



**Attorney General v Mukade & 2 others (Civil Appeal E025 of 2024)
[2025] KEHC 7458 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E025 OF 2024
WM MUSYOKA, J
MAY 29, 2025**

BETWEEN

THE HONOURABLE ATTORNEY GENERAL APPELLANT

AND

JOB MUSIKE MUKADE 1ST RESPONDENT

SHARON ANYANGO 2ND RESPONDENT

MATHEWS JUMA OKETCH ALIAS TONADO 3RD RESPONDENT

(Appeal from orders made in ruling of Hon. EA Nyaloti, Chief Magistrate, CM, in Busia CMCCC No. E032 of 2024, on 11th June 2024)

JUDGMENT

1. The suit at the primary court had been filed by the 1st and 2nd respondents, against the appellant, and the 3rd respondent, for Kshs. 850,000.00, general damages for unlawful detention, malicious prosecution and character assassination, and costs. The proceedings arise from criminal proceedings in Busia CMCCRC No. 807 of 2020.
2. The appellant and the 3rd respondent filed defences, initially denying everything averred in the plaint filed by the 1st and 2nd respondents.
3. Before the matter progressed to hearing, the appellant filed a Motion, dated 14th May 2024, seeking the striking out of the plaint, on grounds that the Advocate who drew and signed it had not taken out a practicing certificate for the year 2024, and, therefore, he was an unqualified person. The 3rd respondent supported that application, vide his affidavit sworn on 20th May, 2024.
4. I have not seen, from both the record of appeal and the original trial record, any replies to that application from the 1st and 2nd respondents.



5. It would appear that the application was canvassed orally, on 23rd May 2024. A ruling was delivered, on 11th June 2024, dismissing the said application, on grounds that access to justice should not be impeded on technicalities of the law and that a mistake of an Advocate is not visited on his innocent client. Article 159(2)(d) of *the Constitution*; section 34B(2) of the *Advocates Act*, Cap 16, Laws of Kenya; *National Bank of Kenya v Anaj Warehousing Limited* [2015] eKLR (Mutunga, CJ&P, Tunoi, Ibrahim, Ojwang & Wanjala, SCJJ); *TJF Kajwang v Law Society of Kenya* [2002] eKLR (SM Amin & JK Mulwa, JJ) and *Republic v Ex parte Geoffrey Kariuki Njuguna & 9 Others* [2016] eKLR (J. Ngugi, J) were cited in the ruling.
6. The appellant was aggrieved and instituted the instant appeal, vide a memorandum of appeal, dated 13th June 2024, and amended on 19th June 2024. The grounds revolve around *National Bank of Kenya v Anaj Warehousing Limited* [2015] (Mutunga, CJ&P, Tunoi, Ibrahim, Ojwang & Wanjala, SCJJ) eKLR being misapplied, an Advocate who has not taken out a practising certificate not having authority to file pleadings and not being able to enjoy protection of the *Advocates Act*, the trial court failing to draw issues, and the court failing to give the plaintiffs the option to withdraw the impugned pleadings and filing fresh pleadings.
7. Directions were given on 18th November 2024 and 14th January 2025 for filing of written submissions. Both sides have complied. I have read through the respective written submissions and noted the arguments.
8. There is only one issue for determination, the fate of pleadings filed by an Advocate without a valid practising certificate.
9. The prevailing law on the matter is stated in such decisions as *Amigos Nuts and Commodities Limited v Kam Hong* [2020] eKLR (Makhandia, Musinga & Murgor, JJA) and *Tindika v Mwacharo* [2024] KEELC 4136 (Dena, J), which built upon and reiterate the decisions in *National Bank of Kenya v Anaj Warehousing Limited* [2015] eKLR (Mutunga, CJ&P, Tunoi, Ibrahim, Ojwang & Wanjala, SCJJ) and *Republic v Resident Magistrate's Court at Kiambu Ex-parte Geoffrey Kariuki Njuguna & 9 Others* [2016] eKLR (J. Ngugi, J).
10. The position is that no pleadings, documents or submissions become invalid, under the provisions of the *Advocates Act*, only because they were prepared by an Advocate, who, at the time he prepared them, was not holding a current practising certificate. The documents drawn and filed by such an Advocate do not become invalid, and do not merit being struck out.
11. The trial court did not err. That then would mean the appeal herein has no merit. I hereby dismiss it. The trial court records shall be returned to the trial court for the trial to proceed in earnest. The appeal file herein shall be closed. There shall be no order on costs. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 29TH DAY OF MAY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gilbert Tarus, instructed by the Attorney General, for the appellant.

Mr. Wycliffe Okutta, instructed by Ouma Okutta & Advocates, Advocates for the 3rd respondent.



Mr. Arembe Olaka, instructed by Omurwa Musangalile, Advocates for the 1st and 2nd respondents.

