

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. E398 OF 2021**

**JOHN WACIRA WAMBUGU-----APPELLANT**

**VERSUS**

**THE DISCIPLINARY TRIBUNAL OF THE LAW SOCIETY OF  
KENYA-----1<sup>ST</sup> RESPONDENT  
MONICA WANJIKU NGUGI -----2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The appellant in this matter is an advocate of the High Court of Kenya and by way of a memorandum of appeal has approached this court basically seeking to overturn the decision of the 1<sup>st</sup> Respondent striking him off the Roll of advocates.
2. The appellant further seeks to have the 1<sup>st</sup> respondent compelled by this court to conduct a reconciliation of accounts which he believes would enable the 1<sup>st</sup> respondent determine the outstanding amount payable to the 2<sup>nd</sup> respondent if any.
3. The memorandum of appeal reads;-
  - a) THAT the 1st Respondent erred in law and fact by failing to consider the prejudice that the Appellant is likely to suffer by striking him off the Roll of Advocates, before conducting an audit and/or reconciliation of Accounts and determining the amount payable, if any.
  - b) THAT the 1st Respondent erred by failing to consider the evidence placed before itself by the Appellant in terms of the detailed statement of accounts before issuing the punitive order of striking him off the Roll of Advocates.

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- c) THAT the 1st Respondent erred in law and in fact by failing to hold the 2nd Respondent accountable to their own claim and further, compelling the Appellant to present a detailed statement of Accounts which the 1st Respondent disregarded in totality.
- d) THAT the 1st Respondent erred and misdirected itself in striking out the Appellant from the Role of Advocates when it ordered the Appellant and the 2nd Respondent on 4th February, 2019 to take accounts and present to the 1st Respondent on 15th April, 2019 which only the Appellant presented and/or complied with the said order.
- e) THAT the 1st Respondent erred in failing to consider that the Appellant's sole source of livelihood is in the practice of law as an advocate of the High court of Kenya.

4. In the appeal he seeks the following orders;-

- a). THAT this Honourable Court do set aside and quash the Orders issued on 20th July, 2020
- b) . THAT this Honourable Court to find in favour of the Appellant and compel the Appellant and the 2nd Respondent to conduct a reconciliation of Accounts and ascertain the outstanding amount payable if any.
- c). THAT this Honourable Court be pleased to set aside the order issued by the 1st Respondent striking the Appellant off the roll of advocates.
- d). THAT this Honourable Court do declare the Report issued to the Chief Registrar of the Judiciary as null and void.
- e). THAT the costs of this appeal be provided for.
- f). THAT this appeal be allowed.
- g). THAT this Honourable court does award such other or further relief as it may deem just and expedient under the circumstances of this case.

5. The appeal is opposed by both respondents and in their submissions the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have raised the question of jurisdiction.
6. The respondents contend that this court lacks the jurisdiction to entertain the appeal citing the fact that the appellant has previously been heard by this court in HCCA E020 of 2021 and that the issues raised in the present appeal are a replica of the matters determined by the court in that appeal.
7. The 2<sup>nd</sup> Respondent has thus urged this court to decline jurisdiction as the same Ruling of the Disciplinary Tribunal issued on 20<sup>th</sup> July 2020 was the subject of the appeal before Hon Lady Justice Bett and now before this court.
8. I understand the respondents to mean that this matter is *res judicata* and to hear it on merit would be akin to this court sitting on appeal against the decision of the learned Honorable Lady Justice A.C Bett delivered on 9<sup>th</sup> September 2024.
9. Jurisdiction is a matter that should be resolved by a court *in limine* whenever that issue is brought to the attention of the court.
10. The Court of Appeal in the **Owners of Motor Vessel Lillians “s” vs Caltex Oil (k) Ltd 1989 eKLR** had this to say about jurisdiction:  
*“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without*

*jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:*

*“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given” (emphasis added).*

11. The Respondents submitted that the Appellant herein had filed an appeal before this Honourable court being HCCA No. E020 of 2021 which was an Appeal from the Ruling of the Disciplinary Tribunal of the Law Society of Kenya, issued on 20th July, 2020 in Disciplinary Cause No. 79 of 2013.
12. According to them, a cursory glance at the instant appeal record will show that this appeal raises precisely the same issues that were dealt with in the appeal before Lady Justice A.C Bett.

13. Further, a deeper reading of the same will show that it is indeed the same Ruling of the Disciplinary Tribunal that is being appealed against and the orders sought are the same.
14. The 2<sup>nd</sup> Respondent contends that the Appeal E020 of 2021 was heard and determined and judgement delivered on 9th September, 2024 settling all the issues with finality.
15. The 2<sup>nd</sup> Respondent attached the Memorandum of Appeal and Judgement in HCCA No. E020 of 2021 as part of their authorities and urged this court to consider that the current matter before this Honourable Court as a non-starter.
16. The 2<sup>nd</sup> Respondent also attached the 2<sup>nd</sup> Respondent's submissions filed in HCCA No E020 of 2021.
17. The court on the 31<sup>st</sup> July 2025 heard Mr Kamau for the appellant who indicated to the court that the appellant had filed submissions dated 2<sup>nd</sup> October 2024 but I have not been able to trace the submissions alluded to by the appellant.
18. This court notwithstanding the fact that the submissions of the appellant could not be traced has taken liberty to consider the issue of jurisdiction of this court to hear and determine this appeal since the question of jurisdiction is a matter of law and can adequately be dealt with in the circumstances of this case by purely examining the record to establish whether the court is being called upon to address the same issues that were dealt with by the Hon Lady Justice A.C Bett.
19. This court has closely looked at judgment of the Hon Lady Justice A.C Bett and noted the following paragraphs which are key for consideration by this court in determining whether this court has jurisdiction to entertain the instant appeal;-

**“15. The appeal is premised on the following grounds;**

- a) THAT the 1st Respondent erred in law and in fact by failing to consider the prejudice the Applicant is likely to suffer by striking him off the Roll of Advocates, before conducting an audit and/or reconciliation of accounts and determining the amount payable, if any.**
- b) THAT the 1st Respondent erred in law and in fact by failing to consider the evidence placed before itself by the Appellant in terms of the detailed statement of accounts before issuing the punitive order of striking him off the Roll of Advocates, the said act of the 1st Respondent has caused the Appellant a lot of distress and health complications that they have caused the Appellant to travel overseas for treatment months on end.**
- c) THAT the 1<sup>st</sup> Respondent erred in law and in fact by failing to hold the 2<sup>nd</sup> Respondent accountable for their own claim and deliberately concealed material facts regarding legal fees owed to the Appellant by themselves and further, compelling the Appellant to present a detailed statement of accounts which the 1st Respondent disregarded in totality.**
- d) THAT the 1st Respondent erred and misdirected itself in striking out the Appellant from the Roll of Advocates when it ordered the Appellant and the 2nd Respondent on 4th February, 2019 to take accounts and present to the 1st Respondent on 15th April, 2019 which only the appellant presented and/or complied with the said order.**
- e) THAT the 1st Respondent erred in law and in fact by failing to take into account the monies paid to them by the Appellant in favour of the complainant and later released the said monies to the 2nd Respondent.**

- f) THAT the 1st Respondent erred in failing to consider that the Appellant's sole source of livelihood is in the practice of law as an advocate of the High court of Kenya.**
- 16. This appeal was canvassed by way of written submissions pursuant to directions earlier issued.**
- 17. The Appellant contends that on 4th February 2019, the 1st Respondent directed parties to take accounts and appear before the Tribunal with confirmed figures on 15th February, 2019 and that while he complied with the orders, the 2nd Respondent failed to do so and therefore they have been unable to determine the contentious and non-contentious figures.**
- 20. The issues of the appellant being struck off the Roll of advocates as well as the issue of accounts were dealt with by the learned Judge. The two issues are the same ones presented for consideration before me.**
- 21. The judge in her decision continues;-**
- “86. In any event, the order striking out the Appellant from the Roll of Advocates was informed by the unchallenged judgment dated 27<sup>th</sup> October 2014, and the Appellant's subsequent conduct that bordered on impunity. This conduct was further compounded by the Appellant's failure to attend the Tribunal when ordered to do so in order to show cause why he should not be struck off the Roll of Advocates.**
- 87. In the circumstances the Appellant's claim that reconciliation ought to be conducted to ascertain what is owed to the 2<sup>nd</sup> Respondent is not tenable. The Appellant is shifting goal posts.**
- 88. The court further appreciates that at no point in the course of the proceedings before the 1st Respondent did the Appellant complain about**

the failure by the 2nd Respondent to submit her statement of accounts or to disclose the outstanding legal fees.

89. Be that as it may, this court holds the view that had the Appellant maintained proper records and provided a comprehensive paper trail of the transactions in respect to the 2nd Respondent's money, failure by the 2nd Respondent to submit her statement of accounts would not be an issue.

90. This Court thus finds that decision of the 1st Respondent was not only within the limits of its jurisdiction but also warranted. The 1<sup>st</sup> Respondent is mandated to enforce ethical standards in the legal profession by adjudicating complaints of professional misconduct or conduct unbecoming. It acted within its statutory powers and its orders were therefore valid.

91. The Appellant cannot therefore now move this court seeking an order to set aside the decision of the 1st Respondent to have his name struck off the Roll of Advocates yet from the proceedings of the Tribunal it is apparent that he has all along been instrumental in the delay and frustration of the process therefore, impeding the finalization of the matter which was lodged in the Tribunal in the year 2013.
92. By failing to obey court orders and filing a myriad of applications without any justifiable cause, the Appellant abused the process of the court. It is the duty of this court to put a halt to such actions which bring disrepute to the legal profession.
93. Accordingly, for the reasons set out above, the court finds this appeal lacks merit and the same is dismissed with costs.
20. Upon examining the contents of the Judgment of the learned Honorable judge, I have no doubt in my mind that the issues that are raised in the

instant memorandum of appeal were precisely the same issues canvassed before the court in Civil Appeal No. E020 of 2021.

21. It does appear to me that the appellant in this appeal was basically engaged in a game of chance with the High Court basically trying to see whether he could find a judge who would be able to grant him the orders he desired. It was in my view a well calculated move by the appellant to try and secure favorable orders from the court by whatever means.
22. The filing of the two appeals in the same year, raising the same issues and involving the same parties cannot have been by sheer mistake. It was a well calculated move by the appellant to try and secure orders one way or the other.
23. It does also appear to me that the appellant, who was facing issues of professional misconduct, did not reflect on what the filing of simultaneous appeals would communicate of him to the courts at the point when that fact would be discovered. It would have been different if the appellant was just a lay man trying to salvage his career but an advocate certainly knows the bounds of engaging the courts and the appropriate procedure to follow to challenge the decisions of the Tribunal or any court orders that he does not agree with.
24. This court has considered the matter of jurisdiction on the face of the pleadings filed by the parties and I have no hesitation in finding that the issues raised in the instant appeal were adequately dealt with by the Honorable Lady Justice Bett in her Judgment in Appeal no E020 of 2021.
25. The matters are now *res judicata* and this court is not minded to embark on a determining the appeal on its merits for that would amount to an exercise in futility. This court would be technically sitting on appeal against the judgment of a court of concurrent jurisdiction.

26. The doctrine of res judicata is founded on public policy and is aimed at achieving two objectives namely, that there must be finality to litigation and that an individual should not be harassed twice with the same account of litigation.
27. The factors that the court takes into consideration in deciding if a matter is res judicata were laid out by the Supreme Court of Kenya in the case of **Kenya Commercial Bank Limited vs Muiri Coffee Estate Limited & Another [2016] eKLR** in the following terms:  
*“Hence, whenever the question of res judicata is raised, a Court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The Court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a Court of competent jurisdiction.* This test is summarized in **Bernard Mugo Ndegwa v. James Nderitu Githae & 2 others, [2010] eKLR**, under five distinct heads:  
**i. the matter in issue is identical in both suits;**  
**ii. the parties in the suit are the same;**  
**iii. sameness of the title/claim;**  
**iv. concurrence of jurisdiction; and**  
**v. finality of the previous decision.”**
28. The instant appeal on all fours fits within the above text and there is absolutely nothing new that the appellant is raising in this appeal. The court in HCCA E020 of 2021 considered whether his striking off the Roll of advocates was properly arrived at and at length dealt with the issues of accounting.

29. The issues were therefore determined by the High Court with finality and the decision of that court must be respected

28. In **John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR** stated as follows:

*“The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unravelling uncontrollably.”*

30. To reopen a matter that has been competently determined by a court of concurrent jurisdiction would be to promote incoherence and judicial disharmony in decision making. Such action would undermine public confidence in the judiciary.

31. The reasonable man in the street would be left to wonder what has become of these courts that when they sit in Kakamega and Nairobi they interpret the law differently on precisely the same issues and facts. This court is reluctant to embark on the determination of this appeal on merit considering that all the issues were previously determined by the High Court.

32. The court therefore agrees with the 1<sup>st</sup> and 2nd Respondents that the Appellant does not deserve exercise of this Honourable Court's discretion in his favour.
33. He has totally ignored the judgment adopted by this Honourable court on 1st March, 2023 to which he is subject. He has further failed to obey all other orders issued by the Tribunal and the courts. Indeed, the most reasonable thing to have done in this matter would have been to withdraw this appeal and if the appellant was genuinely in search of justice, he would quickly have realized that saddling this court with the instant appeal would not augur well in the eyes of any officious bystander. This certainly is the wrong forum for the appellant if he still feels aggrieved by the decision of the Tribunal and the High Court.
34. The appellant is now engaged in wasting valuable judicial time and he is actually vexing the High Court by relitigating the same issues. His appeal is a classic example of abuse of the court process.
35. As an advocate he knows that this is not how the judicial process should be utilized by any litigant who has a genuine grievance capable of resolution by a court.
36. Having said so, I find and hold that this court has no jurisdiction to entertain the instant appeal and hereby dismiss the same with costs to the respondents.
37. It is so ordered.

**DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 6<sup>TH</sup>  
day of NOVEMBER 2025.**

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**A. M. MUTETI**  
**JUDGE**

**In the presence of:**

Habiba: Court Assistant

Kamau for Appellant

No appearance for 1<sup>st</sup> Respondent

Ms Kibii holding brief Gin for 2<sup>nd</sup> Respondent

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