



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ENVIRONMENT AND LAND CASE NO. 124 OF 2010**

**LEONARD ODINDI NG'ONG'A..... PLAINTIFF**

**- V E R S U S -**

**1. MWANAISHA MASUDI NTUNE**

**2. LAWRENCE MBUTHIA MUNGANIA .....DEFENDANTS**

**RULING**

This case was filed by a firm of advocates practicing under the name and style of Ong'era Adembesa & Co Advocates of Nkurumah Road opposite Dosh offices P.O. Box 85072, Mombasa. The plaint was signed on 17th February 2010 but was not filed in court until 23rd April 2010 and receipt No. 3289137 for Kshs. 1700 issued to Adembesa & Co. advocates on 23rd April, 2010.

The plaint was amended on 30th June 2010 and filed in court on 8th July, 2010 and receipt no. 34635000 for Kshs. 1700 issued to Adembesa & Co. Advocates. A notice of change of advocates dated 19th November, 2010 was filed in court on 24th November, 2010 by Asige Kiberenge and Anyanzwa in place of Ong'era Adembesa & Company Advocates. The address given for the new advocates was Asige Kiverenge and Anyanzwa, 1st floor, Wakiandi House, Meru Road, P.O. Box 86870, Mombasa.

This case was fixed for full hearing on 6th March, 2014. Mr. Mungalla appeared for Asige Kiberenge and Anyanzwa Advocates for the plaintiff while, Mr. Shimaka appeared for Marende Birir Advocates who appeared for the 1st defendant and Mr. Oddiaga of Oddiaga & Co. advocates appeared for the 2nd defendant.

Mr. Stephen Oddiaga advocate told the court that Mr. On'gera who had drawn this suit was struck off the roll of advocates for not taking a practising certificate for many years a fact known to Mr. Asige Advocate and that Mr. Adembesa from whose name the firm borrows its' name had died over 20 years ago. That Mr. On'gera when he practiced was a lone advocate in that firm. Mr. Oddiaga told the court that Mr. Asige should have owned up these facts to the court to avoid wasting courts time.

Mr. Mungalla in opposing what Mr. Oddiaga had said argued that the court was not told whether Mr.

On'gera had a practicing certificate when he drafted and filed the plaint. He argued that the pleadings were proper and that the court should disallow Mr. Oddiaga's application.

I ruled that since there was no dispute that Mr. Adembesa had died many years ago and that as a result Mr. On'gera was a sole practitioner in the firm, the issue of whether or not Mr. On'gera had a practicing certificate went to the root of the suit. I also stated that it is now well established rule of practice and law that pleadings drawn by an advocate without a practicing certificate are improper and cannot be a basis for bringing a suit in court.

I ordered Mr. Oddiaga to liaise with the Law Society of Kenya to establish the Advocacy status of Mr. On'gera of Adembesa & Co. Advocates to confirm whether he had a practicing certificate when his firm drafted these pleadings to enable the court to make further orders.

Mr. Oddiaga extracted the court orders and wrote to the Law Society. He presented a letter from the Law Society dated 18th March, 2014. The letter stated and I quote;

*"We confirm that according to our records, the above mentioned advocate (ONGERA DAVID M. ADVOCATE P105/2356/92) last took over a practicing certificate in the year 2003 and hence was not certified to practice law for the years 2009,2010, 2011 and 2013."*

The letter was signed Mercy K. Wambua, Deputy Secretary (Compliance & Ethics).

Order 9 rule 1 states as follows;

*"Any application to or appearance or act in any court required or authorized by law to be made or done by a party in such a court, except where otherwise expressly provided by the law for the time being in force, be made by party in person, or his recognized agent or by an advocate duly appointed to act on his behalf".*

An advocate can only appear in court for his client if he has a valid practicing certificate. Under the above order any application or appearance or act in any court is invalid if he has no practicing certificate.

Mr. On'gera drew the pleadings on 17th February, 2010 and amended them on 30th June 2010 and filed those pleadings in court on 23rd April 2010 and 8th July 2010 respectively. When he did so he had no practicing certificate. He purported to do so as an advocate practicing in the firm of Adembesa & Co. Advocates. These pleadings were a nullity. I feel for the plaintiff who avers that he discovered on 27th April 2009 that the land he was purchasing was fraudulently transferred to somebody else. But my hands are tied by the law. I have quoted. I am sure he will now be well advised by his advocates on the next cause of action. I hereby strike out the pleadings herein for having been drawn by an unqualified person, in that Mr. Ong'era had no practicing certificate when he did so.

This suit is therefore struck out with no order as to costs.

**Dated and delivered in open court at Mombasa this 5th day of June, 2014**

**S. MUKUNYA**

**JUDGE**

**5.6.2014**

In the presence of:

Mr. Asige Advocate for the plaintiff

Mr. Nyamanda Advocate for Mr. Oddiaga Advocate for the 2nd defendant.

Marende Birir Advocates for the first defendant.

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1 See - Atulkumar Maganlal Shah v investment & Mortgages Bank Ltd & 20 others CA. no. 13 of 2001 Regina Kavenya Mutuku & 30 others v United Insurance Co. Ltd Nairobi (Milimani) HCCC. NO. 1994 of 2000 (2002) KLR 250.  
Obura v Koome (2001) i EA, 175

2 See Abdul Aziz Juma v Nikisuhi Investments & 20 others (2013)eKLR HCC. Nairobi ELC 291 of 2013.  
Cheraik Management Ltd -vs- Fund Board of Trustees & others Nairobi (Milimani) HCC. 102 of 2012.  
Kenya Power & Lighting Co. v Chris Mahinda t/a/ Nyeri Trade Centre (2008) 1 KLR 753  
ibidi - footnote 1