



Ndung'u v Law Society of Kenya & 2 others (Miscellaneous Civil Application E086 of 2025) [2026] KEHC 4845 (KLR) (Civ) (16 April 2026) (Ruling)

Neutral citation: [2026] KEHC 4845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E086 OF 2025**

JN MULWA, J

APRIL 16, 2026

BETWEEN

PAUL KINYANJUI NDUNG'U APPLICANT

AND

LAW SOCIETY OF KENYA 1ST RESPONDENT

ADVOCATES DISCIPLINARY TRIBUNAL 2ND RESPONDENT

ADVOCATES COMPLAINTS COMMISSION 3RD RESPONDENT

RULING

1. Before the Court for determination is the motion dated 30/01/2025 filed by Paul Kinyanjui Ndung'u (hereafter the Applicant) against Law Society of Kenya, Advocates Disciplinary Tribunal and Advocates Complaints Commission (hereafter the 1st, 2nd & 3rd Respondents) pursuant to Section 1A, 1B, 3, 3A of the Civil Procedure Act (CPA) and Order 42 Rule 6 of the Civil Procedure Act (CPR) seeking inter alia -:
 - a. Spent
 - b. That pending the hearing and determination, the Honorable Court be pleased to grant an order of stay of proceedings, judgment and any consequential orders arising in Disciplinary Case No. DTC 126 of 2021 and DTC 110 of 2022 that are currently ongoing at the Law Society of Kenya.
 - c. That the Honorable Court be pleased to arrest the sentencing and any consequential orders arising in DTC 126 of 2021 that is slated for July 2025 pending the inter partes hearing of this instant application.



- d. That this Honorable Court be pleased to arrest the judgment and any consequential orders arising in DTC 110 of 2022 slated for 03/02/2025 pending the inter partes hearing of this application.
 - e. That an order of prohibition be issued restraining the Respondents from taking any disciplinary action against the Applicant pending the hearing and determination of the instant application.
 - f. That the costs of this application be provided for.
2. The motion is premised on grounds amplified in the supporting affidavit of even date and supplementary affidavit dated 18/07/2025, both sworn by the Applicant.
 3. The Law Society of Kenya and Advocates Disciplinary Tribunal (hereafter the 1st & 2nd Respondents) oppose the motion by way of a replying affidavit and further affidavit dated 19/06/2025 and 07/10/2025 respectively sworn by Florence Muturi, who cites being the Secretary of the 1st and 2nd Respondent thus duly authorized to depose the said affidavits.
 4. Directions were taken on disposal of the Applicant's motion by way of written submissions, of which, the parties duly complied. Having considered the material on record, the Court postulates that the issue(s) for determination concern-
 - a. Whether there is merit to the application motion?
 - b. Who ought to bear the costs of the application?

Whether there is merit to the Applicant's motion?

5. In presenting the instant motion, the Applicants rely on among other provisions Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in *Rose Njoki Kingau & another v Shaba Trustees Limited & another* [2010] KECA 87 (KLR) and requires no restatement. Alongside the above provision, the Applicant has equally cited the provision of Order 42 Rule 6 of the CPR.
6. However, before proceeding any further, it would be germane to address an issue that has since piqued the Court's interest.

As earlier observed in this ruling, this Court deliberately set out ad verbum the Applicant's relief(s) as sought.

Notably, when the matter was placed before this Court ex parte, I proceeded to grant prayers 2, 3 & 4 thereof, of which as can be garnered ex facie, were interim reliefs pending hearing and determination of the motion. It is equally notable that prayer (5) in the Applicant's motion seeking an interim relief of prohibition from taking any disciplinary action against the Applicant pending hearing and determination of the instant motion. As such, the motion lacks any substantive relief for determination before this Court.

7. Even for arguments sake, if this Court was to presume that the Applicant's intent was to seek orders of stay of execution pending hearing and determination of an appeal, it is trite that Order 42 Rule 6(1) of the CPR presupposes the existence of an appeal as a condition precedent to the exercise of this Court's appellate jurisdiction.



8. It is also notable that what is before this Court is a Miscellaneous Application. No filed appeal has been evinced before this Court as at time of writing of this ruling. Meanwhile, this Court has observed time without number that the invocation of the jurisdiction of this Court under Order 42 Rule 6 (1) or 6 (6) of the CPR must be preceded by the filing of an appeal, or compliance with the procedure for filing an appeal, in this case a memorandum of appeal (See Order 42 Rule 1 of the CPR).
9. Thus, where a party specifically seeks stay of proceedings pending hearing and determination of an appeal not yet filed, the Court may be acting in vacuo by considering the Applicant's prayer for stay of proceedings pending a non-existent appeal. See; Abubaker Mohamed Al-Amin v Firdaus Siwa Somo [2018] KECA 202 (KLR) and Equity Bank Limited v West Link Mbo Limited [2013] KECA 320 (KLR).
10. In the end, the Applicant's motion lacks merit as there exists no substantive prayer for the Court's consideration, as the prayers as presently sought by the Applicant have been overtaken by events, to wit, the interim temporary stay of proceedings, judgment and any consequential orders arising from DTC 126/2021 and DTC 110/2022 are hereby discharged and vacated.
11. The motion dated 30/1/2025 is dismissed with costs to the Respondents.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF APRIL 2026.

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JANET MULWA.
JUDGE

