



Goal Advisory Africa Limited (Trustee) & 376 others v Official Receiver & 4 others; Shah & another (Intended Interested Party) (Civil Application E590, E591, E592, E593, E597, E601, E607 & E615 of 2023 (Consolidated)) [2025] KECA 104 (KLR) (24 January 2025) (Ruling)

Neutral citation: [2025] KECA 104 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E590, E591, E592, E593, E597,
E601, E607 & E615 OF 2023 (CONSOLIDATED)
M NGUGI, P NYAMWEYA & WK KORIR, JJA
JANUARY 24, 2025

BETWEEN

GOAL ADVISORY AFRICA LIMITED (TRUSTEE) APPLICANT

AND

OFFICIAL RECEIVER RESPONDENT

AS CONSOLIDATED WITH
CIVIL APPLICATION E591 OF 2023

BETWEEN

CYTONN INTERGRATED PROJECT LLP APPLICANT

AND

THE OFFICIAL RECEIVER 1ST RESPONDENT

CYTONN HIGH YIEL SOLUTIONS LLP (IN LIQUIDATION) 2ND
RESPONDENT

SBM BANK (KENYA) LIMITED 3RD RESPONDENT

AS CONSOLIDATED WITH
CIVIL APPLICATION E592 OF 2023

BETWEEN

CYTONN INVESTMENT MANAGEMENT PLC APPLICANT



AND

THE OFFICIAL RECEIVER RESPONDENT

**AS CONSOLIDATED WITH
CIVIL APPLICATION E593 OF 2023**

BETWEEN

**BIRGUY LAMIZANA & 81 OTHERS & 81 OTHERS & 81 OTHERS & 81
OTHERS & 81 OTHERS APPLICANT**

AND

**THE OFFICIAL RECEIVER 1ST RESPONDENT
CYTONN HIGH YIELD SOLUTIONS LLP 2ND RESPONDENT
SBM BANK (KENYA) LIMITED 3RD RESPONDENT**

AND

**ANILKUMAR MOHANIAL SHAH INTENDED INTERESTED PARTY
SUNANDABEN SHAH INTENDED INTERESTED PARTY**

**AS CONSOLIDATED WITH
CIVIL APPLICATION E597 OF 2023**

BETWEEN

**VALERINA JIWA & 289 OTHERS & 289 OTHERS & 289 OTHERS & 289
OTHERS & 289 OTHERS APPLICANT**

AND

**THE OFFICIAL RECEIVER 1ST RESPONDENT
CYTONN HIGH YIELD SOLUTIONS LLP 2ND RESPONDENT**

**AS CONSOLIDATED WITH
CIVIL APPLICATION E601 OF 2023**

BETWEEN

CYTONN INVESTMENTS PARTNERS FIFTEEN LLP APPLICANT

AND

THE OFFICIAL RECEIVER RESPONDENT

**AS CONSOLIDATED WITH
CIVIL APPLICATION E607 OF 2023**



BETWEEN
CYTONN INVESTMENT MANAGEMENT PLC APPLICANT
AND
THE OFFICIAL RECEIVER RESPONDENT
AS CONSOLIDATED WITH
CIVIL APPLICATION E615 OF 2023

BETWEEN
CYTONN INVESTMENTS PARTNERS SIXTEEN LLP APPLICANT
AND
THE OFFICIAL RECEIVER RESPONDENT

(Being applications for striking out notices of appeal and all other pleadings filed by the firm of MALI Advocates LLP arising from the ruling and orders of the High Court of Kenya at Nairobi (Mabeya, J.) dated 30th November 2023 in Commercial & Tax Division Insolvency Petition No. E063 of 2021)

RULING

1. With the consent of counsel for the parties, the applications in Civil Applications E590, E591, E592, E593, E597, E601, E607 and E615 (all of 2023) were consolidated for hearing and determination together, arising from the fact that the said applications, which were filed by Goal Advisory Africa Limited (Trustee) (“GAA Ltd”); Cytonn Integrated Project LLP (“CIP LLP”); Cytonn Investment Management PLC (“CIM PLC”); Birguy Lamizana & 81 others (“Birguy & others”); Valerina Jiwa & 289 Others (“Valerina & others”; Cytonn Investments Partners Fifteen LLP (“CIP Fifteen LLP”) and Cytonn Investments Partners Sixteen LLP (“CIP Sixteen LLP”); emanated from, and sought to stay execution of a ruling delivered on 30th November 2023 by the High Court at Nairobi (Mabeya J.) in Nairobi High Court Commercial & Tax Division Insolvency Petition No. E063 of 2021.
2. Additionally, by consent of the parties Catherine Njeri Njaimwe (“Ms. Njaimwe”) and the Creditors Committee for Cytonn High Yield Solutions LLP & Cytonn Integrated Project LLP (both in-liquidation) (“the Creditors Committee”) were joined as respondents to the consolidated applications upon application by their counsel.
3. The said applications were listed for hearing on 3rd December 2024. On that date, we noted that there were subsequent applications filed by the Official Receiver and SBM Bank (Kenya) Limited (“SBM Bank”) seeking, among other orders, the striking out of the notices of appeal and the pleadings filed by Mali Advocates LLP (“Mali”) in a majority of the applications for stay of execution. We accordingly directed that the applications for striking out of pleadings be heard first in light of their possible effect on the earlier applications, hence this ruling. All the other applications were adjourned to await this ruling on representation.



4. The applications by the Official Receiver are dated 8th March 2024 and 11th March 2024, and were filed in Civil Applications E590, E591, E592, E593, E607 and E615 (all of 2023). The applications seek to strike out the notices of appeal dated 5th December 2023 and all pleadings filed subsequent thereto by Mali on behalf of GAA Ltd; CIP LLP; CIM PLC; Birguy & others and CIP Sixteen LLP.
5. For SBM Bank, the applications are both dated 1st March 2024 and were filed in Civil Application numbers E591 of 2023 and E593 of 2023 and seek to strike out the notices of appeal dated 11th December 2023, the notices of motion dated 15th December 2023, submissions dated 25th December 2023, supplementary affidavits sworn by Evans Matundura on 18th January 2024, and the records of appeal dated 4th January 2024 lodged in Civil Appeal Nos. E103 of 2024 and E104 of 2024 by CIP LLP and Birguy & others. If the prayers are successful, SBM Bank additionally seeks the setting aside of the orders issued by this Court on 27th December 2023. The applicant also seeks costs of the applications.
6. No application for striking out pleadings was made against Valerina & others in Civil Application E597 of 2023 and CIP Fifteen LLP in Civil Application E601 of 2023. At the hearing, we were informed by counsel that none of the parties in the two matters was represented by Mali. As such, they are only named in this ruling by virtue of the consolidation of their matters with the other six. The outcome of the instant applications will not affect them in any way.
7. The quest by the Official Receiver to strike out the subject notices of appeal and other pleadings is hinged on the assertions made on the face of the applications and the respective affidavits of Ms. Judy Mugo and Ms. Diana Mumo sworn on 8th March 2024 and 11th March 2024. It is averred that although one Mr. Edwin Harold Dayan Dande (“Mr. Dande”) is the registered managing partner of Mali, he is not a qualified advocate under section 9 of the Advocates Act; that the composition of Mali offends section 37 of the Advocates Act, which prohibits the sharing of profits realised in respect of the professional business of an advocate; and that despite being directed by the Law Society of Kenya (“the LSK”) in a letter dated 5th December 2023 to cease conducting legal business, Mali proceeded to file a notice of appeal dated 5th December 2023 and an application dated 15th December 2023. The Official Receiver therefore contends that the notice of appeal dated 5th December 2023 and the application dated 15th December 2023 are incompetent and should be struck out on the grounds that the applicants’ advocates are in breach of section 37 of the Advocates Act and also undermine the authority of the LSK under section 4 of the Law Society of Kenya Act.
8. The applications by SBM Bank are premised on rules 1(2) and 86 of the Court of the Appeal Rules and section 3(2) of the Appellate Jurisdiction Act and were supported by the affidavits of Stephanie Kioko sworn on 1st March 2024. The grounds in support of the applications are similar to those of the Official Receiver.
9. GAA Ltd, CIP LLP, CIM PLC, Birguy & others and CIP Sixteen LLP opposed the applications through replying affidavits sworn by Celestine A. Koile on 15th July 2024 and notices of preliminary objection dated 6th March 2024. It is her averment that Mali is a duly registered law firm with the requisite legal capacity to represent litigants. She deposed that Mali was registered on the 9th November 2022 with Ms. Lillian Wangari and Mr. Noah Randiek as partners and Mr. Dande as the firm’s manager. Further, that both Ms. Lillian Wangari and Mr. Noah Randiek are qualified and practising advocates. Ms. Koile averred that prior to the registration of the firm, the LSK issued a letter of no objection to the partnership on the 8th November 2022. That in 2023, the LSK wrote to the firm directing the removal of Mr. Dande as the statutory manager because he was not an advocate. It is her deposition that Mr. Dande subsequently resigned on 21st June 2023. Further, that on 27th June 2023 the LSK duly notified the firm that the question of deregistration had been resolved. Ms. Koile averred



- that Mr. Dande never acted as an advocate nor represented any party through Mali. She also averred that the pleadings in issue were drawn and executed by an advocate with a valid practising certificate way after Mr. Dande's resignation from the firm. She denied the allegation that Mr. Dande had shared in the profits emanating from Mali's legal practice.
10. Ms. Koile additionally averred that between June 2023 and March 2024, Mali's founding partners resigned, paving way for new partners to take over. Still, the changes were never implemented despite the relevant applications and notices being lodged with the Business Registration Service ("the BRS"). She deposed that upon following up with the BRS, they discovered that the Official Receiver had placed a caution to bar changes from being implemented on the composition of Mali. Ms. Koile further deposed that on 17th January 2024 Mali received a letter from the LSK dated 5th December 2023 advising the firm to stop conducting legal business. On the 18th January 2024, the new partners wrote to the LSK clarifying the issues surrounding Mali's partnership and respectfully turning down LSK's order to cease operations. Ms. Koile further averred that the legitimacy of Mali had been determined in a ruling delivered on 30th October 2023 by Lucy Ambasi, Chief Magistrate in MCCC No. 151 of 2023: Cytonn Investment Management PLC vs John Bosco Matheka where she held that Mali was properly registered with the requisite capacity to represent its clients.
 11. Ms. Koile also deposed that Mali had filed Nairobi HCCHRPET No. E052 of 2024: Mali Advocates LLP & Edwin Dande vs BRS, The Official Receiver and Law Society of Kenya, seeking to compel the BRS to effect changes on the partnership of the firm and seeking an interpretation on the role of a statutory manager appointed under the *Limited Liability Partnership Act*, Cap 30A ("the LLP Act") in a partnership under the *Advocates Act*. Further, that the petition is pending hearing and determination by the High Court. She deposed that the applications by the Official Receiver and SBM Bank are mischievously intended to disrupt the appeal before this Court and are therefore an abuse of the Court process. Ms. Koile also objected to the hearing of the said applications by this Court, asserting that the issues raised in the applications were not canvassed before the High Court, hence this Court has no jurisdiction to entertain them. She concluded her averments by reiterating that Mali is properly constituted and all the documents which the Official Receiver and SBM Bank seek to strike out were filed by licensed advocates and the applications should be dismissed with costs.
 12. We heard the applications by the Official Receiver and SBM Bank on 3rd December 2024. Learned counsel, Mr. Emmanuel Bitta and learned counsel Ms. Diana Mumo, appeared for the Official Receiver. For SBM Bank, learned counsel Mr. Greg Karungo, and learned counsel Ms. Naomi Mutisya, were present. The respondents in the applications were represented by learned Senior Counsel Paul Muite who appeared alongside learned counsel Ms. Celestine Koile and learned counsel Mr. Dudi for GAA Ltd, CIP LLP, CIM PLC, Birguy Lamizana & 81 others and CIP Sixteen LLP. Learned Senior Counsel Mr. Paul Muite and learned counsel Mr. Brace Odhiambo appeared for Valerina & others. For CIP Fifteen LLP, learned Senior Counsel Mr. Paul Muite and learned counsel Mr. Ernest Muriungi were in attendance. Learned counsel Mr. Ndungo was present for Ms. Njaimwe, whereas learned counsel Mr. Kavita Mwanzia appeared for the Creditors Committee. There was no representation for Anilkumar Mohanial Shah & Sunandaben Shah (intended interested parties) and their application to join the proceedings, which was filed in Civil Application No. E593 of 2023, remains unprosecuted.
 13. Learned counsel Mr. Bitta for the Official Receiver filed submissions dated 5th September 2024. Submitting on the composition of Mali, counsel urged that the firm was not compliant with section 9 of the *Advocates Act* from inception since the registration of Mr. Dande as the managing partner was unlawful. Counsel reiterated the role of the LSK and urged that the letter dated 5th December 2023 has neither been vacated nor successfully challenged in court. According to counsel, the firm could not therefore conduct legal business. Counsel submitted that the issue at hand was not about sharing of



- profits but whether the firm could lawfully engage in legal practice, of which he submitted that the firm did not qualify. Counsel relied on the case of Mohamed Ashraf Sadique & Another vs Mathew Oseko T/A Oseko & Co. Advocates [2009] eKLR to point out that only advocates can join and practice together under a registered business due to their co-joined duty and ethical obligation to the public and the courts.
14. With regard to the fate of the pleadings, counsel referred to section 34(1) of the *Advocates Act*, and the cases of Jimmy Aggrey Simiyu t/a B.W. Mathenge & Co. Adv. vs Elizabeth Wanjiru Evans [2019] eKLR and Lumumba & Kaluma Advocates vs Kenya Railways Corporation [2011] eKLR to urge that proceedings initiated or continued by an illegal entity cannot be sustained and should be struck out. Counsel also relied on Ngomeni and Swimmers Ltd vs Katana Charo Suleiman [2014] eKLR to urge that the proper relief in the circumstances is to strike out the pleadings despite the same being signed by an advocate. In the end, counsel urged that the applications be allowed and the pleadings be struck out.
 15. Ms. Mutisya, learned counsel for SBM Bank, relied on submissions dated 2nd August 2024. She urged the Court to dismiss the respondents' preliminary objections contending that they raised matters of fact, contrary to the dictum in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] 1 EA 696 that a preliminary objection is a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct and cannot be raised if any fact has to be ascertained. Counsel submitted that the applications by SBM Bank were not concerned with the validity or legality of the letter dated 5th December 2023 but whether Mali was authorised to conduct the business of law when it lodged pleadings in this Court.
 16. In addition, counsel relied on the case of Ngomeni Swimmers Ltd vs Katana Chara Suleiman [2014] eKLR to urge that documents filed by an illegal entity not qualified to practice law should be struck out. Counsel also relied on the case of National Bank of Kenya Ltd vs Anaj Warehousing Ltd [2015] eKLR to submit that documents prepared by unqualified persons such as non-advocates or advocates who have been struck off the roll are void for all purposes by dint of section 34(1) of the *Advocates Act*. The case of Five Forty Aviation Ltd vs Erwan Lanoe [2019] eKLR was cited to urge the Court not to endorse an illegality. The other aspects of the counsel's submissions address similar issues as addressed by the counsel for the Official Receiver. In rejoinder to the assertion that the applications were brought belatedly and without plausible explanation for the delay, counsel submitted that the applications were brought as soon as they became aware of the LSK letter dated 5th December 2023 detailing the defects in the registration of Mali.
 17. Although learned counsel Mr. Ndungo and learned counsel Mr. Mwanzia who, respectively, appeared for Ms. Njaimwe and the Creditors Committee did not file any response to the applications by the Official Receiver and SBM Bank, they indicated their clients' support for the applications. They submitted that unless there was evidence of change of management at Mali, the firm remained illegal and should be barred from engaging in legal practice.
 18. In opposing the applications, learned counsel, Ms. Koile, for GAA Ltd, CIP LLP, CIM PLC, Birguy Lamizana & 81 others and CIP Sixteen LLP relied on submissions dated 18th November 2024. Counsel reiterated the factual contents as deposed to in the replying affidavit, and urged for the dismissal of the applications, stating that striking out of the pleadings is a draconian measure not warranted in the circumstances of this case. She contested the jurisdiction of the Court to hear these applications, urging that under Article 164(3) of the *Constitution*, the Court's jurisdiction is limited to the hearing and determination of appeals.
 19. According to counsel, issues regarding Mali's registration were resolved and by a letter dated 27th June 2023, the LSK confirmed that the firm was properly constituted. Counsel blamed the Official Receiver



for the difficulties encountered in effecting the changes on the firm's composition with the BRS. Counsel further argued that undertaking these proceedings, in the absence of the LSK and the BRS, are not only unjust but also undermines the Court's ability to make a fair and informed decision. Ms. Koile also urged that Mali was registered based on the necessary approvals from both the LSK and the BRS and no evidence was adduced to prove that Mr. Dande ever represented any client of the firm. Counsel maintained that Mr. Dande was merely a statutory manager of the firm as per the provisions of section 27 of the LLP Act. Counsel reiterated that the pleadings herein were filed by a duly licensed advocate, as required under section 9 of the *Advocates Act*.

20. Ms. Koile relied on *The Co-operative Merchant Bank Ltd vs George Fredrick Wekesa*, Civil Appeal No. 54 of 1999 where this Court (differently constituted) held that striking out a pleading is a draconian act, and *Blue Shield Insurance Company Ltd vs Joseph Mboya Oguttu* [2009] eKLR where it was held that striking out of pleadings is a drastic remedy that should only be resorted to when a pleading is a complete sham. Additionally, counsel relied on *D.T. Dobie & Company (Kenya) Limited vs Joseph Mbaria Muchina & Another* [1980] eKLR for the proposition that courts should aim to sustain a suit rather than dismiss it summarily unless it is so hopeless that it discloses no reasonable cause of action. Counsel submitted that the Official Receiver and SBM Bank have not satisfied the conditions for striking out pleadings as outlined in Order 2, Rule 15 of the Civil Procedure Rules, 2010; and the pleadings by Mali were filed through one of its partners, namely Ms. Koile, and disclose a reasonable cause of action, are not scandalous, frivolous, or vexatious, and are not an abuse of the court's process. It was consequently the counsel's plea that the applications be dismissed.
21. On his part, Mr. Muite, SC urged for the dismissal of the applications asserting that this being an appellate court, only matters coming up on appeal should be given audience and that the present applications raise fresh issues not addressed before the trial court.
22. We have addressed our minds to the applications by the Official Receiver and SBM Bank, the responses thereto, and submissions of counsel of all sides. In our considered view, the applications raise two pertinent issues:
 - a. Whether this Court has jurisdiction to hear the applications; and
 - b. Whether Mali Advocates LLP is properly and legally constituted, and if not, what should be the fate of the pleadings filed in this Court by the firm.
23. Regarding the issue of jurisdiction, we will consider two aspects that became apparent from the pleadings and submissions by counsel. The first is in relation to the doctrine of sub judice. Even though counsel did not pursue this aspect of the challenge to the Court's jurisdiction, the issue regarding the proceedings in Nairobi HCCHRPET No. E052 of 2024: *Mali Advocates LLP & Edwin Dande vs BRS, The Official Receiver & Law Society of Kenya* came up. Unfortunately, Ms. Koile did not annex the pleadings of that petition to her replying affidavit to enable the Court to determine whether the issues in these applications are similar to those being canvassed in the petition pending before the High Court. However, in the replying affidavit and submissions, counsel for GAA Ltd; CIP LLP; CIM PLC; Birguy & others and CIP Sixteen LLP stated that the petition before the High Court seek to compel the BRS to effect changes on the registration of Mali and the interpretation of the role of a statutory manager appointed under the LLP Act in a partnership constituted pursuant to the *Advocates Act*.
24. The doctrine of sub judice is legislated in section 6 of the *Civil Procedure Act*, which bars a court from proceeding:

“with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties,



or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

25. The Supreme Court in *Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] KESC 54 (KLR) addressed the doctrine of sub judice thus:

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

26. Going by the holding by the Supreme Court, which we are bound by, there is no doubt that the plea of sub judice does not hold in the circumstances of this case. This is due to two significant factors. First, the two suits are between different parties. Second, GAA Ltd; CIP LLP; CIM PLC; Birguy & others and CIP Sixteen LLP have not placed evidence before the Court to establish that the subject matter in Nairobi HCCHRPET No. E052 of 2024 is similar to the one in the present applications. In our view, even though both claims revolve around the legality of Mali, the petition before the High Court seeks revocation of the LSK’s letter dated 5th December 2023. It also seeks orders compelling the BRS to effect changes in the partnership of the firm. In contrast, the present applications ask for the striking out of pleadings lodged by Mali, as presently constituted. Therefore, we are satisfied that this Court can determine these applications without delving into the issues pending before the High Court.

27. The second jurisdictional issue that was raised is whether this Court can address issues that have not arisen in the court appealed from. It was argued by counsel opposing the applications that by dint of Article 164(3) of the *Constitution*, the Court lacked original jurisdiction to hear matters as a Court of first instance. The Supreme Court has previously underscored the importance of jurisdiction in *Macharia & another vs Kenya Commercial Bank Limited & 2 others* [2012] KESC 8 (KLR) as follows:

“A Court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... Where the *Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the *Constitution*. Where the *Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”



28. This Court is a creature of Article 164 of the Constitution which provides for its jurisdiction as follows:

“The Court of Appeal has jurisdiction to hear appeals from-

- a. The High Court; and
- b. Any other court or tribunal as prescribed by an Act of Parliament”

29. The Appellate Jurisdiction Act at section 3(2) provides for the jurisdiction of the Court as follows:

“For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred by this Act, the Court of Appeal shall have, in addition to any other power, authority and jurisdiction conferred by this Act, the power, authority and jurisdiction vested in the High Court.”

30. Notwithstanding the apparent limitation of the jurisdiction of the Court to the hearing and determination of appeals, rule 1(2) of the Court of Appeal Rules, 2022 provides that:

“These Rules shall not limit or otherwise affect the inherent power of the Court to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

31. Section 3(2) of the Appellate Jurisdiction Act and rule 1(2) of the Court of Appeal Rules therefore bestow upon the Court inherent jurisdiction to do whatever is necessary to meet the ends of justice and to stop abuse of the Court process. In *Equity Bank Limited vs West Link Mbo Limited* [2013] KECA 320 (KLR) (per Musinga, J.A) it was held that:

“Inherent power is the authority possessed by a Court implicitly without its being derived from the Constitution or statute. Such power enables the judiciary to deliver on their constitutional mandate. In *SETH LOOKASAN SETHIYA v. IVAN E. JOHN AIR* [1975] ALL 113, it was held that power means authority, whether any discretion is left or not and whether any direction is imperative or directory relates to the manner and exercise of the power and not to the basic ingredient of the authority itself. Inherent power is therefore the natural or essential power conferred upon the Court irrespective of any conferment of discretion.”

32. In the same judgment, Sichale, J.A quoted an excerpt from I.H. Jacob, “The Inherent Jurisdiction of the Court” in 1770 Current Legal Problems thus:

“I am also in agreement with Mr. Gatonye that the Court also has inherent jurisdiction to do justice. I have found I.H. Jacob, *The Inherent Jurisdiction of the Court* 1770 Current Legal Problems an apt description of what constitutes inherent jurisdiction. It states as follows:-

“On what basis did the Superior Courts exercise their powers to punish for contempt and to prevent abuse of process by summary proceedings instead of by ordinary course of trial and verdict? The answer is, that the jurisdiction to exercise these powers was derived not from statute or rule of law but from the very nature of the court as a superior court of law, and for this reason, such jurisdiction has been called “inherent”. This description has been criticized as being “metaphysical” but I think nevertheless that it is apt to describe the quality of the jurisdiction. For the essential character of a superior court of law necessarily



involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very lifeblood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law. The jurisdictional basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.’ ”

33. Even though, in the above-referenced decision, the Court was dealing with the question as to whether it had jurisdiction to grant interim relief under rule 5(2)(b) of the Court of Appeal Rules, we find the conclusions on the Court's inherent jurisdiction applicable in the present circumstances. In our view, the Court's inherent jurisdiction is meant to aid the Court in the delivery of justice. The jurisdiction is available to the Court to enforce that which is legal and stop any illegality when undertaking its mandate. Therefore, despite Article 164(3) of the *Constitution* granting the Court appellate jurisdiction, the provision, in our view, did not take away the Court's power to entertain interlocutory applications which are meant to bring order to the proceedings before it. Where it is alleged, as has been done in this case, that the pleadings before the Court have been drawn and filed by an unauthorised person, the Court has power to enquire into the issue. Therefore, these applications are a housekeeping matter, falling within the Court's jurisdiction.
34. We now turn to the question as to whether Mali was legally allowed to practice law when it filed the notice of appeal dated 5th December 2023. From the outset, we must point out that we will limit our findings to the state of things as of 5th December 2023 and not venture into the interpretation of the LLP Act as to the role of the statutory manager in a partnership registered pursuant to the provisions of the *Advocates Act*. We adopt this approach in order to protect the integrity of the proceedings before this Court and without traversing into what is currently before the High Court in Nairobi HCCHRPET No. E052 of 2024. Additionally, under Article 165(3)(a) of the *Constitution*, the High Court has unlimited original jurisdiction in criminal and civil matters. Therefore, addressing the legality or otherwise of the composition of Mali would usurp the High Court's power and simultaneously deny any aggrieved party in Nairobi HCCHRPET No. E052 of 2024, the opportunity to appeal the decision to this Court.
35. The relevant facts for us are as follows. Mali was duly registered on 9th November 2022 with the registration number being LLP- G81Q555. The founding partners were Mr. Noah Odhiambo Randiek and Ms. Lilian W. Maina. Mr. Dande was the manager. Before its registration, the firm was issued with a letter of no objection dated 8th November 2022 by the LSK. After registration, the LSK, in a letter dated 11th May 2023, informed the proprietors of Mali of their breach of sections 9 and 37 of the *Advocates Act* and Rule 4 of the Advocates Practice Rules. In this letter, the proprietors of Mali were required to regularise their registration by removing Mr. Dande from their statement of particulars because he was not an advocate. This did not happen, and on 16th June 2023, the LSK wrote to the Director General at the BRS demanding that the firm be deregistered for breaching sections 9 and 37 of the *Advocates Act* and Rule 4 of the Advocates Practice Rules.
36. Internally, on 21st June 2023, Mr. Dande wrote a letter of resignation as the manager of the firm and Mr. Noah Odhiambo Randiek was nominated as the new manager. The LSK was notified of the changes and on 27th June 2023, the LSK wrote to the Director General at the BRS, lifting the deregistration request. Shortly thereafter, on 30th June 2023, Ms. Lilian W. Maina resigned as a partner of the firm. This was closely followed by the resignation of Mr. Noah Odhiambo Randiek on 4th September 2023.



- On 11th September 2023 Ms. Celestine Koile filled out form LLP-9 as an incoming partner. Another form LLP-9 was filled on 30th January 2024 where it would appear that the firm now had 3 partners, namely, Mr. Ernest Mugao Muriungi, Ms. Celestine Anyango Koile and Mr. Adamskey Ojwang Dudi. These changes by the firm were, however, not effected and vide a letter dated 18th September 2023, the firm complained of a caution placed against the changes by the Official Receiver.
37. The BRS, in a letter dated 28th November 2023, wrote to the LSK confirming that the partners in the firm were still Mr. Noah Odhiambo Randiek and Ms. Lilian W. Maina while Mr Dande remained as the manager. On 5th December 2023, the LSK wrote to the firm demanding that it ceases undertaking legal business because of the failure to effect the changes in the firm’s statement of particulars.
38. The LSK’s letter dated 5th December 2023 is at the centre of the present applications. Therefore, we must underscore the role of the LSK in so far as legal practice is concerned. Section 4 of the [*Law Society of Kenya Act*](#) provides the objects and functions of the LSK, inter alia:
- “(a) to maintain and improve the standards of conduct and learning of the legal profession in Kenya;
 - b. to facilitate the acquisition of legal knowledge by members of the legal profession and others;
 - c. to assist the Government and the courts in all matters affecting legislation and the administration and practice of the law in Kenya;
 - d. to represent, protect and assist members of the legal profession in Kenya in respect of conditions of practice and otherwise;
 - e. ...”
39. It is in furtherance of these objectives that the LSK carries out its regulatory mandate over the legal practice in Kenya. Mali was complying with the objectives in sections 4 (a), (c), and (d) of the LSK Act when it sought the approval of LSK before its registration. Similarly, it was in pursuance of its supervisory role that the LSK advised the firm to regularise its composition and subsequently to cease engaging in legal practice. It is necessary to point out that the role of the LSK in regulating legal practice in Kenya is not in contest.
40. We were referred to a ruling dated 31st October 2023 by Hon. Lucy Ambasi, Chief Magistrate in Milimani CM Civil Suit No.151 of 2023. It is important to note that this ruling was delivered in between the LSK letter dated 27th June 2024 lifting the deregistration request to the BRS and the letter dated 5th December 2023 demanding that the firm cease legal practice. The ruling, despite not being challenged on appeal, spoke to the situation prevailing on 31st October 2023 and cannot be a proper response to the later letter dated 5th December 2023 directing the firm to cease legal practice.
41. Without contestation of the LSK mandate in regulating legal practice in Kenya, the germane issue then becomes whether, in the subsistence of the cease order issued by the LSK on 5th December 2023, Mali could still lodge documents before this Court. We appreciate that the actions of the Official Receiver, the BRS and the LSK are subject to legal proceedings before the High Court. We were not informed that the decision of the LSK has been stayed or suspended. In those circumstances, it is our view that the firm was barred from conducting legal business.
42. The next issue relates to the fate of the pleadings filed by Mali in this Court. We were asked to spare the pleadings because they were prepared and signed by a qualified advocate. In our view, the starting point



is to appreciate that under section 6 of the [Limited Liability Partnership Act](#), a partnership becomes a body corporate with a legal personality separate from its partners. That being the case, section 35(1) of the [Advocates Act](#) provides as follows:

“Every person who draws or prepares, or causes to be drawn or prepared, any document or instrument referred to in section 34(1) shall at the same time endorse or cause to be endorsed thereon his name and address, or the name and address of the firm of which he is a partner and any person omitting so to do shall be guilty of an offence and liable to a fine not exceeding five thousand shillings in the case of an unqualified person or a fine not exceeding five hundred shillings in the case of an advocate:

Provided that, in the case of any document or instrument drawn, prepared or engrossed by a person employed, and whilst acting within the scope of his employment, by an advocate or by a firm of advocates, the name and address to be endorsed thereon shall be the name and address of such advocate or firm.”

43. Order 2 Rule 16 of the Civil Procedure Rules on the other hand provides that:

“Every pleading shall be signed by an advocate, or recognised agent (as defined by Order 9, rule 2), or by the party if he sues or defends in person.”

44. Order 9 Rule 2(c) of the Civil Procedure Rules which deals with the question of recognized agents provides that “in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.” Considering the foregoing provisions, we have no difficulty finding that even though the contested pleadings were signed by Ms. Celestine Koile, a qualified advocate, she did so as an agent of Mali and not in her personal capacity.

45. Having arrived at the foregoing conclusion, it follows that Ms. Koile, or any advocate in the employment of Mali, was barred from drawing documents or rendering legal services to or on behalf of Mali as per rule 4A of the Advocates (Practice) Rules, which provides as follows:

“No advocate employed by an unqualified person shall draw documents or render other legal service to his employer for which fees are charged directly or indirectly by his employer to any other person and retained by that employer.”

46. We have already held that Mali was barred from engaging in legal practice by virtue of the LSK letter dated 5th December 2023. Similarly, we have also found that the advocates working under the firm were barred from drawing documents on its behalf by dint of rule 4A of the Advocates (Practice) Rules. The question that begs an answer is what happens to documents filed by an advocate in breach of rule 4A of the Advocates (Practice) Rules as read with section 35(1) of the [Advocates Act](#).

47. The Supreme Court in *National Bank of Kenya Limited vs Anaj Warehousing Limited* [2015] KESC 4 (KLR) dealt with the responsibility of an advocate under section 34 of the [Advocates Act](#) and held that the greater responsibility lay with the advocate and not the client who seeks legal services. In that regard, the Court held that:

“In these circumstances, how does the citizen’s position rest? If he or she were to walk into an advocate’s office, for a conveyancing service at a fee, would there be an initial obligation resting on him or her to demand the advocate’s practising certificate? Would he or she be in breach of the law if after the service, it turned out that the advocate lacked a certificate? The transgressor, in our view, is the advocate, and not the client. The illegality is the assumption



of the task of preparing the conveyancing document, by the advocate, and not the seeking and receiving of services from that advocate. Likewise, a financial institution that calls upon any advocate from among its established panel to execute a conveyance, commits no offence if it turns out that the advocate did not possess a current practising certificate at the time he or she prepared the conveyance documents. The spectre of illegality lies squarely upon the advocate, and ought not to be apportioned to the client.”

48. From the holding of the Supreme Court, the onus is on the advocate to ensure compliance with the rules of practice. This Court has also reiterated that striking out of pleadings is a draconian measure which must only be resorted to in compelling cases. For instance, in *Kivanga Estates Limited vs National Bank of Kenya Limited* [2017] KECA 591 (KLR) the Court sounded the foregoing warning thus:

“Striking out a pleading, though draconian, the court will, in its discretion resort to it, where, for instance, the court is satisfied that the pleading has been brought in abuse of its process or where it is found to be scandalous, frivolous or vexatious...”

There is no greater duty for the court than to ensure that it maintains the integrity of the system of administration of justice and ensure that justice is not only done but is seen to be done by, amongst other measures, stopping litigations brought for ulterior and extraneous considerations. The courts, litigants and counsel are enjoined by both the *Constitution* and the law to assist the court to further the overriding objective for the just determination of the proceedings; the efficient disposal of the business of the court; the efficient use of the available judicial and administrative resources; the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the parties.”

49. From the cited authorities, there is no doubt that striking out of pleadings prepared and filed by an advocate acting in contravention of the rules of practice would be draconian, and this Court, wielding the shield of justice, would deploy the shield to protect an innocent litigant against the subterfuge of an advocate who fails to comply with the rules.
50. There is no doubt that counsel for GAA Ltd; CIP LLP; CIM PLC; Birguy & others and CIP Sixteen LLP contravened rule 4A of the Advocates (Practice) Rules. However, the Supreme Court in *National Bank of Kenya Limited vs Anaj Warehousing Limited* (supra) held that the illegality lies squarely with the advocate and not the client. Applying that dictum to the present case, we note that Mali was a registered law firm prior to 5th December 2023. Any potential client conducting a search would have found the firm duly registered. Such a client would not be privy to the engagements between the firm, the LSK and the BRS going on in the background. Furthermore, no evidence was adduced to establish the level of the clients’ complicity, if any. Additionally, it should be appreciated that there is an unrebutted averment that although the letter by the LSK barring Mali from offering legal services is dated 5th December 2023, it was received by the firm on 17th January 2024. Therefore, it would be safe to assume that when the impugned notices of appeal and pleadings were filed in December, 2023, Mali was not aware of its disbarment and was acting based on the LSK letter dated 27th June 2023 assuring the firm that the controversy surrounding its registration had been resolved.
51. In seeking the striking out of the pleadings, counsel for the Official Receiver and SBM Bank heavily relied on *Ngomeni Swimmers Limited vs Katana Chara Suleiman* [2014] KECA 267 (KLR) where the Court struck out pleadings filed by an unqualified advocate and law firm. It is noted that in that case, the proprietor of the firm was not qualified as an advocate, and neither was the firm where he practised the trade competent to offer legal services. The Court also held that no evidence was tendered



to establish that the purported advocate who signed the plaint was indeed an advocate practising under the said firm. In that regard, the Court held that:

“As at the time of filing suit, the proprietor of the firm of Wesley John & Associates Advocates was Wesley John Kamau. He was not an advocate known in law then. In view of his want of qualification, it follows that the firm was also incompetent by dint of Rule 12 aforesaid. On the same note, the appellant’s contention that the Plaint was signed by Joseph Muisyo, a competent advocate does not advance the appellant’s case any further. There is nothing to show that indeed Joseph Muisyo was an advocate or that the signature on the plaint was his. It also appears that even if the said Joseph Muisyo was an advocate and indeed signed the plaint the same can still be impugned on account of being an advocate not in the employment of the firm nor did he indicate that he had signed the plaint on behalf of the firm of Wesley John & Associates.”

52. The facts in that case are distinguishable from those of the present case. In this case, it is uncontested that Ms. Celestine Koile is a qualified advocate with a valid practising certificate and plied her trade with Mali. She appeared in court and filed an affidavit deposing that she had drafted, signed, and filed the impugned pleadings. None of the applicants controverted her depositions. Therefore, in the present case, the documents were drawn and signed by a qualified advocate though in contravention of rule 4A of the Advocates (Practice) Rules as read with section 35(1) of the *Advocates Act*.
53. Noting that no element of client culpability has been established and that the pleadings were filed by a qualified advocate without knowledge of the letter disbarring the firm, we believe that striking out the pleadings would be draconian in the circumstances. As a Court, we must balance the right of the respondents to access justice and the regulatory mandate of the LSK. In the circumstances, the order that finds favour with us is to preserve the impugned notices of appeal and pleadings while enforcing the LSK’s letter disbarring Mali. Consequently, we decline the invitation to strike out the impugned pleadings. However, Mali or any advocate practising under it are barred from representing GAA Ltd; CIP LLP; CIM PLC; Birguy & others and CIP Sixteen LLP or any other party in these proceedings.
54. The final issue relates to the question of costs. In *Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others* [2014] eKLR, the Supreme Court, while addressing the question of costs, held as follows:

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.”

55. The Court went on to add that:

“Although there is eminent good sense in the basic rule of costs – that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered



opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the applicant.”

56. Guided by the foregoing pronouncement, we have considered the background of the applications by the Official Receiver and SBM Bank, and the conduct of the parties herein. In our view, given the outcome of the applications, it is in the interest of justice that each party bear their own costs of the applications by the Official Receiver and SBM Bank, which we so order.

57. In conclusion, the final orders are as follows:

- a. The prayer for striking out the notices of appeal and pleadings lodged by Mali Advocates LLP is hereby declined;
- b. The firm of Mali Advocates LLP is hereby barred from representing Goal Advisory Africa Limited (Trustee) Cytonn Integrated Project LLP; Cytonn Investment Management PLC; Birguy Lamizana & 81 others and Cytonn Investments Partners Sixteen LLP or any other party in Civil Applications E590, E591, E592, E593, E607 and E615 (all of 2023);
- c. The orders herein do not affect Civil Applications E597 and E601, as no application for striking out was filed in those matters; and
- d. Each party shall bear own costs of the applications.

58. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2025.

MUMBI NGUGI

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JUDGE OF APPEAL

P. NYAMWEYA

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original,

Signed

DEPUTY REGISTRAR.

