



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 36 OF 2011

IN ACCORDANCE WITH ORDER 53 RULES 1 OF THE CIVIL PROCEDURE RULES
AND

IN THE MATTER OF: THE ADVOCATES ACT CAP. 16 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF: COMPLAINT AGAINST ROBINSON ONYANGO MALOMBO AND
SHADRACK OPIYO ARUM**

FORMERLY OF ARUM AND COMPANY ADVOCATES

AND

**IN THE MATTER OF: AN APPLICATION BY ROBINSON ONYANGO MALOMBO FOR
LEAVE TO APPLY FOR**

JUDICIAL REVIEW BY WAY OF AN ORDER OF PROHIBITION

BETWEEN

REPUBLIC.....APPLICAN

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VERSUS

**THE DISCIPLINARY COMMITTEE LAW SOCIETY OF
KENYA.....RESPONDENT**

AND

**Jael Obudho.....PROPOSED INTERESTED
PARTY**

RULING

The ex parte applicant Robinson OnyangoMalombo is an advocate of the High Court of Kenya. The respondent is the Disciplinary Committee of the Law Society of Kenya. The ex parte applicant by this action seeks order of prohibition to prohibit the disciplinary committee of the law society of Kenya from sentencing him twice in respect of Misc. disciplinary cause No. 16 of 2007.

An application is now filed dated 20th July 2011 by JaelObundho. She seeks to be joined as an interested party in this action. In her affidavit in support of the application she stated that she is the legal representative of her late husband's estate that is Fred MoloObudho(deceased). She gave the background of the disciplinary cause against the ex parte applicant. Her late husband in July 1996 approached the ex parte applicant and instructed him to act for him in the sale of his property Mombasa/Block/XLVII/61. The ex 0parte applicant secured a buyer for the price of ksh.5.2 million. It is the interested party's submission that the ex parte applicant failed to account fully for the purchase price. She was therefore the complainant in the disciplinary cause and it is on that basis that she seeks to be joined as an interested party in this judicial review.

The application was opposed. It was opposed on the basis that the interested party ceased to have an interest in the complaint from the moment the ex partyapplicant was sentenced by the disciplinary committee. The ex parte applicant stated in his affidavit as follows:

“That in effect the dispute between myself and the proposed interested party was determined in the disciplinary cause and therefore there would be no further issue for the determination in this matter.”

Order 53 rule 4 of the Civil Procedure Rules 2010 enables the court to order that a person who may be interested in the outcome of a judicial review matter to be served with the documents relating to the same. That rule provides as follows:

“if on the hearing of the motion the High Court is of the opinion that any person who ought to have been served therewith has notbeen served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing, in order that the notice be served on that person, upon such terms (if any) as the court may direct.”

In my view the interested party is such a person that ought to be served. The ex parte applicant is challenging the decision of the disciplinary committee which the interested party was the complainant. Whatever decision this court will make in this judicial review matter will have a bearing on that disciplinary cause. I therefore reject the opposition raised by the ex parte applicant and I do allow the application as follows:

- 1. An order is hereby issued for JaelObudho to be joined as an interested party in this matter.***
- 2. The ex parte applicant is ordered to serve JaelObudho with all the documents in this matter.***
- 3. The ex parte application shall pay the costs of the notice of motion dated 20th July 2011 to JaelObudho.***

DATED and DELIVERED at MOMBASA this 5th day of July, 2012.

Mary Kasango

JUDGE