

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MLAY, J., LONGWAY, J., AND RUGAZIA, J.)

MISC. CIVIL APPEAL NO.18 OF 2004

DR. MASUMBUKO R.M. LAMWAI APPELLANT

VERSUS

1. THE ADVOCATES COMMITTEE

2. BERNARD REUBEN MREMA RESPONDENTS

J U D G M E N T

Longway, J.

In this appeal, the Appellant Masumbuko Roman Mahunga Lamwai who was convicted and sentenced by the Advocates Committee in respect of a complaint for misconduct by Bernard Ruben Mrema, is now appealing against the Advocates' Committee's decision on 14 grounds viz:

1. That the Honourable Chairman and Members erred in law and fact in entertaining matters which were not properly before the Committee. Had the Committee addressed its mind to the mandatory provisions of Rule 3 of the Advocates (Disciplinary) Rules, they should have held that they did not

have jurisdiction to entertain the matter since the complainant never filed the prescribed Form No.1 nor was there any affidavit in support of the application as required by the said Rule.

2. That the Honourable Chairman and Members erred in law and in fact in fixing a hearing date for the application without having before it material sufficient to enable the Committee to decide that there was a **prima facie** case against the Appellant.
3. That the Honourable Chairman and Members erred in law and in fact in holding that there was a proper service on the appellant while in fact the Appellant had not been served with either an application or any affidavit. The Committee should have found as a fact that there was no application before it and that the pleadings had not even commenced.
4. That the Honourable Chairman and Members erred in law and in fact in holding that the Appellant was Responsible for the dismissal of the 2nd Respondent's case after it was clear that the 2nd respondent accepted Mr. Deo Ringia's appearance in court on his behalf and his advice that they should concede to the preliminary objection raised by the Defendant without having properly looked at the record.

5. That the Honourable Chairman and Members erred in law and in fact in holding that the Appellant had been served with a complaint while in fact what was served on him was a copy of a letter to the Tanganyika Law Society, and no formal complaint was indeed served on the appellant.
6. That the Honourable Chairman and Members erred in law and in fact in holding that the Appellant had filed a defence to the complaint while in fact, what he did was to reply to the copy of the letter to the Tanganyika Law Society. Had it been a defence, he should have filed a Counter Affidavit.
7. That the Honourable Chairman and Members erred in law and in fact in acting on the letter rather than on a formal complaint as required by the Advocates (Disciplinary) Rules.
8. That the Honourable Chairman and Members erred in law and in fact in believing that there was a second suit filed subsequent to the one dismissed, without being shown copies of the pleadings and without looking at the record of the High Court. The Committee should have required the 2nd Respondent to supply these documents before the hearing date was fixed.

9. That the Honourable Chairman and Members erred in law and in fact in accepting Mr. Deo Ringia's testimony without corroboration while apparently he was a co-Respondent in the application.
10. That the Honourable Chairman and Members lacked jurisdiction to order a refund of Tshs.25,000,000/= to the Respondent while in fact the 2nd Respondent had spent nothing.
11. That the Honourable chairman and Members did not have jurisdiction to award any damages and/or compensation to the 2nd Respondent.
12. That the Honourable Chairman and Members erred in law and in fact in holding that there was any misconduct on the part of the Appellant. Had they properly addressed their minds to the whole issue, it would have been clear that the dismissal of the suit happened when the Appellant was under suspension and that the 2nd Respondent had consented to Mr. Deo Ringia acting on his behalf.
13. That the punishment of suspension for one year is excessive in any circumstance.

14. Request for a copy of the decree was made and the Secretary to the 1st Respondent informed the Appellant that the Committee did not have the practice of issuing decrees.

On these grounds, the Appellant prays that this court allows the appeal and order that the conviction and sentence for misconduct be set aside; that the suspension from practicing for one year be set aside as well as the order that the Appellant pay the 2nd Respondent Tshs.25,000,000/= be quashed and set aside with costs and any other order that the court may deem fit.

The background to the decision now sought to be impugned is that the 2nd Respondent had instructed the Appellant to conduct or represent him in a claim he had against Attorney General and the Inspector of Police, for loss suffered as a result of his motor vehicle having been impounded by the Traffic Police in Dodoma, and which had been returned to him in a dilapidated state, such that it was only worth scrap. Instructions having been given and taken for the Appellant by Mr. Mchome, process had to be set in motion with the preparation and service of a 90 days notice to the Defendants, but which did not take place. On following up the Appellant, the 2nd

respondent was informed of the Appellant's being a Member of Parliament and could be found at his office in Kinondoni. On finding the Appellant the 2nd Respondent had to give a second set of documents for the issuance of notice.

Thereafter he was attended to in respect of the suit by advocates in Dr. Lamwai's (Chambers), who appeared in court to adjourn the suit for the Appellant who never appeared. Later, the 2nd Respondent discovered that the Appellant had been suspended from practicing and on calling on Mr. Deo Ringia he was advised to withdraw his suit for lack of notice of intention to sue. Later, upon informing the Appellant of his case's dismissal, the Appellant told him that Mr. Ringia must have taken a bribe from the other side. In all, the 2nd Respondent pressed on with/ insisted with his complaint against the Appellant by reason that the Appellant was the advocate he had instructed to represent him, so he was responsible for what he claimed.

It is part of the background information that Mr. Deogratias Ringia was joined to the charge by the 2nd Respondent and that he

had filed his defence and testified in response to the complaint. The base line of Mr. Ringia's defence was to the effect that he had attended to the 2nd Respondent on behalf of the Appellant who had instructions and denied receiving any bribe from the State Attorney.

It is useful to note that as background knowledge for this appeal and was indeed observed at the hearing of the complaint, that the 2nd Respondent had no claim against Mr. Deogratias Ringia but the Appellant.

The Appellant did not appear before the Committee to defend himself nor did he file his defence as was availed time to do so on 28/11/2001, rescheduled to the 31/12/2003 and another reschedule on 15/3/2004 that the defence be filed on 22/3/2004 after asking for a week's extension reasoning a failure to obtain documents relevant to the complaint. That by the 21/6/2004 when hearing was to take place, no defence had been filed as ordered on 22/3/2004 and the Appellant was absent with no word to the Committee, so the prosecution proceeded in his (Appellants) absence.

Parties to this appeal were scheduled to file Written Submissions in argument of the appeal. Following the order of the

16/3/06 the Appellant was to file his Submissions on the 6/4/06 and he did so. It is noted that the reply by the Respondents was in defaulted of the date scheduled and was rescheduled to 31/5/2006 with the Appellants rejoinder to be filed on 14/6/06. What are the arguments? At a glance, the grounds given by the Appellant on the memorandum of appeal, are attacking the process followed by the Committee and the 2nd Respondent in bringing the complaint to the trial that took place and therefore the consequences that should have been. Some grounds have similar arguments too as has been shown by the parties' submissions, in order to avoid repetitions, groupings may be necessary.

In his submissions on the ground number I it is submitted that had the committee addressed itself to the mandatory provisions of Rule 3 of the **Advocates (Disciplinary) Rules** it would have been found that the Committee had no jurisdiction to entertain the complaint which was not couched in the formal of Form No 1 – a prescribed form. Worse still that there was no affidavit to support the application. It was contended that the 2nd Respondent's letter of 4/12/2000 to the Secretary to Advocates Committee which asks the

Secretary to take action against the appellant and Mr. Deo Ringia for the withdrawal of his case, does not suggest the type of action to be taken against them. In a similar manner the appellant contended that the Acting Secretary's letter to the Advocates Committee of the 15/10/2003 requiring him to answer the 2nd Respondent's complaint in the letter and attend hearing on the 28th November, 2003 only purported to be a notice, since there was no affidavit to support the application.

The appellant insisted in his submissions that contrary to the requirements of Rule 3 of Advocates (Disciplinary) Rules, there was no formal process setting in motion of the action sought to be taken as per Rule 5 of the Rules and that clearly, no **prima facie** case had been shown. The appellant submitted that a **prima facie** case could not have been made on a mere letter from a complainant. As such that the notice was premature since no formal pleadings were before the committee.

Further, the appellant submitted that Rule 6 required an exchange service of documents by parties which process the Secretary did not comply with, so the proceedings were not properly before the

Deo Ringia state that he had instructed him to do so, with the knowledge of the 2nd Respondent.

From the foregoing, and the fact that the 2nd Respondent had followed Mr. Deo Ringia to his office in Kariakoo because he wanted him to still represent him and was asked to pay fees, the Appellant submitted that the 2nd Respondent had withdrawn his representation since being on suspension he could not practice. As such, the Appellant submits that he could not have failed to render legal services. The Appellant pointed out in his Submission that no materials/documents were shown to the Committee respecting process of the civil case, so that a finding could be made.

On the observation by the Committee that the Appellant had not been served on 28/11/2001, because as complained that he had not been served with a copy of the complaint and extending time for the Appellant to file defence, but did not do so, is that the Appellant had not been served with a copy of Form No.1. That the same had not been filed because it was non existent. The Appellant therefore submitted he had not misconduct himself and he prayed that the

court should hold that the 2nd Respondent's suit had been processed at the instance of Mr. Deo Ringia after accepting the advice he had given.

In ground five, the Appellant complains that he was wrongly held to have been served with the Complaint. He submitted that what were served on him was the letter to the Secretary of the Advocates Committee of 4/12/2000 from the 2nd Respondent, complaining against him and Deo Ringia. Indeed as submitted in respect of ground one on this point, the Appellant repeats that the committee was informed of his non service of the complaint on him on 28/11/01 and had ordered such service as well as giving him extensions to file his defence. The Appellant further repeated that contrary to the provisions of Rule 5, no copy of Form 1 and supporting affidavit were served on him, so he could not have answered as required in law.

The Appellant's ground number 6 is a tag on the previous ground, that he was wrongly held to have filed a defence when in fact he had only made a reply to the copy of the letter to the Tanganyika Law Society, not a Counter affidavit. It is argued, that

the Committee in requiring the Appellant to reply to the letter by the 2nd Respondent, was asking him to do the impossible especially as the letter did not comprise of an application properly before the Committee. The Appellant's submission on ground seven repeats those made on grounds 1 and 2 and also what is in ground 6 above, in that the letter of complaint did not comply with the strict requirements of Rule 3, so it did not expose the nature of the case against the Appellant, for him to be able to defend himself.

On the Submission in the eighth ground, the appellant adopts the submission on ground 4 to state that, since no records of the proceedings of the 2nd Respondent's second suit which was dismissed for non-appearance were produced in evidence, the Committee wrongly held that such a case existed. This flaw is blamed on the improper institution of the proceedings now sought to be impugned, on grounds that had there been an affidavit supporting the complaint as provided by the Rules, such facts may have been put in place by the Committee.

The ninth ground is that the Committee should not have accepted Mr. Deo Ringia's testimony without corroboration. The

Appellant submitted that Mr. Ringia was recorded to have stated that the Appellant had a firm of advocates, which he did not. That he had appeared on his behalf, when the 2nd Respondent's complaint shows that Mr. Ringia's role was discussed, but went on to give advice and take action by withdraw the suit. That Mr. Ringia had said he perused record of suit and had observed that the Appellant had not served the Attorney General with a 90 (ninety) days statutory notice of intention to sue. But that the identity of the file is not disclosed. That with regards to the misunderstanding alleged by Mr. Ringia, the Appellant found out that during his suspension, Mr. Ringia and others had worked under his name when he was not a registered firm and were not even accountable to him. Further, the Appellant submitted that according to the 2nd Respondent's letter of complaint, Mr. Ringia was the 2nd person complained against and is referred to as a second Respondent by the Committee. Mr. Ringia's evidence was taken and acted upon without the support of independent evidence. That Mr. Ringia's statement on his association with the Appellant without evidence of the same, was unreliable and intended to shift the burden of the mistake in withdrawing the case to the Appellant and

attempting to show that the Appellant still had instructions while the 2nd respondent appeared in court with Mr. Ringia.

On the Appellant's tenth ground, it is submitted that the committee had no power to order that the Appellant refund the 2nd respondent 25,000,000/= for reasons given, because no evidence was led on the issue of his negligence and especially that the 2nd Respondent had spent nothing. It was submitted that the Committee's powers were limited to the provisions of section 13 (4) (v) of the Advocates Act, whereby in his view, the Committee can only order costs which would not include compensation for a claim recoverable in a suit.

That even if the same was recoverable, it would have to be in a civil suit for negligence, when the amount of damage would be assessed. This submission applies to complaint in ground eleven.

On the twelfth ground the Appellant adopted the submission on ground four that he had nothing to do with the misconduct since the suit was dismissed during his suspension.

In the thirteenth and last ground, it is submitted that the one years suspension was excessive considering that what is complained to have happened, happened when he was in suspension, therefore unable to contract the events. Also, as submitted in the foregoing, the 2nd Respondent's suit was terminated by the decision of Mr. Ringia and the 2nd Respondent without the Appellant's instructions. The Appellant also submitted that no reason has been given for the punishment metted out, when his livelihood depends on his practice. Reference was made to section 13 (4)(b) of the Advocates Act as to the Committee's powers to punishment. In all the Appellant prayed that the appeal be allowed.

The 1st respondent, the Advocates Committee, is represented by the learned State Attorney from the Attorney General's Chambers. The learned State Attorney expressed his/her intention to submit in parts, in accordance with the nature of the Appellant's submissions. It was point out that the grounds 1-3, 5-7 and 9 were objections rather than grounds which could have been raised under rule 14 of the Advocates (Disciplinary) and other Proceedings Rules.

It was submitted that because he did not take advantage of the several instances he was availed, he was now time barred.

The 2nd portion of the learned State Attorney's submission in reply, was that the court was now trying the records of evidence and what transpired at the trial. As such, that grounds 4, 8 and 12 and their submissions would have been good defence at the trial, not now when the new evidence cannot be replied to. It was submitted that the Appellant had been availed several opportunities to defend himself, but did not take them up. That he had ignored process until the judgment was given. It was further humbly submitted therefore, that, grounds 4, 8 and 12 were not worthy of consideration, alternatively, that grounds 10, 11 and 13 will be dealt with as a 'third' part of their Submissions for purposes of this appeal.

The 1st Respondent opted to reply to grounds 1,2,3,5,6 and 7 generally. These are related to the existence of a complaint before the Committee and that no enquiries were conducted to establish a prima facie case. On these grounds it was submitted that the Complainant did not have to fill in the form No.1 because what was contained in the complaint bore **'the address of the Secretary to**

the Advocates Committee, the title, content that disclosed a cause of action, the Complainant's name and that of the Appellant'. Further, it was submitted that while it is agreed that rules have to be complied to strictly, they should be so strictly construed as against advocates and not **'the poor laymen who might not jump the huddles if they wish to seek relief through the same letters of the Law'.** It was reasoned that otherwise the rules would never serve the laymen. It was noted that the Committees and Tribunals abide by the principle of natural justice rather than technicalities. From this premises, it was submitted that a complaint which did not conform to Form No.1 could still be accepted and acted upon, so long as the Committee was of the opinion that a prima facie case had been established. It was added in submission here that the affidavit was not mandatory in view of the provisions of Rule 22 of the Advocates (Disciplinary and other Proceedings) Rules, which use the Committee in its wisdom decided upon discretionally and reasonably. So the Appellant could have responded to what document was served on him as a complaint so long as his response (defence) was reduced to writing. On the

complaint that the Committee did not enquire as to the existence of a prima facie case, it was submitted that Rule 5 does not impose a duty on the Committee to find a prima facie case if on the face of the complaint the Committee was of the opinion that such a case had been established.

Responding to the grounds 4 and 8, the learned State Attorney submitted that the record was clear that the Appellant was handling and was responsible for the 2nd respondent's case and further that as testified by both the 2nd respondent and Mr. Deo Ringia, the letter acted on behalf of the appellant who had now and then directed him to follow up the case. That the record also showed that Deo Ringia and other people worked in the Appellant's office. Attention is drawn to the fact that while denying Deo Ringia the appellant does not say to whom he handed the 2nd respondent's case during his suspension. As regards non production of documents of the second case, it was submitted for the 1st respondent that the members should not be faulted because they had believed the witnesses' evidence. Also that what was still a fact, was the dismissal of the 2nd respondent's case

drawn in the claim as the worth of the 2nd Respondent's claim on the evidence availed. On the powers of the Committee, it was submitted that these were unlimited depending on the nature and proof of the complaint tried. That no Complainant who had successfully proven their allegations would be left without a remedy, and those in subsection 5 of section 13 were additional, to cater for an order of costs.

Lastly, repeating Submissions on the grounds 4 and 8, the learned State Attorney submitted that the complaint that the dismissal of the 2nd Respondent's case took place during the Appellant's suspension when 2nd respondent consented to Mr. Deo Ringia to act on his behalf, was more of a defence that would have been raised at trial. It was learned State Attorney's Submission that Mr. Deo Ringia acted on the behalf of the Appellant, the suspension having nothing to do with the 2nd Respondent whom the (appellant) could have informed of the position but did not. Concluding his submission, learned State Attorney shouldered the Appellant with the Responsibility of the 2nd Respondent's case dismissal because he had not made arrangements for it. As such, that the one year suspension

was not excessive considering that the Committee's powers under section 13(4) of Cap. 341 are discretionary, and were exercised reasonably and judicially befitting the nature of the misconduct. Finally, that the Committee did not err, so its decision and sentence should not be interfered with.

In reply Submission to the 1st Respondent's submission, the Appellant argued that the Rule 14 of the Advocates (Disciplinary and Other Proceedings) Rules does not concern the advocate against whom a complaint is made, but 'any person' who must give notice to 'the advocate'. That even if it were to be used to raise objections it would not bar him from raising objections at the Appellate level and no authority has been shown to this effect. The Appellant went on to argue that the learned State Attorney's observations did not reflect what was in the memorandum as against the evidence of Mr. Deo Ringia and the 2nd Respondent. On the response to ground 8, that the appellant did not have to prove that no second suit was filed, rather that the 2nd Respondent to prove the withdrawal of the original suit by Mr Deo Ringia and a second suit filed. The appellant pointed out that the 2nd respondent had told the committee of his information

from the appellant that he was suspended, a fact within judicial notice of the Advocates Committee. From the above, it was submitted by the appellant that there was no question of fresh evidence the 2nd Respondent would have to answer. The appellant urged that the learned State Attorney misunderstood his main complaint. That he was quiet about the coverage of Rule 22 on Form No.1. It was the Appellant's submission that it was not a question of negligence, rather as he submitted, it was whether the Committee had found a *prima facie* case disclosing the claim against him to require him to answer the complaint against him in accordance with the rules.

The appellant asserts there was no proper application and therefore that he should not be condemned for not having defended himself. Responding to the learned State Attorney's submissions on grounds 1,2,3,5,6 and 7 that the committee had power to dispense with requirements of service of notices, affidavits and documents under Rule 22 and that the complaint need not be as prescribed in Form No 1 but rather could be moved on the principles of natural justice; the Appellant submitted that Rules were to be followed and

not broken. It was further submitted that compliance with the Rules was important to curve the complaint in a format which would enable the advocate to defend himself/herself properly and for the committee to find if there was a *prima facie* case.

The appellant went on to submit that the Committee had no power to dispense with the requirements of Rule 3 of the Advocates (Disciplinary) Rules and that, one can only defend oneself when the accusations are clear, which the appeal was not the case in the instant matter. Having made reference to Rule 5 of the Rules that the Committee has to make a finding of a *prima facie* case, it was submitted by the Appellant that the Committee can only make such a finding when the necessary documents have been filed and the finding recorded, not otherwise. On the argument by State Attorney that Mr. Deo Ringia had acted on the appellant's instructions when the appellant was on suspension, the appellant referred to sections 26 and 39 (1) of the Advocates Act Cap 341 and submitted that while suspended, the appellant was in no position to direct or issue instructions because he would not have his practicing certificate operating. The appellant points out that the complainant had

acknowledged his suspension and that he would be helped after reinstatement. Otherwise that the complainant had acquiesced in what Mr. Deo Ringia did for him in court without consultation of the appellant.

On the arguments that the Committee did not have to require proof of filing of the second suit, the appellant submitted that he who alleges must prove, so the finding required proof of the second suit and that it was dismissed through the appellant's negligence. With regards to the first suit, the appellant submitted that in fact the same had been withdrawn with leave to file a fresh suit subject to service of notice of intention to sue. He contended that in the instant case, the negligence alleged in respect of the dismissal of second suit was insufficiently proved.

With regards to the learned State Attorney's submissions on ground 9, the appellant submitted in reply that he had not at any stage in his submissions conceded giving directions to Mr. Deo Ringia. That in any case he had no capacity to act whether by appearing in court, or giving briefs because he had no valid practicing

certificate. The appellant reiterated that Mr. Ringia's denial of being under the 2nd Respondent's instructions needs independent evidence for it to be acted upon. In fact the appellant submitted that the issue was the dismissal of the second suit, whose existence has not been proved, not the one withdrawn by Mr. Ringia with the 2nd Respondent's consent when well aware that the Appellant was suspended.

We propose to deal with grounds 1, 2, 3, 5, 6 and 7 which are procedural followed by the remaining grounds.

On the first ground of appeal, it is contended that there was no application filed in the prescribed form and supporting affidavit. The question is whether a formal application supported by affidavit is necessary. The answer to this lies under Section 13 of the Advocates Act, Cap 341 which provides as follows:

" S.13 (1) The Committee shall have jurisdiction to hear and determine –

- (a) any application by an advocate to procure the removal of his name from the Roll;***
- (b) any application by any person to remove***

the name of any advocate from the Roll; or
(c) any allegation of misconduct made against
any advocate by any person.

(2) Where an application or allegation of
misconduct is made under paragraph (b)
or paragraph (c) of subsection (1), the
Committee shall have power to require the
advocate in respect of whom such application
is made, or in respect of whom such allegation
is made, to show cause why his name should
not be removed from the Roll of advocates
or to answer the allegation made, as the case
may be:

Provided that where, in the opinion
of the Committee, an application under
paragraph (b) of subsection (1), or an
allegation under paragraph (c) of the
subsection does not disclose a prima facie
case, the Committee may refuse such
application or may dismiss the allegation
without requiring the advocate to
whom the application or allegation relates
to show cause why his name should not
be removed from the Roll or to answer the

allegation as the case may be.

(3) On the hearing of an application under paragraph (b) of subsection (1) or any allegation under paragraph (c) of that subsection –

- (a) the Committee shall give the advocate to whom the application relates or against whom the allegation is made an opportunity to appear and be heard by it, and for that purpose shall, not less than seven day before the date fixed for the hearing, inform him of such date and of the particulars of the application or allegation, furnish to him a copy of any affidavit made in respect of the application or allegation, and notify him of the time and place when and where he may inspect and make a copy of any other document in the possession of the Committee which it deems relevant to the application or allegation;*
- (b) the Committee may in the course of the hearing, hear such witnesses and receive such documentary evidence as in its opinion*

may assist it in coming to a conclusion as to the truth or otherwise of any allegation made against the advocate”.

It is noted under Section 13 (1) (c) of the Advocates Act the Committee has jurisdiction to hear and determine not only formal applications for the removal of an advocate from the roll but also any allegations of misconduct made against any advocate by any person. The provisions of Rule 3 of the Advocates (Disciplinary and Other Proceedings) Rules apply to formal applications under S.13 (1) (a) and (b) and not to an allegation of misconduct made against an advocate under S.13 (1) (c) as it was in this case. The Rule provides as under:

“13 (1) The Committee shall have jurisdiction to hear and determine
(a)NA
(b)NA
(c) Any allegation of misconduct made against any advocate by any person”

It would appear that with due respect to the Committee, it was a misdirection to refer to the proceedings before it as an application

rather than an allegation of misconduct against an Advocate. However, we do not think that this misdirection occasioned a failure of justice because the appellant was served with a copy of the complaint letter and required to answer as required by S.13 (2) of the Act.

It is on the basis of the foregoing that we find the first ground of appeal to have no merit and dismiss it.

By the same token and pursuant to the proviso to sub-section 2 of S.13 above quoted, we find the second ground of appeal to have no merit because the letter of complaint constituted *prima facie* case which enabled the committee to proceed with the hearing of the complaint. The ground is accordingly dismissed.

Since we have held that no formal application was required and that the appellant was served with a letter of complaint, the complaints in the third ground that he was not served with an application supported with an affidavit is misconceived and without merit. Consequently, this ground is also dismissed.

As for ground five, it has already been found that a formal complaint was unnecessary in the circumstances and that service of

the letter of complaint was sufficient. As such, this ground is also found to have no merit.

In the sixth ground the appellant contends not to have filed a defence but a reply to the letter to the Tanganyika Law Society. Again, we find this a misconception in that as already found, the Committee has power to require the advocate to answer the allegations made against an advocate by way of a complaint. Subsection 3 (a) of section 13 give the Committee power to give the Advocate the opportunity to appear and be heard. There is no requirement where there is no formal application for an advocate to file a defence by way of Counter Affidavit. In our considered opinion the Advocate's reply and any evidence he would have given had he entered appearance constitutes a defence. The sixth ground is therefore found to have no merit and dismissed.

Likewise, we cannot be detained by ground seven because we note that the appellant is still talking of a formal complaint when as we have already held, there was no need for a formal application. The ground also crumbles and accordingly dismissed.

On the fourth ground of appeal, we note that the Committee found no reason to doubt the veracity of the complainant and Deo Ringia. This is what the Committee said in part:

"Dr. Lamwai had not appeared before the Committee to defend himself against the complaint though duly aware of the date of hearing. In the absence of any defence by Dr. Lamwai before the Committee and given the evidence adduced by the complainant and Deogratias Ringia on what had transpired, the Committee is satisfied that the complainant had indeed instructed Dr. Lamwai to represent him in court and that Dr. Lamwai failed to render legal services of representing the complainant in his case, leading in the dismissal of the complainant's case."

That said, we can only say that as appellant was afforded an opportunity to raise this ground during hearing and defaulted to appear, he cannot be heard to raise it on appeal. That found, this ground is also dismissed.

For the same reason, it is apparent that the appellant is trying to raise defence in ground 8 just as in ground 4 which we are not

prepared to accept. In which case, we find this ground to have no merit and dismiss it.

Ground nine which relates to lack of corroboration of Deo Ringia's evidence is found to have no merit because it was amply corroborated, if at all corroboration was needed by complainant's evidence. In view of this, we also find this ground to have no merit and proceed to dismiss it.

In ground 10 the Appellant submits that the Committee had no jurisdiction to order that he pays a refund of Tshs.25,000,000/= to the 2nd Respondent when the latter had spent nothing and the suit was dismissed. The Appellant argued that it is not necessary that when a suit is filed the plaintiff succeed whether in part or in whole. That in any case no evidence had been given and adjudicated upon by the civil court. It was the Appellant's submission that the Committee's powers to order compensation are contained in section 13 (4) (5) of the Advocates Act Cap 341 RE 2002. That since the provisions refer to costs as opposed to monetary claim, the Committee exceeded its powers, so the order should be set aside.

The learned State Attorney submitted that it was the Appellant who drew the claim for 2nd Respondent, no doubt knowing there was enough evidence to prove the amount. He submitted that section 13 (5) of the Advocates Act gives the Committee unlimited powers depending on the nature of the matter. The Committee had indeed found the Appellant guilty of misconduct and had convicted him under section 13 (1) (c), 13 (2) and 13 (4) of the Advocates Act.

It went on to grant the Complainant's prayer of refund of Tshs.25,000,000/= which he was claiming from the Attorney General and the Inspector General of Police in the case that was dismissed.

In granting the prayer, the Committee reasoned that:

"Since the Complainant cannot open up a fresh case in court, it means he has lost the amount he was claiming for in his case which was dismissed due to Dr. Lamwai's negligence. The Committee holds that Dr. Lamwai should refund the Complainant the amount of Tshs.25,000,000/= he was claiming for in the dismissed case,"

Clearly, from the above quotation, the court trying the 2nd Respondent's civil case having dismissed it, the claim in it cannot be said to have been granted. Looking at the true meaning of the word 'refund' we feel that the word was misused. The Oxford Study Dictionary we consulted defines the word 'refund' as:

"to pay back (money received or expenses that a person has incurred" or money refunded" or repayment". Thus, to "refund" Tshs.25,000,000/= would imply that the amount was incurred by the 2nd Respondent in pursuing the matter or indeed the case that was dismissed. There is no evidence that the 2nd respondent expended that money so assuming that the committee had powers to issue such an order, unfortunately, it had no basis.

The powers of the Committee to make an order as to payment by any party are contained under S.13 (4) and (5) which provides:

"13(4) Upon conclusion of a hearing subsection 3, the committee may, if it is satisfied of the truth of the allegations upon which an application under paragraph (b) of subsection (1) is founded or any allegation of misconduct made against the advocate-

- a) N/A
 - b) *admonish the advocate; or*
 - c) *suspend the advocate from practising
for such period as the committee may direct.*
- (5) *In any proceedings under this section
the Committee shall have power to make
any such order as to payment by any
party of any costs or witness expenses
at it may think fit, and any such order
shall be deemed to be an order of the
High Court and may be enforced in like
manner."*

The provisions restrict the committee to make orders as to 'any cost or witness expenses' together with admonition or suspension. After due consideration of the above provisions, we feel, with unfeigned respect to the Committee, that it had no powers to grant a refund of Tshs.25,000,000/=. We therefore uphold the ground 10 and consequently quash and set aside the order to refund the complainant Tshs.25,000,000/=

As for ground 11, we find it irrelevant as no damages were awarded by the Committee. It is accordingly dismissed.

As a matter of record, we wish to point out that to our knowledge there is no S-13 (4) (v) of the Advocates Act Cap 341 RE 2002, as has been cited by the appellant in his submission.

The appellant's plea in ground 12 relates to the finding of misconduct by the Committee. The reasons advanced in support of the 4th ground were found to be attempts by the appellant to raise defence in appeal and we rejected such attempts. For the same reasons, we also dismiss this ground.

Lastly, the appellant sought in ground 13 that one year's suspension is excessive in any circumstances. The appellant gives reasons and we are looking at the third and last of his reasons, that is that the Committee did not assign any reason for the one year's suspension. That regard should have been had to the fact that the matters complained of took place during the period of this suspension. He therefore pleads for a censure rather than a suspension. The learned State Attorney held the view that the period was proper for reasons given at page 5 of the Committee's judgment and that the powers given to the Committee under section 13 (4) of

the Advocates Act were properly exercised for the nature or the misconduct.

On page 5 of the judgment we venture to chance that the committee's reason is:

"In the absence of any defence by Dr. Lamwai before the committee and given the evidence adduced by the complainant and Deogratias Ringia on what had transpired, the committee is satisfied that the complainant had indeed instructed Dr. Lamwai to represent him in court and that Dr Lamwai failed to render legal services of representing the complainant in his case, leading in the dismissal of the complainant's case. For this reason the committee holds that Dr Lamwai is guilty of misconduct...and the Committee convicts Dr Lamwai...."

We indeed agree that the Committee has reasoned its conviction of the appellant. The powers of the Committee are provided for under section 13 (4) (c) of the Advocates Act which states:

"(c) suspend the advocate from practising for such period as the Committee may direct."

As noted from the above provision, the powers of suspension by the committee in relation to the period of suspension are discretionary, and we see no reason to find that the discretion was unreasonably or unlawfully exercised. Furthermore, the record shows the appellant absented himself from receiving judgment therefore denying himself of an opportunity to advance any mitigating factors. Such a person should not be heard now complaining that the period of suspension was excessive. We therefore see no reason to interfere with the Committee's orders. The ground is found to have no merit and accordingly dismissed.

We have considered ground 14, but we do not see any relevance or sense in it, so it is dismissed accordingly. Save for the ground number 10 which has been allowed, the appeal is dismissed in its entirety. Costs of this case here and below are to be borne by the appellant.

 JUSTICE P. A. RUGAZIA

Coram: Mlay, Longway, Rugazia, JJJ

For the Appellant Arbogast Anthony for

For the 1st Respondent - Mrs stela Kachenye for

For the 2nd Respondent - Absent

c.C. Masebo

Order: Judgment delivered in the presence of Arbogast Anthony Advocate for the Appellant and Mrs. Stela Kachenya State Attorney for the 1st Respondent and in the absence of the 2nd Respondent.



J.I. MLAY

JUDGE

18/5/2007



M. H.C.S. LONGWAY

JUDGE



P.A. RUGAZIA

JUDGE