



**Consumers Federation of Kenya v Weru & 5 others; Equity Bank Kenya Limited & another (Interested Parties) (Commercial Case E269 of 2026) [2026] KEHC 6321 (KLR) (Commercial and Tax) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6321 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E269 OF 2026**

**PM MULWA, J**

**MAY 11, 2026**

**BETWEEN**

**CONSUMERS FEDERATION OF KENYA ..... PLAINTIFF**

**AND**

**GEORGE WERU ..... 1<sup>ST</sup> DEFENDANT**

**MUNIU THOITHI ..... 2<sup>ND</sup> DEFENDANT**

**TRANSCENTURY PLC ..... 3<sup>RD</sup> DEFENDANT**

**KENYA REVENUE AUTHORITY ..... 4<sup>TH</sup> DEFENDANT**

**THE NATIONAL ASSEMBLY ..... 5<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**EQUITY BANK KENYA LIMITED ..... INTERESTED PARTY**

**NATIONAL TAXPAYERS ASSOCIATION ..... INTERESTED PARTY**

**RULING**

1. The Plaintiff moved the Court by the Notice of Motion dated 22<sup>nd</sup> April 2026 seeking, inter alia, urgent interim and interlocutory orders restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from acting as Receiver Managers of the 3<sup>rd</sup> Defendant, TransCentury PLC, pending the hearing and determination of the suit. The Plaintiff further sought orders for the appointment of the Official Receiver in place of the current Receiver Managers, preservation of the assets and records of the 3<sup>rd</sup> Defendant, and directions that



outstanding tax liabilities allegedly due to the Kenya Revenue Authority be accorded priority before any remittances are made to Equity Bank.

2. Upon considering the application ex parte on 23<sup>rd</sup> April 2026, the Court certified the matter as urgent and granted prayer 2 of the application. Following those directions, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, as well as the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, filed several applications and responses challenging the propriety of the proceedings.
3. When the matter came up for directions on 6<sup>th</sup> May 2026, counsel for the Defendants raised a preliminary issue regarding the qualification of counsel, Mr. Ouma, who had drawn and filed the pleadings and the present application on behalf of the Plaintiff. It was contended that counsel lacked a current practicing certificate at the material time and was therefore not qualified to act as an advocate within the meaning of the *Advocates Act*.
4. A further issue arose regarding the representation of the 3<sup>rd</sup> Defendant. It was contended that by reason of the interim orders issued by the Court, the directors of the 3<sup>rd</sup> Defendant had resumed participation in the affairs of the company and appointed counsel notwithstanding the subsisting receivership, while the Receiver Managers equally asserted authority to represent the company.
5. This ruling therefore determines two issues. First, whether counsel who instituted these proceedings was qualified to act at the material time. Secondly, whether the interim orders granted by the Court ought to remain in force in light of the receivership already subsisting over the 3<sup>rd</sup> Defendant.
6. I have considered the rival submissions and the material placed before the Court. The first issue for determination is whether Mr. Ouma possessed the requisite right of audience and capacity to institute these proceedings on behalf of the Plaintiff.
7. Section 9 of the *Advocates Act* is explicit that:
  - a. he has been admitted as an advocate, and
  - b. his name is on the Roll of Advocates, and
  - c. he has in force a practicing certificate.”
8. The objection before the Court is founded on the contention that Mr. Ouma did not possess a current practicing certificate at the time of filing the suit and the accompanying application. Counsel for the Defendants urged the Court to find that the proceedings were incompetent ab initio and to either strike out the suit altogether or discharge the ex parte orders granted on 23<sup>rd</sup> April 2026. The Plaintiff, on the other hand, contended that the dispute raises substantial issues touching on the receivership and management of a public company and ought not to be defeated on account of procedural technicalities.
9. Section 34 of the *Advocates Act* 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—any public officer drawing or preparing documents or instruments in the course of his duty; or any person employed by an advocate and acting within the scope of that employment; or 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. transfer of stock or shares containing no trust or limitation thereof for gain.
10. The law on the effect of pleadings drawn by an advocate without a current practicing certificate is now settled in *National Bank of Kenya Ltd v Anaj Warehousing Ltd* (2015) eKLR where the Supreme Court of Kenya observed as follows:

“(48) The decision by the Appellate court in *Ndolo Ayah* was based on certain fundamental assumptions. The first of these was that the phrase “an unqualified person” is synonymous with “an advocate without a practicing certificate”. On the face of section 34 (1) of the *Advocates Act*, this assumption is not without merit, especially taking into account the provisions of section 2 of that Act which defines “an unqualified person” as “a person not qualified under section 9 to act as an advocate.”

11. The Supreme Court then posed the following questions at paragraph 53:

“What is the real intention of section 34 of the *Advocates Act*? Is it aimed exclusively at advocates “without practicing certificates”, or persons who are not advocates within the terms of section 2,12 and 13 (regarding qualification) of the *Advocates Act*? Does one cease to be “an advocate” on account of not taking out a practicing certificate? Or does one remain “an advocate” but “one who is not qualified to perform the tasks of an advocate?”

12. At paragraph 55 the court stated:

“The Appellate Court’s second assumption, in *Ndolo Ayah*, was that section 34 (1) of the *Advocates Act* had the effect of rendering all instruments of conveyance prepared by advocates without current practicing certificates, null and void for all purposes. It is now clear that such an assumption was not based on any express or implied meaning of section 34 or other provisions of the *Advocates Act*. In the reasoning of the Appellate Court, the ground for invalidating such documents rests in public policy...”



13. The Supreme Court categorised the ratio decidendi in the Ndolo Ayah case as the general “announced rule” which can, in appropriate situations, be departed from. The Court concluded by stating that:
- “(68) The facts of this case, and its clear merits, lead to a finding and the proper directions in law, that, no instrument or document of conveyance becomes invalid under section 34(1) (a) of the *Advocates Act*, only by dint of it having been prepared by an advocate who at the time was not holding a current practicing 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.”
14. That position has since found statutory expression in Section 34B of the *Advocates Act*. It specifically provides for the validity of legal documents in the following terms:
1. A practicing advocate who is not exempt under section 10 and who fails to take out a practicing 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 practicing 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.
15. In the present case, it is not disputed that Mr. Ouma is an advocate of the High Court of Kenya. The complaint only concerns the absence of a current practicing certificate at the material time. Guided by the decision of the Supreme Court in the National Bank of Kenya Ltd case (supra), and the provisions of Section 34B of the *Advocates Act*, I am unable to hold that the pleadings filed herein are invalid or incapable of sustaining the suit.
16. The Court is equally guided by Article 159(2)(d) of *the Constitution* which obliges courts to administer justice without undue regard to procedural technicalities. While non-compliance with the *Advocates Act* attracts statutory consequences, a litigant ought not to be shut out where substantive issues remain unresolved.
17. The second issue concerns the interim orders granted on 23<sup>rd</sup> April 2026, restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from acting as Receiver Managers of the 3<sup>rd</sup> Defendant. The Defendants contended that the orders were obtained without disclosure that the company was already under receivership.
18. The material before the Court confirms that the 3<sup>rd</sup> Defendant was already under receivership when the Plaintiff moved the Court ex parte and the Receiver Managers had already assumed control. That fact was not candidly disclosed.
19. The ex parte orders had the effect of reintroducing the directors into the management of the company, notwithstanding the subsisting receivership, thereby creating uncertainty as to the lawful control and representation of the 3<sup>rd</sup> Defendant.



20. Order 40 Rule 7 of the Civil Procedure Rules empowers the Court to discharge, vary or set aside an injunction order. It provides that:

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”

21. In view of the material non-disclosure regarding the existing receivership and the resulting uncertainty occasioned by the interim orders, I am satisfied that sufficient cause has been established to warrant their discharge.

22. Consequently, the interim orders granted on 23<sup>rd</sup> April 2026 are hereby set aside and discharged.

23. Having discharged the interim orders, the issue regarding representation of the 3<sup>rd</sup> Defendant stands resolved, the Receiver Managers remaining in control of the affairs and representation of the company pending further orders of the Court

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI**

**THIS 11<sup>TH</sup> DAY OF MAY 2026.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Nanda & Mr. Ouma for Plaintiff

Mr. Paul Ogunde for 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

Ms. Kahindi hb for Mr. Ochieng for 4<sup>th</sup> Defendant

Ms. Khadambi for 5<sup>th</sup> Defendant

Mr. Kiragu Kimani, SC & Mr. L. Ondieki for 1<sup>st</sup> Interested Party

Court Assistant: Lispa

