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Obura v Koome

COURT OF APPEAL OF KENYA AT NAIROBI

i KWACH, LAKHA AND O'KUBASU JJA

Date of Ruling: 8 JUNE 2001

Sourced by: LAWAFRICA

Case Number: 146/2000

SUMMARISED BY HK MUTAI

j [1] Advocate – Unqualified person – Definition thereof – Failure to hold a current practising certificate – Appeal filed by unqualified person – Whether the acts of an unqualified person are invalid if his client is unaware of such lack of qualification – a Section 9 – Advocates Act (Chapter 16).

Editor's Summary

Section 9 of the Advocates Act (Chapter 16) Laws of Kenya provides that in order to qualify to act as an advocate, a person must have been admitted as an advocate, have his name on the Roll and have in force a practising certificate. Where an advocate who does not satisfy these conditions signs a memorandum of appeal, then that memorandum is incompetent and the appeal will be struck out.

No cases referred to in ruling

Ruling

KWACH, LAKHA AND O'KUBASU JJA: This is an application by the Plaintiff by way of a notice of motion dated and filed on 26 February 2001 whereby the Plaintiff seeks to have the appeal filed by the Defendant from the judgment of the superior court (Ole Keiwua J) given on 30 September 1998, struck out. It is founded on the ground that the appeal is incompetent having been filed by an unqualified person. The appeal turns on the correct interpretation and application of section 9 of the Advocates Act. Section 9 of the Act (Chapter 16) Laws of Kenya (as amended) provides:

"Subject to this Act, no person shall be qualified to act as an advocate unless-

- (a) he has been admitted as an advocate; and
- (b) his name is for the time being on the Roll; and
- (c) he has in force a practising certificate;

and for the purpose of this Act a practising certificate shall be deemed not to be in force at any time while he is suspended by virtue of section 27 or by an order under section 60(4)".

It is not in dispute that one Anthony Khamati who is the advocate on record for the Appellant did not hold a practising certificate in the year 2000 in breach of section 9(c) of the Advocates Act. The appeal herein was filed on 21 June 2000 and the memorandum of appeal was signed by the said Anthony Khamati, Advocate.