

1. Kero disagrees with his advocates Melito & Co. (Melito) and instructs Bwibo & Company Advocates (Bwibo) to immediately take over the conduct of his suit, (a claim for general damages against Banco Limited following a road traffic accident in which Kero sustained serious bodily injuries). Kero is unable to immediately raise the sum of Kshs.100, 000 due to Melito as legal fees and convinces Bwibo to pay Melito on his behalf, subject to the sum attracting interest at 20%. The sum shall be recovered from the general damages ultimately awarded in the suit. Upon conclusion of the suit Bwibo recovers the sum lent to Kero, as well as his legal fees for services rendered in the matter. Kero, dissatisfied with the statement of account given by Bwibo, files an originating summons in the High Court seeking orders that Bwibo deposits the decretal sum recovered into court. An interim order is granted to the effect that if Bwibo does not deposit the sum into court, Bwibo will be committed to civil jail. Bwibo immediately files an application for stay of execution and secures the requisite order. Kero in turn files a complaint with the Advocates Complaints Commission which entertains the complaint and refers it to the Disciplinary Committee. The DC makes orders adverse against Bwibo as follows:
  - (a) "The Advocate is to refund the sum of Kshs.527, 385 together with interest at 12% with effect from 9<sup>th</sup> July, 2004 to the date of full payment to the complainant within 90 days and in default, he will stand suspended from practice for a period of three months (as) from the date of default;
  - (b) The advocate is to pay a fine of Kshs.30, 000 to the Law Society of Kenya;
  - (c) The Advocate is to pay costs of Kshs.10, 000, each to the Law Society of Kenya and the Complaints Commission;
  - (d) The matter be mentioned on 12<sup>th</sup> April, 2010 to confirm compliance."

Bwibo files an application seeking to bring into the High Court and to quash the decision of the Disciplinary Committee on the basis that the decision in question entailed excess of jurisdiction for "the respondent being an inferior tribunal should not proceed with a matter pending in the High Court and with respect to which the High Court had already issued orders of stay in favour of Bwibo. Bwibo avers that he was not accorded a fair hearing before the Disciplinary Committee and that the latter had acted in contravention of the rules of natural justice as the proceedings before the Disciplinary Committee showed that no hearing at all took place; no evidence was taken, and no submissions were made. Bwibo contends that his affidavit which was indeed placed before the Disciplinary Committee was not considered and that the Disciplinary Committee had, "proceeded as if there was no affidavit by Bwibo." Bwibo submitted that the proceedings before the Disciplinary Committee showed error on the face of the record: "the record is not consistent and does not show what exactly took place;" it does not show when the complainant was heard, and what exhibits if any, were considered; and it appears that "the panel that gave the judgement is not the one that heard the matter if any hearing took place at all;" "the panel that passed the sentence is also not the same as the previous one."

The Secretary of the Law Society deposed that the Disciplinary Committee received a complaint from the Complaints Commission, regarding the conduct of Bwibo as an advocate. The Commission raised a complaint about the professional conduct of Bwibo and lodged *Disciplinary Cause No. 114 of 2008*, preferring charges against Bwibo. The Secretary of the Law Society deposed that the Complaints Commission had written to and communicated the particulars of the complaint to the applicant (by letters dated 20<sup>th</sup> February, 2008), but no response was received. He deposed that the date *18<sup>th</sup> September, 2008* was fixed for plea-taking and Bwibo was served with plea notice, but he failed to turn up; and as a result, the Disciplinary