



**Jawanga Investments Limited v Shah t/a Lewins (Environment and Land Appeal E040 of 2024) [2024] KEELC 13512 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13512 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E040 OF 2024  
MD MWANGI, J  
NOVEMBER 25, 2024**

**BETWEEN**

**JAWANGA INVESTMENTS LIMITED ..... APPELLANT**

**AND**

**SK SHAH T/A LEWINS ..... RESPONDENT**

**RULING**

(In respect to the Notice of Motion dated 18<sup>th</sup> April 2024 by the Respondent to the appeal brought under Section 9 and 31 of the [Advocates Act](#) 2024, Laws of Kenya, LSK Code of Conduct and Order 51 of the Civil Procedure Rules).

**Background**

1. This matter was initiated by way of a Memorandum of Appeal dated 18<sup>th</sup> March 2024. It is stated to be an appeal from the ruling of Hon. James Ndegwa of the Business Premises Rent Tribunal (BPRT) in BPRT Case No. E906/2023 delivered on 1<sup>st</sup> March, 2024.
2. Alongside the appeal, the Appellant filed a Notice of Motion dated 28<sup>th</sup> March 2024 seeking for orders of stay of proceedings of the BPRT Case E906/2023 pending the hearing and determination of the appeal or in the alternative, an Order of Temporary Injunction restraining the Respondent from entering, accessing, dealing in any way or interfering with the Business Premises known as Shop No. 3 Alishon House on L.R No. 209/525/20 Latema Road pending hearing and determination of the appeal.
3. In response to the application, the Respondent through his Advocate filed a Notice of Preliminary Objection as well as a Notice of Motion dated 18<sup>th</sup> April 2024, both seeking the striking out of the Appellant's application, Memorandum of Appeal and the vacation of the Orders issued on 5th April, 2024 on the basis that the pleadings were drawn by an unqualified person; the Advocate, Mr. MTN, who at the time had not taken out the Annual Practising Certificate for the year 2024.



4. The Appellant's Advocate in rejoinder filed a Replying Affidavit deposing that he had applied for the 2024 Practicing Certificate on 20<sup>th</sup> February 2024. Further that even the LSK Portal showed that his practice status was active. However, he admitted that his Practicing Certificate for the year 2024 is dated 19<sup>th</sup> April 2024.
5. The Respondent filed yet another application dated 13<sup>th</sup> May 2024 praying that his Notice of Preliminary Objection be upheld and the Orders sought in the Notice of Motion dated 18 April 2024 be allowed.
6. The Applicant who is the Respondent to the appeal herein prays for the following orders;
  - a. That the Honourable Court find that Mr. MTN Advocate, is unqualified to practice law
  - b. That this Honourable Court be pleased to strike out and/or dismiss the certificate of urgency, Notice of Motion, supporting Affidavit and annexures thereto all dated 28<sup>th</sup> March, 2024 and filed on 5<sup>th</sup> April, 2024 and the Memorandum of Appeal filed on 27<sup>th</sup> march, 2024 by Mr. MTN.
  - c. That this Honourable court be pleased to vacate the orders issue don 5<sup>th</sup> April, 2024.
  - d. That this Honourable court do find that Mr. MTN is in contempt of this Honoruable Court.
  - e. That this Honourable Court grants costs of this application and the appeal to the Respondent herein.
7. The application is premised on the grounds on the face of it and on the affidavit of Professor Kiama Wangai sworn at Nairobi on 18<sup>th</sup> April, 2024. The gravamen of the application as well as the preliminary objection is that Mr. MTN, an Advocate, did not hold a practicing certificate at the time of filing the Memorandum of appeal and the application dated 28<sup>th</sup> March, 2024 and was not therefore qualified or certified to practice law. The Respondent exhibits a letter from the Law Society of Kenya dated 16<sup>th</sup> April, 2024 which confirms that according to its records, Mr. MTN last held a valid practicing certificate in the year 2023. He was not therefore certified to practice law as at the date of that letter.
8. The Respondent therefore submits that the pleadings in this matter having been drawn and filed by unqualified person in terms of the provisions of the Advocates Act are invalid and bad in law, and ought to be struck out. The Respondent cites various provisions of the Advocates Act and the Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct to support his application and preliminary objection. The Respondent particularly zeros in on Section 9 of the Advocates Act that requires an Advocate to have in place a practicing certificate to be qualified to act as such.
9. The Advocate, Mr. MTN replied to the application by way of his Replying Affidavit sworn on 25<sup>th</sup> April, 2024 at Nairobi. The Advocate deposes that he is an Advocate of the High Court of Kenya on record in this matter on behalf of the Appellant.
10. The Advocate asserts that he applied for his 2024 practicing license online on 20<sup>th</sup> April, 2024. He deposes that he did not however follow up on regularization of his records appropriately but on discovery he followed up and was eventually issued with the practicing certificate. The practicing certificate is dated 19<sup>th</sup> April, 2024.
11. The Advocate nonetheless deposes that the preparation of pleadings by an Advocate without an active practicing certificate does not invalidate the pleadings contrary to the assertions by the Applicant. The delay in regularization of the records according to the Advocate should not cause an injustice upon his



client. He pleads on behalf of his client that the pleadings filed by his law firm on behalf of the client be deemed properly on record. He urges the court to disallow the application by the Respondent.

### **Court's Directions.**

12. The court's directions were that the application be canvassed by way of written submissions. Both parties complied and filed their respective submissions. I have had occasion to read and consider the submissions.

### **Issues for Determination.**

13. Having considered the application and the preliminary objection by the Respondent, the response by the Advocate and the respective submissions by the parties the sole issue for determination is whether the pleadings filed by an Advocate without a practicing certificate at the time of filing them are invalid.

### **Analysis and Determination**

14. The Advocate in his replying affidavit admitted that his practicing certificate for the year 2024 is dated 19<sup>th</sup> April, 2024. This means that at the time of filing the Memorandum of Appeal and the application dated 28<sup>th</sup> March, 2024, he did not have a valid practicing certificate. The letter by the LSK dated 16<sup>th</sup> April, 2024 confirms that he last held a valid practicing certificate in the year 2023. He was not therefore certified to practice law as at the date of that letter.

15. The issue before me is an issue that has been litigated all the way to the Supreme Court. The Supreme Court conclusively addressed the issue in the case of National Bank Ltd – vs – Anaj Warehousing Ltd (2015) eKLR. The court held expressed itself in the following words;

“..... 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 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.”

16. The Supreme Court of Kenya however clarified that such an Advocate remains liable in any applicable criminal or civil proceedings, as well as any disciplinary proceedings to which he or she may be subject to for practicing without a valid practicing certificate. This clarification should serve as a warning to Advocates to be vigilant and ensure they hold a practicing certificate at all times. I do hope that the Law Society of Kenya will leverage on technology and make it a practice of reminding its members personally to renew their practicing certificates as the practicing year draws near.

17. The Court of Appeal in the case of Amigos Nuts and Commodities Limited -vs- Kam Hung Tsui (2020) eKLR, guided by the above Supreme Court decision held that the documents or pleadings drawn and filed by an Advocate who does not possess a current practicing certificate do not become invalid and should therefore not warrant being struck out. He court stated that;

“..... We resonate and associate ourselves fully with the holding that documents or pleadings drawn and filed by an advocate who does not possess a current practicing certificate does not become invalid and should therefore not warrant being struck out.”

18. Guided by the above decisions, my finding is that the Notice of Motion dated 18<sup>th</sup> April, 2024 as well as the preliminary objection of even date are unmerited. The application is dismissed and the preliminary objection disallowed.



19. I however make no order as to cost.
20. The above finding disposes off the application dated 13th May, 2024 as well. The same is disallowed with no orders as to cost.
21. I must conclude with a warning to Advocate Mr. MTN in future to always ensure that he holds a valid practicing certificate before drawing and filing any documents and appearing before this or any other court. The action of an advocate appearing before the court to represent a client when he or she is aware that he does not hold a valid practicing certificate amounts to misconduct. Section 56 of the [Advocates Act](#) reserves this court's power to deal with misconduct or offenses by an advocate, committed during or in the course of, or relating to proceedings before the court.
22. I will leave it at that for now.
23. The upshot is that the Notice of Motion applications dated 18th April 2024 and 13th May, 2024 and the preliminary objection of 18th April, 2024 are dismissed but with no orders as to cost.
24. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Mwaura for the Appellant

N/A for the Respondent

Mr. Njuguna for the Interested Party

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

