

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW NO. 73 OF 2026

IVY MUKOLWE.....1ST APPLICANT
CATHERINE ACHOLA.....2ND APPLICANT

-VERSUS-

BOMA INTERNATIONAL
HOSPITALITY COLLEGE.....1ST RESPONDENT
GEORGE ADALLA.....2ND RESPONDENT
SUSAN NG'ONG'A.....3RD RESPONDENT

RULING

1. The Application that forms the subject of this ruling is the one dated **23/03/2026** wherein the applicants seek orders that;

1) Spent.

2) The honorable court does find that the 2nd Respondent, being the 1st Respondent's Head of Academic Affairs is in contempt of court for disobedience of the Order this court issued on the 13th of March 2026.

3) Upon grant of prayers 1 and 2 above, the honorable court does impose a fine and or penalty of KSHS. 10, 000, 000. 00 against the 1st and 2nd Respondents (contemnors) and in default of payment of such fine, all moveable and

immoveable assets of the 1st and 2nd Respondents including land and buildings be attached and sold in execution of this order to satisfy the penalty for contempt.

4) Upon issue of prayers 1 and 2 above, the court does issue an order that the 2nd Respondent (GEORGE ADALLA) be committed to civil jail for a period of 6 months.

5) The honorable court be pleased and do hereby order the gate-keepers on duty on 16th March 2026 at the 1st Respondent's entrance gate to appear before the honorable court and show cause why contempt proceedings should not be commenced against them pending the hearing and determination of the Judicial Review Application herein.

6) Any other relief the honorable court may deem fit to grant.

7) Costs of this Application.

2. The Applicants argue that the respondents are in contempt of the order of the court in that they continue to deny the applicants access to the institution in violation of the order. Further, that their attempt to gain access is stopped at the gate.

3. They argue that the institution has changed the biometrics accessibility and they are troubled that the Respondent has created roadblocks making the access to the orders impossible.
4. The Application is opposed through the Respondents Replying Affidavit Sworn on 24th March 2026 and a further supplementary Affidavit Sworn on 30th March 2026. The Respondents have opposed the Application for being an abuse of the court process.
5. It is the respondent's case that they have not denied the applicants access to the institution. They argue that access is regulated by biometrics settings which they cannot change. It is their case that the biometrics and access is only available upon payment of fees which the applicants have not paid and therefore, they cannot use biometrics access. They argue that the applicants have not been denied access physically on condition they pay fees.
6. In a different thrust, the respondents through the supplementary affidavit of George Adalla sworn on 30/03/26 argue that the applicant's lawyer Nathan Kilimo is unknown to the Law Society of Kenya. This is confirmed by The Law Society of Kenya in their letter of even date.

Analysis and determination

7. Having carefully considered the grounds in support of the application, the parties' rival affidavits and submissions, the only issue this court is called upon to determine is whether the pleadings filed by Nathan Kilimo are legal.

8. Section 2 of the Advocate’s Act provides that: -

“unqualified person” means a person who is not qualified under section 9 and includes an advocate who -

(a) is not qualified under section 9;

(b) is not exempt under section 10; and

(c) fails to take out a practising certificate.”

9. Section 34 further provides as follows: -

“(1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument—

(a) relating to the conveyancing of property; or

(b) for, or in relation to, the formation of any limited liability company, whether private or public; or

(c) for, or in relation to, an agreement of partnership or the dissolution thereof; or

(d) for the purpose of filing or opposing a grant of probate or letters of administration; or

(e) for which a fee is prescribed by any order made by the Chief Justice under section 44;

or

(f) relating to any other legal proceedings; nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document or instrument: Provided that this subsection shall not apply to—

(i) any public officer drawing or preparing documents or instruments in the course of his duty; or

(ii) any person employed by an advocate and acting within the scope of that employment; or

(iii) any person employed merely to engross any document or instrument.

(2) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable summarily.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) This section shall not apply to—

(a) a will or other testamentary instrument; or

(b) a transfer of stock or shares containing no trust or limitation thereof.”

10. Section 34B which is one of the amendments introduced in 2017 provides for validity of documents and states that: -

“Validity of legal documents

(1) A practising advocate who is not exempt under section 10 and who fails to take out a practising certificate in any year, commits an act of professional misconduct.

(2) Notwithstanding any other provisions of this Act, nothing shall affect the validity of any legal document drawn or prepared by an advocate without a valid practising certificate.

(3) For the purpose of this section, "legal document" includes pleadings, affidavits, depositions, applications, deeds and other related instruments, filed in any registry under any law requiring filing by an advocate.”

11. The provision of Section 34B of the Act as couched, validates legal documents of advocates in good standing who have not taken out practising certificates. It is worth noting that the Supreme Court Decision in **National Bank of Kenya Ltd v Anaj Warehousing Ltd (Petition 36 of 2014) [2015] KESC 4 (KLR) (2 December 2015) (Judgment)** is what necessitated the National Assembly to amend the Advocates Act by introducing among other provisions sections 34A and 34B because while the law was clear that unqualified persons could not draw legal instruments and pleadings, it was not clear on the validity of such documents.

12. Catherine Ochola in the supporting Affidavit at paragraph 9 deponed;

“Our advocates beseeched the Respondents to obey the Order. They made numerous phone-calls and mails on the same. This according to her can be seen in annexure “CIVY-2” which is a document containing the emails sent by our advocates importuning for obedience of the order.

13. At Paragraph 15 she further deponed on oath that;

“Their advocate sent a mail to our advocate on the evening of the 16th of March responding to earlier questions about their disregard of the Order. He cited reasons such as biometric challenges and unfeasibility of our resumption. Why then were we not let in to discuss a framework of resumption with the school hierarchy? ***This can be seen in annexure “CIVY-4” which is a copy of the response of the Advocates for the Respondent.***

14. According to the Law Society of Kenya, that Nathan Kilimo is not an advocate, and the Applicants and their advocates on record knew this at the time of annexing the documents. The court has taken time to peruse the entire contents of the applicants’ application and noted that Nathan Kilimo has been at the forefront and the driver of the bulk of the applicant’s engagements. The applicants have recognized him as their advocate and he has engaged the Respondent's counsel on the issues related to this application in depth.

- 15.** Nathan Kilimo did not take any step towards advancing or asserting his status. The court notes that the Applicant's counsel elected to remain silent on this. The court has been left with no option than to go with the position that was advanced by the Law Society of Kenya that he is not an advocate of the High Court. The court cannot determine an application that is being prosecuted by a person who is not known as an advocate by the Law Society of Kenya.
- 16.** Section 34B(2) of the Advocate's act applies to persons who have been admitted to the roll of advocates but for one reason or another, does not have a practising certificate and as the said Nathan Kilimo has not produced any evidence that he is an Advocate of the High Court of Kenya, and additionally, the Law Society has also stated that they do not know him, at first glance, the Respondents cannot be afforded the benefit of section 34B(2). A search on the LSK search engine also does not yield any results under the advocates name.
- 17.** Consequently, the finding of the Supreme Court in **National Bank of Kenya Ltd v Anaj Warehousing Ltd (Petition 36 of 2014) [2015] KESC 4 (KLR) (2 December 2015) (Judgment)** come into mind to wit;

The facts of this case, and its clear merits, lead us to a finding and the proper direction in law, that, no instrument or document of conveyance becomes invalid under Section 34(1)(a) of the Advocates Act, only by dint of its having been prepared by an advocate who at the time was not holding a

current practising certificate. The contrary effect is that documents prepared by other categories of unqualified persons, such as non-advocates, or advocates whose names have been struck off the roll of advocates, shall be void for all purposes.

18. However, the issue at hand is the pleadings filed in court. A perusal of the same reveals that they were filed by the firm of Maalim & Associates Advocates but it does not contain the advocates' practicing number or anything to link the said Nathan Kilimo to the drafting of the pleadings, his attendance notwithstanding.

19. I am guided by the holding of Professor Ngugi J (as he then was) in **Republic v Resident Magistrate's Court at Kiambu Ex-Parte Geoffrey Kariuki Njuguna & 9 others [2016] KEHC 4012 (KLR)** where he held;

35. A claim in law and a course of action belongs to the client and not the advocate. It is hard to justify, in this era where the Constitution (at Article 159) commands the courts to privilege the ideals of substantive justice as opposed to legal formalism, statutory interpretation which bereaves a party of a valid substantive claim because his or her lawyer failed to adhere to a procedural requirement unrelated to the claim in question. The case would be different, of course, if there is evidence that the client acted in bad faith or with knowledge

of the failure of the lawyer to take out a practicing certificate but still persisted in having the lawyer represent them. No such evidence was presented here. Instead, we have a group of innocent members of the public who instructed a law firm – not even a particular lawyer – to file a claim on their behalf. The law firm so instructed, then, assigned the file to a lawyer in the firm who happened not to have taken a practicing certificate. In my view, to paraphrase the Supreme Court, the fact of this case, and its clear merits lead me to a finding that the pleadings drawn and signed by Mr. Nyanyuki as well as the submissions he made in the two suits are not invalid merely by dint of Mr. Nyanyuki's failure to take out a practicing certificate.

Determination;

- 20.** The circumstances in the instant case are not those of an advocate on the roll of advocates without a practicing certificate, but those of a firm whose representative who appeared in court is not an advocate of the High Court of Kenya. However, the reasoning, in my view, is relevant to the circumstances herein.
- 21.** The basis for striking out a suit or pleadings under section 34B is the status of the advocate who drew the same. As it has not been shown that the firm on record is non-existent or restricted from practice, it would not be in the interests of justice to strike out the pleadings. As the

parties instructing the firm had no way to determine whether the advocate who attended court was actually on the roll of advocates, to punish them for his misconduct would equally be an affront to justice.

22. In the spirit of promoting the applicants' right to access to justice under Article 48 of the Constitution, the court is of the view that Applicant's pleadings shall not be invalidated nor defeated by the said lapse.

Order:

1. The applicants shall regularize the issue of representation within 14 days.
2. The Application shall be determined after the Applicants comply with order 1.

Dated, signed and delivered virtually in Eldoret this 24th day of April, 2026.

.....

J. CHIGITI (SC)

JUDGE