



Chabari v All Saints Senior Boys' Academy & another (Cause E003 of 2025) [2025] KEELRC 2384 (KLR) (14 August 2025) (Ruling)

Neutral citation: [2025] KEELRC 2384 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E003 OF 2025
ON MAKAU, J
AUGUST 14, 2025**

BETWEEN

FRANKLIN BUNDI CHABARI CLAIMANT

AND

ALL SAINTS SENIOR BOYS' ACADEMY 1ST RESPONDENT

KITHINJI KIRAGU 2ND RESPONDENT

RULING

Introduction

1. This ruling relates to the respondent's Notice of Motion dated 26th February 2025 seeking the following orders: -
 - a. That this Application be certified urgent and fit to be heard forthwith and ex-parte in the first instance;
 - b. That this Honourable court be pleased to strike out the pleadings filed by the Claimants herein;
 - c. That this Honourable court be pleased to dismiss the suit herein in its entirety, as it is incompetent and illegally presented before it;
 - d. Any or further orders, writs, directions that this Honourable Court considered appropriate and just to grant for the purpose of administering justice; and
 - e. That the claimant do bear the costs of this application.
2. The motion is supported by Affidavit sworn on even date by David Njuguna Njoroge Advocate on behalf of the Respondent/Applicant and it is opposed by the claimant vide a Replying Affidavit sworn on 14th April 2025 by Angwata Nyangoya Francis Advocate on behalf of the claimant.



3. The Applicant's case is that when the claimant filed his pleading herein on 2nd February 2025, his Advocate Nyangoya Angwata Francis had not taken out a practising certificate for 2025. Consequently, the applicant averred that the pleadings filed by the claimant are incompetent and should be struck out for being drawn in violation of section 9 and 34 of the *Advocates Act*.
4. The claimant's case, on the other hand is that the Advocate was admitted into the Roll of Advocates on 23rd November 2023 and took out a Practising certificate for the year 2024. He further attended CPD Seminars organised by the Law Society of Kenya (LSK) and attained the 6CPD points which qualified him for issuance of practising Certificate for the year 2025. He uploaded his documents into the LSK Portal and received an invoice for payment reference No.P/24/67976 dated 9th December 2024.
5. He contended that he paid the required subscription immediately and thereafter he requested for a Certificate of good standing which he received on 5th February 2025. When the instant motion was filed he wrote to the LSK to enquire about the delay in processing of practicing certificate, despite having paid for the same and he received the Practising Certificate on 28th February 2025. He contented that there was a grace period given by the LSK up to February 2025.
6. He prayed for the motion to be dismissed because it lacks merits. Besides he averred that the courts have ruled that pleadings done by an Advocate without practicing certificate are still valid.
7. The motion was disposed of by written submissions. I have considered the motion, Affidavits and the written submissions filed. The issue for determination is whether the pleadings filed by the claimant are invalid for being drawn by an Advocate without a Practising Certificate.

Analysis

8. Section 9 of the *Advocates Act* provides that: -
 - a. He has been admitted as an Advocate;
 - b. his name is for the time being on the Roll; and
 - c. he has in force a Practising certificate.”
9. Section 34 of the *Advocates Act* then provides that: -
 1. “No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument-
 - a. ...
 - f. Relating to any other legal proceedings; nor shall any such person accept or receive, directly or indirectly, any fees, gain or reward for taking of any such instruction or for the drawing or preparation of any such document or instrument...”
10. There is no dispute that one Nyangoya Francis Agwata is an Advocate and his name is in the Roll of Advocates. There is further no dispute that the said Advocate had a Practising certificate for the year 2024. What is in dispute is whether he had obtained a Practising Certificate before preparing and filing the pleadings herein on behalf of the claimant on 2nd February 2025.



11. In the case of National Bank of Kenya Limited v Anaj Warehousing Limited (2015) KESC 4 (KLR), the Supreme Court held that: -

“The facts of this case, and its clear merits, leads 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.”

12. I do not agree with the above interpretation as it is contrary to section 9(c) of the *Advocates Act*. However, the decision is binding on me and I must follow it. Although it dealt with preparation of charges prepared by an Advocate without a current Practising Certificate, in my view, it applies Mutalis Mutandis to pleadings prepared and filed by a person without current practising certificate. The Supreme Court’s interpretation of section 34(1)(a) of the *Advocates Act* should apply also to subsection (1) (b), (c), (d), (e) and (f).
13. Having said that, I proceed to hold that the Notice of Motion dated 26th February 2025 has no merits and it is dismissed with costs to the claimant.

DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF AUGUST, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

