Republic v Mohammed & another (Petition 39 of 2018)
[2019] KESC 47 (KLR) (15 March 2019) (Ruling)

Republic v Ahmad Abolfathi Mohammed & another [2019] eKLR

Neutral citation: [2019] KESC 47 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

PETITION 39 OF 2018

DK MARAGA, CJ & P, MK IBRAHIM, JB OJWANG,
SC WANJALA, N NDUNGU & I LENAOLA, SCJJ

MARCH 15, 2019

BETWEEN

REPUBLIC ..... APPELLANT

AND

AHMAD ABOLFATHI MOHAMMED ..... 1ST RESPONDENT

SAYED MANSOUR MOUSAVI ..... 2ND RESPONDENT

(Being an appeal from the Judgment of the Court of Appeal delivered at Nairobi on 26 January, 2018 in Criminal Appeal No. 135 of 2016 and pursuant to leave granted on 28 September, 2018)

Disparaging remarks made by an advocate, directed to a court, through oral and/or written submissions amount to professional misconduct.

Reported by Ian Kiptoo

Advocates *- professional misconduct - obligations of an advocate - where an advocate made disparaging remarks in both oral and written submissions - disparaging remarks towards authority of a court - what was the duty of an advocate towards the Supreme Court, the public and the profession as a whole in the course of a trial - whether disparaging remarks made by an advocate through oral and written submissions amounted to profescsional misconduct - Advocates Act (cap 16), sections 55 and 56; Law Society of Kenya Act (cap 18), section 4.*

Brief facts

The matter arose from an appeal from a judgment of the Court of Appeal. However, in the course of the trial the judicial task of hearing counsel and deliberating upon the relevant issues was besieged by scenarios of conduct bordering on contempt which the court had to signal, reprimand, and for the future, prescribe lines to be adhered to by any advocate canvassing his or her client's case.

Issues

i. What was the duty of an advocate towards the court, the public and the profession as a whole in the course of a trial?

ii. Whether disparaging remarks made by an advocate, directed to a court, through oral and/or written submissions amounted to professional misconduct.

Held

1. It was baffling how an advocate of the High Court, and a leading member of the Law Society of Kenya, could address the Supreme Court in such terms, both by written submissions and verbally: a mode of address deliberately chosen, even though studiously insolent and impertinent, condescending and offensive. Such a mode of advocacy, as was perceived, was not only careless, thoughtless and improper, but was imprudent, and clearly intended to cast aspersions at the court and to taint its credibility as a core institution of the constitutional order.
2. Counsel for the respondents was more than discourteous towards the court; he was evincing willful disrespect for the authority of the court, conducting himself in a manner certainly calculated to lower the dignity of the court. That was the typical instance of a trespass well outside the bounds of legitimate advocacy. Counsel for the respondents, an advocate and an officer of the court fell distinctly short, on his terms as an officer of the court, and conducted himself in a disgraceful and reprehensible manner.
3. On admission to the Bar, all advocates made an affirmation, as officers of the court. The status of an advocate as an officer of the court was expressly provided for in section 55 of the Advocates Act. An advocate consequently bore an obligation to promote the cause of justice and the due functioning of the constitutionally established judicial process ensuring that the judicial system functioned efficiently, effectively, and in a respectable manner. In that context, advocates bore the ethical duty of telling the truth in court, while desisting from any negative conduct, such as dishonesty or discourtesy. The overriding duty of the advocate before the court was to promote the interests of justice, and of motions established for the delivery and sustenance of the cause of justice.
4. Section 4 of the Law Society Act charged advocates with certain obligations which included;
    a. set, maintain and continuously improve the standards of learning, professional competence and professional conduct for the provision of legal services in Kenya;
    b. determine, maintain and enhance the standards of professional practice and ethical conduct and learning for the legal profession in Kenya; and
    c. facilitate the realization of a transformed legal profession that was cohesive, accountable, efficient and independent.
5. So clear was the position of the statute law regarding the integrity of the advocate, as a vital player in the cause of justice, as that manifested within the court system.
6. Advocates, while discharging their duties, were under obligation to observe rules of professionalism, and in that regard, they were to be guided by the fundamental values of integrity.
7. Counsel for the respondents bore the title senior counsel, a title in respect of which the Advocates Act section 2 provided for. The designation as senior counsel was a recognition of outstanding status for the bearer; it symbolized the identification of those advocates whose achievement and standing, invoked the expectation that they were in a position to render distinguished service as advocates and counsellors, in the cause of due and meritorious administration of justice.
8. The Supreme Court functioned as the ultimate appellate court. Before the court, as before any court bearing appellate jurisdiction, the submissions of learned counsel, whether written or oral, had a crucial significance. Senior counsel in particular, who had long experience in the conduct of litigation had an obligation of conducting themselves with perceptible decorum, such was manifested in truly respectful temperament, as well as language, when they appeared before the court. That was vital for the due administration of justice, to which no option fell due. The court was conscious of the fact that the parties attending a hearing in court could condescend to vigorous, and sometimes forceful

argumentation by counsel, however, on no single occasion, was such to depart from the requirement of courtesy towards the court, and towards contending parties and their counsel.

9. Willful insult directed at a judge during trial was prohibited in all civilised legal process. Not only did such insult degrade the constitutional process of dispute-resolution, but it disrupted and distorted the orderly procedure which alone, would lead to the requisite adjudication of claims resting with the court.
10. Senior counsel for the respondent had set out to question the court's jurisdiction. While it was allowable that the argumentation could properly have been made with all vigour, it would ill-become legitimate cause to be attended with offensive melodrama, sustained with denigrating depictions such as: exercising illegitimate political power.
11. The Supreme Court bore responsibility for exercising disciplinary procedure against advocates who, in its full view, displayed conduct unbecoming of an advocate. That was provided for under section 56 of the Advocates Act and there was no novelty in judicial interpretation in relation to that provision.
12. The functioning of the reparatory aspect of the Contempt of Court Act under section 24A, at the moment, and with regard to the operations of the High Court and the Court of Appeal, admitted of uncertainty quite apart from the fact that it was not applying them to the instant matter but affirmed such not to be the case as regarded the Supreme Court's competence, which was founded upon the Supreme Court Act, section 28 (1), (3), (4) and (5).
13. An act in contempt of the court constituted an affront to judicial authority; the court had the liberty and empowerment to mete out penalty for such conduct in a proper case. The object was:
    a. to vindicate the court's authority;
    b. to uphold honourable conduct among advocates in their standing as officers of the court; and
    c. to safeguard its processes for ensuring compliance so as to sustain the rule of law and the administration of justice.
14. It was made plain that counsel would not engage in such course of conduct as was depicted in the ruling, and any default in that regard, in the future, would occasion contempt of court proceedings, with the inevitable consequences, and if not, then appropriate sanctions for contempt in the face of the court.

Counsel for the respondents reprimanded.

Orders

All the offending paragraphs of the written submissions of the Senior Counsel for the respondents, as set out in paragraph [2] of the ruling, would not remain as part of the record of the Supreme Court, and would be expunged and wholly obliterated from the record of the Supreme Court.

Citations

Cases

Kenya

1. *Equip Agencies Limited v Credit Bank Limited* Civil Case 773 of 2003; [2004] KEHC 72 (KLR); [2004] eKLR - (Explained)
2. *Mugo, Francis & 22 others v James Bress Muthee; Alex M Ndirangu; Gilbert Kabage t/a Pata Commercial Enterprises; John Muthee Ngunjiri t/a Tango Auctioneers & General Merchants* Civil Suit 122 of 2005; [2005] KEHC 1430 (KLR) - (Explained)

United Kingdom

Rondel v Worsley [1969] AC 191; [1967] 3 WLR 1666; [1967] 3 All ER 993; [1967] UKHL 5 - (Applied)

Australia

Lewis v His Honour Judge Ogden (1984) 153 CLR 682; [1984] HCA 26; 153 CLR 682; 53 ALR 53 - (Applied)

Texts

Harlan, JM., (1955) *What Part Does the Oral Argument Play in the Conduct of an Appeal* Cornell Law Review, Vol 41 (6)

Statutes

Kenya

1. Advocates Act (cap 16) sections 2, 10, 13, 15(4), 17, 18(1); 55; 56; 57 - (Interpreted)
2. Constitution of Kenya In general - (Cited)
3. Contempt of Court Act (cap 8F) section 24A - (Interpreted)
4. Law Society of Kenya Act (cap 18) section 4 - (Interpreted)
5. Supreme Court Act (cap 9B) sections 28(1); 28(3); 28(4); 28(5) - (Interpreted)

Australia

County Court Act, 1958 section 54A(1)(a) - (Interpreted)

Advocates

Mr Ahmednassir Abdullahi, Senior Counsel for the respondent

RULING

A. Introduction

1. The governing principle stated herein runs in attendance upon the Judgment of this court flagged up in the heading. The judicial task of hearing counsel and deliberating upon the relevant issues, was beleaguered by scenarios of conduct bordering on contempt, which this court must signal, reprimand, and for the future, prescribe lines to be adhered to by any Advocate canvassing his or her client's case.

B. Counsel's Pronouncements, Written and Oral

2. Senior Counsel Mr Ahmednassir Abdullahi, in his written submissions of 10 December, 2018 (paragraphs 1-15), did make highly disparaging remarks about this Supreme Court. The following excerpts are notable in that respect:

(i)

> " 1. My Lords and my lady, let us make it clear from the onset that the respondents refuse to submit or recognise the jurisdiction of this court. This court is exercising illegitimate political power without any lawful jurisdiction over the respondents. Moreover, this case is a clear instance where the Court is acting as a surrogate of the State to legitimize the illegal and unlawful detention of the respondent."

(ii)

> " 3. Again, from the onset, we wish to state in the most emphatic manner that the court is biased against the respondents, lacks impartiality, and the very minimum ingredient of independence from the State and its agents in this case is absent... The court had previously based its decision on extraneous political factors/considerations that are underpinned by a nationalistic affinity between the court and the State."

(iii)

> " 12. This court is a jurisprudential train wreck!!! It is incoherent. It is unpersuasive. It is unfaithful to the *Constitution* and is churning out constitutional interpretations that are at best, counterfeit."

(iv)

> " 14. This court sees no limit to its jurisdiction and power. Its jurisdiction is infinite and interminable. It can hear and determine anything on earth. How can a Court that does as it thinks/imagines/wishes/hopes correctly interpret the *Constitution* and deliver justice to the parties before it [?] That is simply impossible. This Court acts in whims and is incapable of doing justice according to the *Constitution*."

(v) Though prompted by the court to expunge the foregoing submissions from the record, Senior Counsel Abdullahi spurned this proposition, electing to retain the said remarks,

> " I do not subscribe to the theory that we cannot question your decisions. We will question and question robustly and I have shown you, my Lords, that, and I will show you again that the three decisions you have made were all wrong, all wrong not because, as my Lord Chief Justice said that you have disagreed with my submissions, they were deliberately wrong, my Lords, because, one, all those three decisions were tailor-made for this peculiar case, my Lords... "

(vi) Senior Counsel Mr Abdullahi went on:

> " But my Lord, the point I am making is that you got it so wrongly. Three decisions you made and you treated the respondents so badly, so badly. The question I am posing, which I am entitled to, is, how can I have faith as counsel, and I say this, there is an ethical dilemma sometimes to appear before this Court and argue, because, I would be very frank, my Lords, this court sometimes appears like jurisprudentially like a headless chicken, my Lords because you change so many times, you bend with every breeze when it comes to interpretation, and that is why people say that there is no coherence when it comes to interpretation of the *Constitution*."

(vii) Mr Abdullahi still went on as follows:

> " My Lady, in reply, I am not expunging. I am ready if you think it is contemptuous. So be it. I am ready to answer if you start [contempt] proceedings against me. I have no problem. I have faced more [difficult] situations. I am ready, I stand by those 14 paragraphs, if you want me to explain. I have explained. I have no apologies. There is nothing contemptuous [in any] of those paragraphs."

3. It baffles the mind, how Mr Abdullahi, an Advocate of the High Court, and a leading member of the Law Society of Kenya, seeking justice for his clients before this court, could address the Bench in such terms, both by written submissions and verbally: a mode of address deliberately chosen, even though studiously insolent and impertinent, condescending and offensive. Such a mode of advocacy, as we perceive it, is not only careless, thoughtless and improper, but is imprudent, and clearly intended to cast aspersions at the court, and to taint its credibility as a core institution of the constitutional order.

4. Mr Abdullahi was more than discourteous towards the court; he was evincing wilful disrespect for the authority of the court, conducting himself in a manner certainly calculated to lower the dignity of the court. This was the typical instance of a trespass well outside the bounds of legitimate advocacy.

5. It is clear to us that Mr Abdullahi, an Advocate and an Officer of the court, fell distinctly short, on his terms as an Officer of the court, and conducted himself in a disgraceful and reprehensible manner.

C. Advocates, as Officers of the Court

6. On admission to the Bar, all Advocates make an affirmation, as Officers of the court. section 15(4) of the *Advocates Act* provides that an aspiring Advocate

> "shall take an oath or make an affirmation as an Officer of the court before the Chief Justice in such form as he shall require, and shall thereafter sign the Roll in the presence of the Registrar or a Deputy Registrar who shall add his signature as witness."

7. The status of an Advocate as an Officer of the court, is expressly provided for in section 55 of the *Advocates Act*. An Advocate, consequently, bears an obligation to promote the cause of justice, and the due functioning of the constitutionally-established judicial process - ensuring that the judicial system functions efficiently, effectively, and in a respectable manner. In that context, Advocates bear the ethical duty of telling the truth in court, while desisting from any negative conduct, such as dishonesty or discourtesy. The overriding duty of the Advocate before the court, is to promote the interests of justice, and of motions established for the delivery and sustenance of the cause of justice.

8. These principles are underlined also in the *Law Society Act*, which charges the Advocate with certain obligations (section 4):

> "(e) set, maintain and continuously improve the standards of learning, professional competence and professional conduct for the provision of legal services in Kenya;
>
> (f) determine, maintain and enhance the standards of professional practice and ethical conduct, and learning for the legal profession in Kenya.
>
> (g) facilitate the realization of a transformed legal profession that is cohesive, accountable, efficient and independent."

9. So clear, then, is the position of the statute law, regarding the integrity of the Advocate, as a vital player in the cause of justice, as this manifests itself within the court system.

10. So much has, indeed, been the clear message emanating from judicial interpretation. And in *Francis Mugo & 22 others v James Bress Muthee & 3 Others*, Civil Suit No 122 of 2005 [2005] eKLR, Justice Musinga thus stated:

> "While I agree that the choice of [counsel] is a prerogative of a party to a suit, it must be borne in mind that in the discharge of his office, an Advocate has a duty to his client, a duty to his opponent, a duty to the court, a duty to himself, and a duty to the State, as well [expressed] by Richard Du Cann in The Art of the Advocate. As an Officer of the court, he owes allegiance to a cause that is higher than serving the interests of his client, and that is to the cause of justice and truth."

11. It is clear, therefore, that Advocates, while discharging their duties, are under obligation to observe rules of professionalism, and in that behalf, they are to be guided by the fundamental values of integrity.

D. Senior Counsel

12. Mr Abdullahi bears the title "Senior Counsel" - a title in respect of which the *Advocates Act* (section 2) thus provides:

> "Senior Counsel' means an Advocate upon whom the President has conferred the rank of Senior Counsel".

And section 17 of the *Act* thus amplifies:

> "(1) The President may grant a letter of conferment to any person of irreproachable professional conduct who has rendered exemplary service to the legal and public service in Kenya conferring upon him the rank and dignity of Senior Counsel."

13. The *Advocates Act* (section 17(2)) sets out the requisite qualifications for Senior Counsel: a candidate is to be an Advocate of at least 15 years' standing, or being one to whom section 10 of the *Act* applies, is to hold, and should have held for a continuous duration of at least 15 years, one or other of the qualifications specified in section 13 of the *Act*. section 18(1) provides for a Roll of Senior Counsel, and all Advocates bearing the rank of Senior Counsel are required to sign this Roll (section 18(3)).

14. The designation as Senior Counsel is a recognition of outstanding status for the bearer; it symbolises the identification of those Advocates whose achievement and standing, invokes the expectation that they are in a position to render distinguished service as Advocates and counsellors, in the cause of due and meritorious administration of justice.

E. Judicial Process: Submission by Learned Counsel

15. For most practical purposes, this Supreme Court functions as the ultimate appellate court. Before this court, as before any courtbearing appellate jurisdiction, the submissions of learned counsel, whether written or oral, have a crucial significance. This point emerges clearly from the learned article of Justice John M. Harlan II of the United States Supreme Court (1955-1971), entitled *The Role of Oral Argument* (published in Cornell Law Review, Vol. 41 (1955), 6), from which the following points emerge:

    (a) a judge's first impressions of a case are tenacious - and may persist during ensuing sessions of conferencing. This is because oral argument, frequently, touches on the crucial issues bearing upon the truth as it should be perceived by the court.

    (b) the art of advocacy makes for effective oral argument; and in this category falls:

        (i) selectivity - the lawyer's selection of issues to be argued;

        (ii) simplicity of presentation and expression;

        (iii) candour - even the strong case has weak points, and it is a cardinal sin to be evasive regarding the weak points;

        (iv) resiliency - probing by the court is no intrusion, but a quest for clarity, as well as an endeavour to call counsel back to the right path.

(c) the wise counsel will limit himself or herself to pertinent issues, leaving the marginal ones to the court's own scrutiny of the record.

(d) Counsel, as Officers of the court, must endeavour to retain the court's confidence, as it is an uncomfortable and undesirable situation when an Advocate loses the confidence of the court.

16. In such a context, it is readily appreciated that Senior Counsel in particular, who have had long experience in the conduct of litigation, have an obligation of conducting themselves with perceptible decorum, such as manifests itself in truly respectful temperament, as well as language, when they appear before the court. This is vital for the due administration of justice, to which no option falls due.

17. Although we are conscious of the fact that the vibrato attending a hearing in court may conduce to vigorous, and sometimes forceful argumentation by counsel, on no single occasion, we maintain, is such to depart from the deportment of courtesy towards the court, and towards contending parties and their counsel. This principle lies in the apposite statement of Lord Reid in the British House of Lords case, *Rondel v Worsley* [1969] AC 191:

> " Implicit trust between Bench and Bar which does so much to promote the smooth and speedy conduct of the administration of justice springs from the confident expectation of the Bench that where counsel is in any doubt about some detailed mode of putting his client's case, he will put his public duty before the apparent interests of his client."

F. Disparaging Remarks, Directed at the Court

18. It is clear, in the light of the foregoing observations, that wilful insult directed at a Judge during trial, is prohibited in all civilised legal process. Not only does such insult degrade the constitutional process of dispute-resolution, but it disrupts and distorts the orderly procedure which, alone, will lead to the requisite adjudication of claims resting with the court.

19. We may draw example from the law relating to contempt - even though we are not applying it in this instance. In what circumstances would an Advocate be adjudged guilty of contempt of the court, or of wilful insult of a judge? The generality of this question in most judicial experience, is demonstrated by an instance of comparative relevance, an Australian case: *Lewis v His Honour Judge Ogden* (1984) 153 CLR 682. This was an appeal before the High Court of Australia. The appellant had been convicted under section 54A(1)(a) of the *County Court Act, 1958* (Vic.), by a judge of the County Court, for insulting the said judge, in the course of an address to the jury. The appellant, a legal practitioner, challenged the conviction in the High Court.

20. The said legal practitioner had addressed the jury during the trial of a criminal matter, and had put it to members of the jury that they were not bound to accept the judge's direction on the facts; he invited the jury to subject the judge's standpoint on facts to scrutiny, because the judge, in his view, had shown preference to the prosecution case, as against the interests of his client (the accused). The trial judge found the legal practitioner to have committed an act of contempt towards the court.

21. It was the finding of the High Court, in the circumstances of that case, that counsel had not wilfully insulted the judge; but, for the purposes of the instant matter, the following passage in the judgment sheds valuable light:

> " [A] wilful insult to a judge or jury during a trial necessarily interrupts the course of the trial and tends to divert attention from the issues to be determined. So in *exparte Parter* (1864) 5 B & S 299 (122 ER 842), where a barrister was adjudged guilty of contempt in that he

wilfully insulted a juryman during the course of his address to the jury, the wilful insult was treated as an obstruction of the administration of justice and, accordingly, as a contempt...

"It follows that a person who wilfully insults a Judge in the course of proceedings in court, does something which necessarily interferes, or tends to interfere, with the course of justice.

"In construing the expression 'wilfully insults', and in evaluating the relevant part of the appellant's address, we must keep firmly in mind the high responsibility which counsel has, to ensure that his client's case is fully and properly presented, especially at a criminal trial. It has been recognised on many occasions and by judges of great distinction that the responsibility of counsel in representing his client may require him to plead his client's case fearlessly and with vigour and determination. At the same time it has always been recognised that counsel has 'an overriding duty to the court, to the standards of his profession and to the public', to quote the words of Lord Reid in *Rondel v Worsley* [1967] UKHL5; [1969] 1 AC 191, at p 227. This overriding duty requires him to 'contribute to the orderly, proper and expeditious trial of causes in our courts' [*Saif Ali v. Sydney Mitchell & Co* [1980] AC 198, at p 233]...."

22. Such is the emerging principle regarding wilful insult directed at a Judge; and we perceive no need at the moment, to forge any altogether novel significations to that perception.

23. In the matter before us, Senior Counsel Mr Abdullahi had set out to question this court's jurisdiction. While it is allowable that the argumentation could properly have been made with all vigour, it would ill-become legitimate cause to be attended with offensive melodrama, sustained with denigrating depictions such as: "exercising illegitimate political power."

G. Contempt Before the Supreme Court: Governing Principles

24. The purpose of this Ruling is limited to depicting the face of grumpy and ill-tempered behaviour before the Supreme Court: signalling lines of caution, and prescribing governing principles for future situations.

25. The court bears responsibility for exercising disciplinary procedure against Advocates who, in its full view, display conduct unbecoming of an Advocate. Section 56 of the *Advocates Act* thus stipulates:

> " Nothing in this *Act* shall supersede, lessen or interfere with the powers vested in the Chief Justice or any of the judges of the court to deal with misconduct or offences by an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the Chief Justice or any judge."

26. There is no novelty in judicial interpretation, in relation to the foregoing provision. In the High Court case, *Equip Agencies Limited v Credit Bank Limited*, Nairobi HCCC No. 773 of 2004, it was thus observed (Warsame, J):

> " [T]he court... has jurisdiction to make an Order in exercise of it disciplinary jurisdiction. The purpose of the punitive and disciplinary powers of the [court]...over [the] Advocate is not for the purpose of enforcing legal rights but for enforcing honourable conduct among them in their standing as officers of the court, by virtue of section 57 of the *Advocates Act* (cap 16, Laws of Kenya).... It is not the business of the court to oppress an Advocate for no reasonable cause. The court is always reluctant to degrade an Advocate unless the circumstances show that his conduct is dishonourable as an officer of the court, and it is for that reason that the

court would exercise its punitive and disciplinary powers to ensure that Advocates conduct themselves in a manner that pleases the eyes of justice."

27. We have taken note that the functioning of the reparatory aspect of the *Contempt of Court Act* (s 24A), at the moment, and with regard to the operations of the High Court and the Court of Appeal, admits of uncertainty - quite apart from the fact that we are not applying them here - but we affirm such not to be the case as regards the Supreme Court's competence, which is founded upon the *Supreme Court Act, 2011* (Act No 7 of 2011), section 28(1),(3),(4) and (5) which thus provide:

> "(1) A person who-
>
> (a) assaults, threatens, intimidates, or wilfully insults a judge of the Supreme Court... during a sitting or attendance in court....; or
>
> (b) wilfully interrupts or obstructs the proceedings of the Supreme Court...; or
>
> (c) wilfully and without lawful excuse disobeys an order or direction of the Supreme Court in the course of the hearing of a proceeding, commits an offence....
>
> (3) The Supreme Court may sentence a person who commits an offence under subsection(1) to imprisonment for a period not exceeding five days, or to pay a fine not exceeding five hundred thousand shillings or both, for every offence.
>
> (4) The Supreme Court shall have the same power and authority as the High Court to punish any person for contempt of court in any case to which subsection(1) does not apply.
>
> (5) Nothing in subsections(1) to (3) shall limit or affect the power and authority referred to in Subsection (4)."

28. There is no doubt that an act in contempt of the court constitutes an affront to judicial authority; and the court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the court's authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice.

29. We thus, in this instance, make it plain that counsel shall not engage in such course of conduct as is depicted in this Ruling, and any default in that regard, in the future, shall occasion contempt-of-court proceedings, with the inevitable consequences, and if not, then appropriate sanctions for contempt in the face of the court.

H. Order

30. All the offending paragraphs of the written submissions of Senior Counsel Mr Abdullahi, as set out in paragraph [2] of this Ruling, shall not remain as part of the record of the Supreme Court, and shall forthwith be expunged and wholly obliterated from the record of the Supreme Court.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH, 2019.

.....

D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

.....

M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

.....

J. B. OJWANG

JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA