



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
DISCIPLINARY COMMITTEE CAUSE NO. 27 OF 1998  
AND  
IN THE MATTER OF CIVIL APPEAL BY C.M. NDOLO**

**ADVOCATE.....APPELLANT  
VERSUS  
MWAMBURI MWACHEDA.....RESPONDENT**

**R U L I N G**

The learned counsel for the Law Society of Kenya has raised a preliminary objection to the application brought by the appellant by way of Notice of Motion. The thrust of the objection is that the society is not a party in the appeal and service upon it of the notice is misplaced.

The appellant on the other hand submits that the society has been properly served as a party to these proceedings. I have noted the submissions of both learned counsel in this matter. I have also gone through the advocates Act Cap. 16 Laws of Kenya and in particular part XI thereof. It appears to me that the Disciplinary Committee is not the society and the society is not the said committee. That being so, unless the Law Society is specifically named as a party in any proceedings it cannot be brought into any matter by way of service of any notice. I note however that the society has a direct interest in such proceedings and may elect to be represented as an interested party. Therefore I find that the society is not a party herein.

Be that as it may, even if I were to hold that the society is a party, going by the provisions of section 62(3) of Cap. 16 aforesaid, the orders sought cannot be granted on an interlocutory application. Only the appellate court can address the said prayers, especially so, as they have been urged after the sentence has started running. I have to observe however, that the delay in the prosecution of this appeal is unfortunate as this has been occasioned by the administrative machinery between the court and the Law Society of Kenya.

Accordingly, the preliminary objection succeeds with costs.

Order accordingly.

Dated and delivered at Nairobi this 3rd day of February, 1999

**A. MBOGHOLI MSAGHA**

**JUDGE**