



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAJIADO**

**MISC. APPLICATION NO. 14 OF 2019**

**MWANIKI GITAU & COMPANY ADVOCATES.....APPLICANT**

**-VERSUS-**

**JOSEPH NJIHIA MUCHIRI.....1<sup>ST</sup> RESPONDENT**

**JELIOTH WANJIRU MWANIKI.....2<sup>ND</sup> RESPONDENT**

**RULING**

This ruling is on the Notice of Motion dated 30<sup>th</sup> November, 2020 which seeks to strike out the Notice of Motion dated 8<sup>th</sup> July, 2019 on the ground that Waweru Munyi Advocate who filed it did not have a Practising Certificate for the year 2019.

Other prayers are that the same advocate be prohibited from representing the Applicant and that he pays the costs of defending this application.

The application which is brought under the provisions of *Sections 1A, 1B, 3 and 3A* of the *Civil Procedure Act, Order 19 Rule 1, 3(2) and 6* of the *Civil Procedure Rules* and *Sections 2, 9, 22, 27 and 34* of the *Advocates Act* is supported by an affidavit sworn by Joseph Mwaniki Gitau.

In the said affidavit, Counsel says that he has made enquires with the Law Society of Kenya and established that Waweru Munyi Advocate did not have a valid Practising Certificate in the year 2019 and even on 1<sup>st</sup> December, 2020 when the supporting affidavit was sworn, he did not have the one for the year 2020.

Annexed to the affidavit are documents headed “Search Advocate” and practising status and CPD compliance for Waweru Munyi and Company Advocates which show that he was “inactive” in 2019 and 2020.

The application, though served was not opposed.

I have carefully considered the application in its entirety including the grounds, the affidavit and the annexures.

I find that while it is fair and just to allow all the other prayers, it is not fair to allow prayer ( c ) before the result of the Disciplinary Proceedings before the Advocates Disciplinary Tribunal is disclosed. The danger of allowing the said prayer is that the Court may issue an order that contradicts the said Tribunal.

If this were to happen, it would appear as if the Court is undermining another legally constituted tribunal.

Allowing prayer (c) would apparently contravene *Section 6* of the *Civil Procedure Act* which provides as follows;

**“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed”.**

For the above stated reasons, the Notice of Motion is allowed in terms of prayers (d), (e ) and (f) so that costs go to the Applicant.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15<sup>TH</sup> DAY OF DECEMBER, 2021**

**M.N. GICHERU**

**JUDGE**



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