



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO 833 OF 2013**

**DAVID MWANIKI KIBE.....CLAIMANT**

**VS**

**AIC CURE INTERNATIONAL CHILDREN'S**

**HOSPITAL.....RESPONDENT**

**RULING**

1. On 4th June 2013, the Claimant, through the firm of Ng'ang'a Nyaga & Company Advocates, filed a claim for unfair termination of employment against the Respondent. The Respondent filed a Notice of Preliminary Objection on 1st July 2013 on the ground that the Claimant's claim, having been filed by an Advocate without a current practicing certificate, was incompetent and ought to be struck out. Pursuant to the Notice of Preliminary Objection, the Respondent filed a Notice of Motion on 15th October 2013. The application was supported by an affidavit sworn by James Makori, an Advocate with the firm of Enonda, Makoloo, Makori & Co Advocates.

2. Mr. Makori deponed that he had checked the status of Nyaga Paul Ng'ang'a from the Law Society of Kenya website and confirmed that the said Nyaga Paul Ng'ang'a did not hold a practicing certificate. Mr. Makori then wrote to the firm of Ng'ang'a Nyaga and Company Advocates on 11th June 2013, seeking confirmation on its relationship with Nyaga Paul Ng'ang'a but got no response.

3. On 18th June 2013, the Law Society of Kenya wrote to the firm of Enonda, Makoloo, Makori & Co. Advocates confirming that as at 18th June 2013, Nyaga Paul Ng'ang'a did not hold a practicing certificate. Mr. Nyaga was served with the Respondent's Notice of Motion but made no response and no appearance.

4. Section 9 of the Advocates Act provides that:

**9. *Subject to this Act, no person shall be qualified to act as an advocate unless-***

***(a) he has been admitted as an advocate; and***

***(b) his name is for the time being on the Roll; and***

***(c) he has in force a practicing certificate***

5. With regard to representation of parties before the Industrial Court, Section 22 of the Industrial Court Act, 2011 provides as follows:

**22. In any proceedings before the Court or a subordinate industrial court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee specially authorised for that purpose.**

6. The legal position on the status of pleadings drawn by an unqualified person is clear and unambiguous. In the case of *Abdul Aziz Juma Vs Nikisuhi Investment & 2 others (ELC Suit No. 291 Of 2013)* Mutungi J held that:

***“an advocate who does not hold a current practicing certificate cannot purport to represent a party or draw pleadings to be filed in court.”***

7. It is not in contest that when the Claimant's Memorandum of Claim was signed by the Advocate on record on 22nd May 2013, the said Advocate did not hold a practicing certificate. He was not therefore qualified to practice as an Advocate and could not lawfully draw and file pleadings or represent the Claimant in any proceedings in a court of law. For this reason, I find that the Claimant's Memorandum of Claim dated 22nd May and filed in Court on 4th June 2013 is incompetent and unsustainable and proceed to strike it out with no order for costs.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF JANUARY 2014**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Claimant*

.....*Respondent*