

TANZANIA / JUDGMENT

fatma amani karume vs attorney general and another 2021 tzhc 3679 21 june 2021

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TZHCDECIDED
21 June 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MAIN REGISTRY) AT PAR ES SALAAM CIVIL APPEAL NO. 02 OF 2020 (Arising from the decision of the Advocates Committee in Application No. 29 of 2019) (MAIGE, NANGELA AND KAKOLAKI. JJJ) FATMA AMANI KARUME APPELLANT VERSUS THE ATTORNEY GENERAL 1st RESPONDENT ADVOCATES COMMITTEE 2nd RESPONDENT MAIGE, J:.

JUDGMENT

In Miscellaneous Civil Cause No. 29 of 2018 which was disposed of by His Lordship Feleshi, JK on 20/09/2019, the appellant herein was representing ADO SHAIBU in a petition under the Basic Rights and Duties Enforcement Act. The petition was disposed of on preliminary points which were argued by way of written

submissions.

In her written submissions in opposition to the preliminary objections, it would appear, the appellant made some statements which were perceived by the first respondent and another person not a party to these proceedings as an apparent gross professional misconduct. For the reason of the nature of this decision, we find it unworthy to reproduce the statements. It would suffice however to unveil that, disgruntled with the statements, Mr. Mlwambo, learned Principle State Attorney who represented the respondents therein, in his rejoinder submissions, complained to the presiding Judge against the alleged misconduct. In reaction, the presiding Judge acting under section 22(2)(b) of the Advocate Act, Cap. 341, R.E., 2019 ("the Act") and having considered the fact that the appellant herein was not afforded an opportunity to reply to the complaint, made the following orders:- Now, to pave way for the advocates professional disciplinary proceedings on the complained of unethical petitioner's reply submissions to take off I hereby suspend Ms. 2 Fatma Amani Karume, Roll No. 848 from practicing under section 22(2) (b) of the Advocates Act (supra) pending the reference to the Advocate's Disciplinary Committee. The Registrar of the High Court is thus ordered to refer the professional misconduct matter contained in the petitioner's reply submissions and the respondent's rejoinder submissions together with this ruling to the Advocate Disciplinary Committee for

determination.

Though it is express in the orders aforesaid that, it was the Registrar who was directed to transmit the complaint to the second Respondent with copies of the written submissions in reply, rejoinder submissions and the ruling of His Lordship Feleshi, JK, the complaint culminating in this appeal was not referred by the Registrar. Instead, it was referred by the first respondent who was the complainant in the Court order. The brief statements constituting the nature of the misconduct was pleaded in paragraph 3(a) (i)-(ix) which, for clarity, we will reproduce verbatim hereunder;

- (i) That, on 5 February 2018 the Respondent being an Advocate of the High Court and Court Subordinate thereto, filed a Miscellaneous Case No. 29 of 2018 in the High Court of Tanzania, Main Registry (Dar Es Salaam), under the Basic Rights 3 Duties and Enforcement Act (Cap. 3. R.E., 2002) The said petition challenged the constitutionality of the appointment of the complainant as the Attorney General of the United Republic of Tanzania. The parties, in the said Petition, were Ado Shaibu (Petitioner) against His Excellency John Pombe Joseph Magufu/i (The President of the United Republic of Tanzania) and Hon. Adetardus Lubango and the Attorney General (Respondents). (The said Petition is attached hereto and marked 'Annexure ALK-F1") (ii) That, in the said petition; the co- Respondents were represented by the Hon. Solicitor General. (Hi) That upon receipt of a copy of the said Petition, the Applicant herein raised a preliminary objection on point of law and the Court ordered that the disposition of the preliminary objection be made by way of written submissions. (The said Reply to the Petition and the Written submission are attached hereto and marked 'Annexure ALK-F2") (iv) That in reply submission (at pages 3 and 8), the Learned Advocate Fatuma Karume (for the Petitioner Ado Shaibu) in facie curiae acted unprofessionally and disrespectfully by adducing personal vindication to the Solicitor-General, the Attorney General and the Court. (The said Reply to the Written submission is attached hereto and marked Annexure ALK-F3').
- (v) That, the Applicant, through his representative, the Solicitor General, depicted the unprofessional and disrespected expressions in the Respondent's Rejoinder Submission, which were written and filed by the said learned Advocate Fatma Karume. (The said Rejoinder Submission is attached hereto and marked "Annexure ALK-F4"). (vi) That, in its Ruling dated 20 September, 2019, the High Court (Fe/eshi, JK) took note of the said unethical expressions and acted promptly to suspend the learned Respondent (The said Ruling of the High Court is attached hereto and marked "Annexure ALK-F5"). (vii) That, on diverse dates from the date of the Ruling suspending her from practice, the Respondent embarked on conducting herself in highly unprofessional and unethical manner contrary to ethical principles of Advocates as stipulated under the Advocates' Act [Cap. 341 R.E. 2002) and Advocates (Professional Conduct and Etiquette) Regulations, 2018. In the main, the Respondent has been ex facie curiae commenting and allowing comments by other people on her social media accounts in total disrespect to the Court, the Applicant and the general public at large. To say the least, the Respondent's comments on social media aims at

undermining the public confidence in the judicial system (i.e. "scandalizing the court" by social upon receipt of a copy of the said Petition, the social media trial). (viii) Regulations 4 of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 provides that every advocate shall be a person of high integrity. Furthermore, regulation 5(1) stipulates every advocate shall discharge his duties with integrity towards (a) the court and the administration of justice; (b) the client; (c) the public; (d) another advocate; and (e) the profession. (ix) In this case, apart from what was adduced in court as unprofessional misconduct and disrespect, on several occasions, before and immediately after pronounced ruling, Advocate Fatma Karume has misbehaved and breached her professional integrity contrary to regulation 6 of the Advocates (Professional Conduct and Etiquette) Regulations, 2018. This can be demonstrated through various ways including but not limited to the following acts:-

- (i) Committing disgraceful or moral reprehensible act that affects advocate's integrity. (ii) Using abusive and inappropriate language in court or any public setting. (Hi) Knowingly, or with reckless disregard for the truth, makes any false or disparaging or misleading statement against judicial officers, fellow advocates, public leaders and other members of the public "Annexure ALK-F2). Aside from contesting the complaint by way of counter affidavit, the appellant herein questioned the tenability of the same for being sub-judice to the ruling in Misc. Civil Application No. 29 of 2018 ("the Court order"), the objection which was overruled on 11th June 2020. Upon hearing of the complaint on merit, the second respondent found the appellant guilty of the alleged misconducts and ordered for removal of her name from the Roll of Advocates. The appellant has been aggrieved by the said decisions and henceforth the instant appeal. In the second ground, which in our view, is capable of disposing of the appeal, the second respondent is in essence faulted in entertaining the matter which was instituted in violation of the Court order. In her written submissions in support of the ground, through her advocate Mr. Peter Kibatala, the appellant contends that, since the High Court, acting under the complaint by the first respondent had ordered that, the complaint be transmitted to the second respondent by the Hon. Registrar of the High Court in the manner therein directed, it was quite wrong for the second respondent to entertain a fresh complaint at the instance of the first respondent. It is further submitted that, as the High Court is, in terms of Rule 17(1) of the Rules, superior to the second respondent, the application, the subject of this appeal, ought to have been struck out for want of jurisdiction and for being brought by a person incompetent so to do. It is more so, the counsel further submits, because the order giving such a direction has never been withdrawn by any court order. Reliance was placed on the case of East African Development Bank vs. Blueline Enterprises Limited, Civil Appeal No. 101 of 2009 (CAT, Unreported), where it was held that:- Going by the practice of this Court a notice which is deemed to have been withdrawn under Rule 84 is usually followed by an order from the Court to that effect. Mr. Kesaria could not produce any order. So, in the absence of such order or an order under Rule 82 (now Rule 89 (2) of the Court Rules striking out the notice it follows that, as stated above, the notice is still intact. It was further submitted that, since the Court order was by

itself capable of creating a proceeding, it ought to have been given precedence over the fresh application filed by the first respondent. 8 The counsel urges the court therefore, to allow the appeal on that ground. In their submissions in reply, through Mr. George Mandepo, learned Principal State Attorney, the respondents, while in agreement that, the matter at hand arose from the Court order, is of the opinion that, the first respondent was not barred from initiating a fresh complaint. His reason being that, while the complaint before the Court order was limited into the misconducts committed during hearing, the application under discussion contained some misconducts which were committed subsequent thereto. We have closely followed the counsel's debate on this issue and carefully gone through the ruling and proceedings of the second respondent. With great respect, we entirely subscribe to the counsel for the appellant on the second ground of appeal. We shall account for our finding as we go along. As we understand the law, there are two procedures through which a complaint against advocates' misconduct can be referred either to the Advocate Committee or to the High Court. The first procedure is set out under rule 4(1) of the Rules read together with sections 10, 11 and 12 of the Act. Under this particular procedure, any person who is aggrieved by the conduct of an advocate, may in writing, apply to the Committee for removal of his name from the Roll or for such an advocate to be required to answer an allegation against him. The second procedure is provided for in section 22 (2) (a) and (b) of the Advocates Act which provides as follows;- 22-(2) Without prejudice to the generality of , the foregoing subsection notwithstanding that no inquiry may have been made by the committee- (a)The Chief Justice or the High Court shall have power for any reasonable cause to admonish any advocate or to suspend him from practicing during any specified period or make an order for removing him name from the Roll; (b)Any judge of the High Court shall have power to suspend any advocate in like manner temporarily, pending a reference to, or disallowance of such suspension by, the High Court. 10 Under the respective provision, any judge of the High Court, either on his own motion or upon a complaint being raised by either of the parties can, where a misconduct is committed in the course of hearing, suspend an advocate pending reference of the misconduct in question to the High Court. The power of the High Court Judge to deal with the misconduct of an advocate under the respective procedure or any procedure set out in section 22 cannot, unless provided otherwise by the Act or any other written law, be superseded or interfered by any authority. This is in accordance with section 22(1) of the Act which provides that:- 22-(1) Nothing in this Act contained shall supersede, or interfere with the powers vested in the Chief Justice, or any of the Judges of the High Court to deal with misconduct or offences by advocates. - In this matter, it is not in dispute, it is the first respondent through his counsel who recorded the complaint against the appellant culminating in her suspension pending reference of the matter to the second respondent. The order directing reference of the complaint to the second respondent was, in our reading, specific and focused. In the first place, it directed the Hon. Registrar to refer the complaint to the Committee. In the second place, it was 11 very specific that in such a reference, the Registrar should transmit to the Committee, the submissions in reply, rejoinder submissions and a copy of the ruling in question. The application though contained some allegations as to misconducts committed subsequent to

the Court order, it is our respectfully opinion that, the first respondent could not, without offending the respective court direction, commence a fresh disciplinary proceeding combining both the misconduct envisaged in the Court order and those allegedly to have been committed sometimes thereafter. In our humble judgment, the first respondent was bound either to await until the complaint he initiated in the Court proceeding is transmitted to the second Respondent in the way and the manner therein directed or else initiate a separate complaint not touching the subject of the complaint dealt with under the Court order. We entertain no doubt that, the approach taken by the first respondent has the effect of preempting the order and direction of the Court under the respective procedure. It appears to us to be the law that; where, like in the instant case, the procedure to deal with a complaint under section 22(2) (b) of the Act has come into motion, any person privy to the respective proceeding, cannot be allowed to make use of the procedure under order 4 of the Rules read together with section 10,11 and 12 of the Act, to commence the same complaint or part thereof. In our view, therefore, the second ground has merit and it is hereby upheld. The application before the second respondent was, for the reasons we have exhibited herein above, incompetent and ought, as correctly submitted by the counsel for the appellant, to be struck out. The appeal, thus, succeeds to the extent of the second ground. As a result, the decision of the second respondent under discussion is hereby set aside and the proceedings thereof quashed. The Hon. Registrar of the High Court is hereby ordered to transmit the complaint to the second Respondent in the manner directed in the Court order. It is ordered accordingly. DATED AT DAR-ES-SALAAM ON THIS 17TH JUNE 2021 13 MAIGE. I JUDGE NANGELA. D JUDGE — —A - i WL— V 11 KAKOLAKI. E JUDGE 14 Judgment delivered on 21st June, 2021 before Hon. S. S. Sarwatt, Registrar of High Court in the presence of Dr. Rugemeleza Nshala and Peter Kibatala Advocates for Appellant. And Ms. Lightness Msuya - State Attorney for the Respondents. REGISTRAR HIGH COURT

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