

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 10 OF 2018

(Formely Nyeri ELC 85 of 2015)

JOSEPH KIHARA GITUI PLAINTIFF

VERSUS

CHARLES KINYUA KIHUTO DEFENDANT

RULING

1. This ruling is in respect of the application dated 28.3.2018 whereby defendant applicant is seeking for the dismissal of the suit.
2. The grounds in support of the application are that the suit was instituted by an advocate who did not have license to practice and or institute proceedings in the Republic of Kenya.
3. The applicant has also filed a supporting affidavit with annexures. Annexure CKKL is a letter from the law society of Kenya showing that Mr. Robinson Ngatia Mugo who filed this did not have a practicing certificate in the year 2011. This suit was filed in the year 2012.
4. Respondent/plaintiff has filed a replying affidavit. He avers that this application is an afterthought since all along his advocate used to appear in court and defendant never raised the issue.
5. For quite some time the governing case law on the status of an advocate who undertakes instructions without a practicing certificate was the **National Bank of Kenya limited versus Wilson Ndolo Ayal Civil appeal No. 119 of 2002 case**. However, the recent decision of **Supreme Court of Kenya Petition No. 36 of 2014 National Bank of Kenya Ltd vs. Array Warehousing Ltd** has clarified that the problem lies when people masquerade as advocates and they go ahead to prepare documents. In the aforementioned S.C.O.K case, the court stated that **“The decision by the appellate court in the Wilson Ndolo Ayal case was based on certain fundamental assumptions that the phrase unqualified person was synonymous with An advocate without a current practicing certificate”**. The court further went ahead to state that; **“To invalidate an otherwise binding contractual obligation on the basis of a precedent, or rule of common law even if such course of action would subvert fundamental rights and freedoms of individuals would run contrary to the values of the Constitution as enshrined in article 40 as regards the protection against arbitrary legislative deprivation of a person’s property of whatever description, article 20 (3) (a) and (b) as regards interpretation that favoured the development and enforcement of fundamental rights and freedoms and article 10 on values and principles of governance.....”**.
6. From the documents availed by the applicant, the advocate known a Robinson Ngatia was a qualified advocate but had no practicing certificate. The documents he has filed herein cannot be invalidated on the basis that he had no practicing certificate.
7. The application is hence not merited and the same is dismissed with costs to respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Plaintiff

Defendant

HON. LUCY. N. MBUGUA

ELC JUDGE