

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 16 OF 2020**

**STANDARD CHARTERED BANK (T) LIMITED ..... PLAINTIFF**

**VERSUS**

**BEST TRAVEL SOLUTION LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GODFREY WILLIAM MALAMIA ..... 2<sup>ND</sup> DEFENDANT**

**ALOYCE KISENGA MCHILY ..... 3<sup>RD</sup> DEFENDANT**

**VALLESSI EMANUEL MASAWA ..... 4<sup>TH</sup> DEFENNDAT**

**Date of Last Order:02/09/2020**

**Date of the Ruling: 11/09/2020**

**RULING.**

**MAGOIGA, J.**

This is an unexpected and unusual ruling in this suit. Under section 34(1) of the Advocates Act [Cap 341 R.E. 2019] as amended from time to time, (hereinafter to be referred as the 'Act') any practicing advocate is mandatorily required to be issued with practicing certificate on yearly basis after 31<sup>st</sup> December of each calendar year upon fulfilling the condition as contained in section 35 (1), (2), (3) (4) and (5) of the Act. According to section 36(1) (a) of the Act, renewal of the certificate is limited to six months and after that period, the renewal has to be sanctioned by the Chief Justice. It is the certificate issue by the Registrar of the High Court that, confers any practicing advocate with powers to appear and represents clients in court of law and be considered an officer of the court. The instant suit when was called on for First Pre-Trial

Conference on 2<sup>nd</sup> day of September, 2020, before me, parties herein were dully represented as follows:-

The plaintiff is advocated by Mr. Jonathan Wangubo, learned advocate, 1<sup>st</sup> and 2<sup>nd</sup> defendants have the legal services of Mr. Sylvester Kakobe Kabano, learned advocate, 3<sup>rd</sup> defendant is advocated by Mr. Philimon Mrosso, learned advocate and the 4<sup>th</sup> defendant is advocated by Mr. Edward Chuwa, learned advocate. And that, Mr. Kanabo is advocating for 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> defendants in the counter claim. All trained legal minds of the parties respectively informed the court that, they were ready for First Pre-Trial Conference as scheduled. This court heard them all and recorded their respective prayer in the usual conduct of the first pre-trial conference but fortunate or unfortunate before the court issued First Pre-Trial Conference Order, Mr. Edward Chuwa, learned advocate drew the attention of this court that, according to Tanzania Advocates Management System (hereinafter to be referred as 'TAMS'), Mr. Sylvester Kakobe Kabano is not a practicing advocate for purposes of entering into records of this court for want of current practicing certificate. Upon that notice, this court invited the learned advocates for parties to address the court now as officers of the court on the raised issue.

Mr. Chuwa, learned advocate given chance told the court that, Mr. Sylvester Kakobe Kabano who has introduced before this court as practicing advocate representing the 1<sup>st</sup> and 2<sup>nd</sup> defendants and 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> defendants in the counter claim and as such prepared the pleadings in respect of the defence in counter claims is not an advocate for purposes of entering on record and preparing the pleadings. According to Mr. Chuwa, by virtue of Regulation 212(1) of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 has a legal duty to assist in preventing an unauthorized person to

practice law and implore the court to take up the matter and deal with Mr. Kanabo in accordance with the law. Further, Mr. Chuwa pointed out that, there are three punishments this court can give to Mr. Kanabo, which are reprimand, suspension from practicing and removal of his name from the Roll of Advocates. It was the submissions of Mr. Chuwa that, the purpose and effect of imposing disciplinary measures is to prevent persons like Kanabo and is to discourage them from the misconduct not only before this court but to other courts and to protect poor citizens who will fall under their prey.

On the proceedings which Mr. Kanabo has participated and pleadings that were prepared by him, Mr. Chuwa prayed that they be expunged from the court record and allow parties to enter in person on record, insisted Mr. Chuwa.

Mr. Wangubo learned advocate for the plaintiff fully subscribed to what has been submitted by Mr. Chuwa. On the part of Mr. Philip Mrosso, learned advocate, equally subscribed to Mr. Chuwa's submissions and prayed to add that section 41 (1) and (2) of the Act is loud and clear that an unauthorized person is not allowed to prepare pleadings or enter appearance in court as an advocate. According to Mr. Mrosso, what Mr. Kabano did was a deliberate act of misconduct and is against the law and deserves to be punished under section 42 of the Act.

Further, Mr. Mrosso implored this to use its powers under section 22 (1) and (2) of the Act to impose necessary punishment to Mr. Kanabo by suspending him from practicing.

On the pleadings drawn by Mr. Kanabo, Mr. Mrosso join hands for an order to be expunged the pleadings from the court record but went further urging the

court to consider interest of justice to parties who are to be affected by the that order and give them time to file proper pleadings.

When I called upon Mr. Slyvester Kakobe Kanabo to reply to the allegations laid against him, Mr. Kanabo submitted that he has been in practice for ten years and he has never been charged of any disciplinary misconduct of whatever colour. Nevertheless, Mr. Kanabo conceded that, he has no practicing certificate and prayed for leniency of the court for the manner he has conducted himself. When probed by the court if he has lodged any application before Chief Justice for renewing of his practicing certificate, Mr. Kanabo was candid to tell the court has not started any process and that he intends to start the process soon.

This was the end of hearing of this unfortunate scenario and I reserved my ruling, hence, this ruling. In the beginning I said this is an unusual ruling in this suit because no one would expect a seasoned advocate with such vast experience of ten years to conduct the way Mr. Kanabo did.

However, I have careful listened to the submission of the learned advocates for parties and the reply and confession of Mr. Kanabo over his misconduct. From the foregoing, it is my considered opinion that there are two issues to decide herein, first, what is the fate of Mr. Kanabo, and second, what is the fate of the pleadings prepared by Mr. Kanabo as an unauthorized person in this record. I will start with the first issue. However, it should also be noted that there are some of the facts not in dispute in this issue. These are: **One**, there is no dispute that Mr. Kanabo since 1<sup>st</sup> January 2020 up to 2<sup>nd</sup> September, 2020 has been practicing without current practicing certificate. **Two**, there is no dispute as well that, Mr. Kanabo has not yet made an application before the Registrar, or to the Judge of the High Court or to the

Chief Justice for renewal of his practicing certificate as provided for under sections 35 and 36 of the Act. **Three**, there is no dispute that upon perusal of the court record and proceedings the written statement of defence to the counter claim of the 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> defendants was prepared and filed by by Mr. Slyvester Kakobe Kanabo. This is evidenced by the following address:

**Drawn and Filed jointly By**

**SLYVESTER KAKOBE KANABO, Esq.**

**Milestone Attorneys (Advocates)**

**Ideal Hotel Tower, Mezzanine Floor,**

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**P.O.Box 14805**

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**signed and stamped.**

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**+255 (0) 22 2182773.**

**Four**, From the foregoing, therefore there is no dispute that Mr. Kanabo is an unauthorized person to practice and his conduct is gross misconduct punishable under sections 41, 42 and 43 of the Act.

From the foregoing, I had an opportunity to read the case of AFRIQ ENGINEERING AND CONSTRUCTION CO LTD v. THE REGISTERED TRUSTEE OF THE DIOCESE OF CENTRAL TANGANYIKA, COMMERCIAL CAUSE NO. 4 OF

2020 (HC) DSM (Unreported) by His Lordship Dr. Nangela, Judge, faced with similar situation to an unauthorized person who appeared before my colleague with no current practicing certificate referred him to Advocates Committee. I think this was the best approach and I will endorse in this suit. The learned Judge showing the importance of the legal practitioners to observe the law had the following to say:

**“this is important since, legal practice is not just a business. It is a profession with values, ethics, professional responsibility, and, one that call for those who practice it to be committed to the observance of the highest ideals of justice and ethical conduct.”**

On that note, I think the best way to deal with Mr. Kinabo in the circumstances is to direct that, the Registrar of the High Court to take up the matter from the date of this ruling to the relevant disciplinary committee to deal with Mr. Kanabo with immediate effect.

The prayer that I suspend Mr.Kanabo in the circumstances is inapplicable because he is not a practicing advocate for want of current practicing certificate despite his name still being in the roll of advocates. Then, the only punishment, I can give under the circumstances is to order his name be removed from the Roll. However, my wisdom calls me to refer Mr. Kanabo to the Advocates Disciplinary Committee for further action for his conduct. It is on that note, I direct and order the Registrar of the High Court to take this matter from here to the Committee for necessary action.

As regards to the expulsion of the pleadings drawn by Mr. Kanabo, this point will not detain this court much. All learned advocates urged this court to expunge the pleadings drawn by Mr. Kanabo but with a prayer by Mr. Mrosso

to allow and afford the affected defendants time to file proper documents for the interests of justice. I have had an opportunity to read the approach taken by my learned brother Nangela, Judge, on this issue by maintaining the proceedings made by the an unqualified person, in particular, the oral submissions that were made by Mr. Masinga, but I noted that the circumstances of that case and this case are distinguishable. In this suit, as noted above, the documents, in particular, written statements to the counter claim were drawn by Mr. Kanabo as opposed to the case of Masinga. In this suit, the said documents offends the provisions of section 41 (1) of the Act. The said provision provides:

**Section 41-(1) No unqualified person shall act as an advocate, or agent for suitor or, as such, issue out any summons or other process, or commence, carry on or defend any action, suit or other proceedings in the name of that other person or his own name, in any court of civil or criminal jurisdiction, or act as an advocate in any cause or matter, civil or criminal.** (Emphasis mine).

Going by the above provision of the law in this jurisdiction, unqualified person is strictly barred not only to appear but also to prepare pleadings. Much as there is no dispute that the written statement of defence to the counter claim was prepared by Mr. Kinabo, then same is of no legal effect and guided further by the decision of the Court of Appeal when grappling with similar situation in the case of EDSON OSWARD MBOGORO v. DR. EMMANUEL JOHN NCHIMBI AND ATTORNEY GENERAL, CIVIL APPELA NO. 140 OF 2006 (CAT) DSM(Unreported) at page 14 had this to say:

**“the court gave a guidance that any person who acts without having a current practicing certificate, not only does he act illegally but**

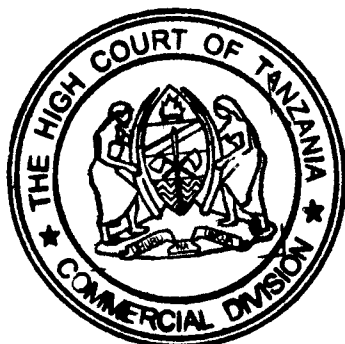
**also he does also whatever in that capacity as an unqualified person has no legal validity. We also take the liberty to say that to hold otherwise would be tantamount to condoning illegality.”**


Guided by the above holding, I am constrained to put the record clear by expunging the written statement of defence to the counter claim of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants from the court record. I further take the wisdom suggested by Mr. Mrosso, learned advocate that, I allow and afford the 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> defendants an opportunity to file a proper written statement of defence to the counter claim. Therefore, for the interest of justice, the 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> defendants are hereby given 21 days from the date of this ruling to file a proper written statement of defence to the counter claim to enable this suit to proceed from where it ended.

Before I pen of this ruling, I sincerely commend Mr. Chuwa for being vigilant and I encourage all advocates to be guided by the provisions of Regulation 212(1) of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 G.N. 118 of 09/03/2018 which casts the legal duty to every advocate to assist in preventing the an unauthorized practice of law by unveiling them all and keep an eye to one another through TAMS for the protection of the legal professional and practice.

It is so ordered and directed.

Dated at Dar es Salaam this 11<sup>th</sup> day of September, 2020



  
**S.M. MAGOIGA**  
**JUDGE**  
**11/09/2020**