



**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT  
AT MALINDI  
CIVIL CASE NO. 113 OF 2012**

**RUSSEL HOPEWELL**

**MARIA HOPEWELL.....PLAINTIFFS/APPLICANTS**

**=VERSUS=**

**ABDALLA ALI ABDULRAHMAN.....DEFENDANT/RESPONDENT**

**R U L I N G**

1. The Plaintiffs sued the Defendant seeking for an order of specific performance.
2. Upon being served, the Defendant filed a Memorandum of Appearance in person on 6<sup>th</sup> August 2012.
3. The Defendant then filed a Defence through the firm of “A. Y. A Jiwaji and Jiwaji Advocates “on 22<sup>nd</sup> August, 2012.
4. The said A. Y. A. Jiwaji and Jiwaji Advocates filed an Application on 26<sup>th</sup> September 2011 seeking to strike out the Plaintiffs' Plaintiff for non-compliance with the requirements of Order 3 Rule 2 of the Civil Procedure Rules, 2010. The Application is still pending.
5. The Plaintiff has now filed an Application seeking for the following reliefs:
  - a. **THAT the Defendant’s/Respondent's Application dated 20<sup>th</sup> September 2012 and the Defence dated 21st August 2012 be struck out with costs.**
  - b. **THAT the costs of this application be provided for.**
6. The Application is premised on one ground; that the Defendant’s Advocate is unqualified to represent the Defendant in the suit having not been authorised to do so by law.
7. The Defendant's Advocates were served with the Application and the hearing notice of 26<sup>th</sup> April 2013 at the physical address that they provided in the Defence. They have not filed a Replying Affidavit or Grounds of Opposition.
8. The Plaintiff/Applicant has deponed that he has looked at the Law Society of Kenya website and discovered that Mr. Jiwaji Abdula, whose admission number is P105/1353/84 is an inactive advocate and therefore not certified to practice law in 2013. The Applicant has annexed from the Law Society of Kenya website the status of the said Advocate.
9. The extract from the Law Society of Kenya’s website annexed on the Application shows that Jiwaji Shamim Yusuf Abdulali trading as A.Y.A Jiwaji and Jiwaji is inactive. He has been inactive since the year 2010.
10. On the material before me, there is no evidence that the Defendant's Advocate is authorised to act for the Defendant or at all. The Defendant’s advocate has not taken out a practicing certificate for the year 2013 or 2012, when the pleadings were filed.
11. The Defence and the Notice of Motion filed by the Defendant's Advocate were filed by an unqualified person by dint of section 9, 31 and 34 of the Advocates Act.
12. Section 34(1) of the Advocates Act states as follows;

***“No unqualified person shall, either directly or indirectly, take instructions or draw any document or instrument relating to any legal proceedings, nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instructions or for the drawing or preparation of any document or instrument.”***

13. In view of the provisions of Section 34 of the Advocate Act, and in the absence of a response from the Defendant, I find and hold that the Defence and Notice of Motion filed by the Defendant's Advocate is invalid and a nullity *ab initio*. I therefore allow the Plaintiff's Application dated 8<sup>th</sup> February 2013 as prayed.

**Dated and delivered in Malindi this 11<sup>th</sup> day of July, 2013.**

**O. A. Angote**

**Judge**