# IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MAIN REGISTRY

# AT DAR ES SALAAM

#### MISC. CIV. APP NO 4 OF 2021

(Arising From Consolidated Application No 3 and 4 Of 2019)

### **BETWEEN**

#### RULING

Date of Last Order: 9/11/2021 Date of Ruling: 14/12/2021

## LALTAIKA, J.

This is a ruling on preliminary points of objection raised by Counsel for the 2<sup>nd</sup> Respondent Mr. Godwin Nyaisa. Briefly, a historical backdrop leading to the present application is that on the 19<sup>th</sup> March 2020 the Advocates Committee (Hon. N.N. Kilekamajenga, J.-Chairperson, G. Kato, Advocate, - Member and E.E. Longopa, Deputy Attorney General, -Member) ruled in favour of the respondents in the Consolidated Application No 3 and 4 Of 2019. In the said applications, the applicant, Dr. Hamisi Saidi Kibola alleged

professional misconduct against Mr. Anthony Goodluck Shuma (advocate with Roll No 1888) and Ms. Hadija Hassan (advocate with Roll No. 5786). He prayed for orders of removal of the respondents from the Roll of Advocates due to unethical conduct. Aggrieved by the decision of the Advocates Committee, the applicant filed a petition of appeal. The petition was presented for filing in this court on the 18<sup>th</sup> day of October 2021 (now Misc. Civil Appeal No. 4 of 2021).

When this matter was called for hearing on the 9<sup>th</sup> November, 2021 Mr. Godwin Nyaisa submitted before the court (Mgeta, Maruma and Laltaika JJJ) that he had raised two preliminary objections and prayed that they are disposed of first before proceeding to determine the appeal on merit. These preliminary points of objection are that:

- 1. The applicant has no right of appeal in terms of Section 24A of the Advocates Act, Cap 341 RE 2019.
- 2. The appeal is hopelessly time barred in terms of Section 24A of the Advocates Act, Cap 341 or Item 2 of Part II of the Schedule of the Law of Limitations Act, Cap 89 RE 2019.

Pursuant to procedural practice in our law that whenever a preliminary objection on a point of law is raised the same must be disposed of first (See the following unreported cases of the Court of Appeal of Tanzania CAT to

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that effect; **Meet Sigh Bachu vs Singh Bachu**, Civil Appeal No 144/02 of 2018, **Godfrey Nzowa Vs. Selemani Kova and Tanzania Building Agency**, Civil Appeal No. 3 of 2014 and **Yazidi Kassim t/a Yazidi Auto Electric Repairs Vs. The Attorney General**, Civil Application No. 552/04 of 2018) the date of hearing for the purposes of disposing of the preliminary objection was scheduled for the 19<sup>th</sup> November 2021.

When the matter came up for hearing Friday 19<sup>th</sup> November 2021 14:00 hours onwards as earlier on scheduled, Mr. Zakaria Daudi appeared for the Appellant, Ms. Anita Bandoma and Mr. Anaseli Lesika represented the 1<sup>st</sup> Respondent and Mr. Godwin Nyaisa fended for the 2<sup>nd</sup> Respondent. The third Respondent was absent. Counsels for the first respondent indicated their unwavering support of the points of objection raised whereas counsel for the applicant vehemently opposed the same.

Submitting on the first limb of the preliminary objection, Mr. Nyaisa contended that the applicant has no right of appeal or what he termed *locus standi* to appeal against the decision of the Advocates Committee. Expounding on his argument, Mr. Nyaisa averred that it is a settled principle of law that the right to appeal is a creature of statute, not inherent nor an

automatic right. He cited the case of **Ludovica K. Mbona v. BC** 1997 TLR 29.

The learned counsel asserted that the decision upon which this appeal lies was pronounced by the **Advocates Committee**. The committee, Mr. Nyaisa opines, is governed by The Advocates Act Cap 341 RE 2019 and the Advocates (Disciplinary and Other Proceedings) Rules of 2018. Mr. Nyaisa invited this court to have a look at Section 24A of the Act contending that the section provides for the right to appeal to an Advocate. Mr. Nyaisa went on to argue that section 2 of the Act defines an Advocate as "any person whose name is dully entered as an advocate upon the law." (Emphasis mine). It is Mr. Nyaisa's submission that upon perusal of the Roll of Advocates he couldn't find the name of the appellant one HAMISI SAIDI KIBOLA. To this end, the learned counsel observed, since the name of the appellant does not appear in the roll, he lacks locus to appeal. Mr. Nyaisa is of a firm view that although the right to appeal is a constitutional right, it is not automatic. To buttress his argument, the learned counsel cited the case of Hamisi Mwinyijuma and Another versus MIC **Tanzania Ltd** Misc. Civil Application No 374 of 2019.



Mr. Nyaisa contended further that in his opinion, section 24A (1) is clear and leaves no ambiguity. Borrowing a leaf from canons of statutory interpretation, the learned counsel submitted that enactment of the Advocates Act was geared towards regulating the conduct of Advocates thus, the learned counsel averred further, the Act does not render reliefs to nonadvocates. The learned counsel emphasized that the Act is specific to the legal profession and should be interpreted narrowly as such. To buttress his point Mr. Nyaisa referred this court to a printout of a Georgetown University Law Center's article "A Guide to Reading, Interpreting and Applying Statutes" (The Writing Center at GULC, 2017) particularly in a discussion on **intentionalism** where the authors expound on a principle that "interpretative task ends with plain meaning." In concluding his submission on the first limb of the preliminary objection, the learned counsel maintained that the appeal is incompetent and the same should be struck out with costs.

Moving on to the second limb of the preliminary objection, the learned counsel hinted that he intended to argue this particular point just in case the court finds that the appellant had a right of appeal. To this end, Mr. Nyaisa is of a firm opinion that the appeal is time barred.

Expounding on his point, Mr. Nyaisa contended that the decision against which this appeal is based was delivered on **the 19<sup>th</sup> March 2021.** The appeal before this court, the learned counsel went on to submit, was filed on the **18<sup>th</sup> of October 2021-** seven months thereafter.

Mr. Nyaisa submitted further that, assuming the appellant had *locus* standi to appeal, Section 24A1 of the Advocates Act Cap 342 provides for 30 days upon which an appeal against the decision of the Advocates Committee must be lodged. The learned counsel reasoned further that assuming there was another law giving the appellant the right to appeal, the **Law of Limitations Act Cap 89 RE 2019** would come into the picture whereby Item 2 of part 2 of the schedule to the Act provides for forty-five (45) days' time limit.

Flying even higher into the cloud of assumption, Mr. Nyaisa submitted that assuming further that the appeal is pegged on the Advocates Act, Rule 17(4) of the Advocates (Disciplinary and Other Proceedings) Rules 2018, the same allows for exclusion of the time within which the appellant was waiting to be supplied with copies of the judgment or ruling. Mr. Nyaisa is of a firm view that for such exclusion to apply, there must be a certificate of delay issued by the Secretary of the Advocates Committee. Expounding

on this point, the learned counsel contended further that he had perused through the pleadings and hadn't come across any such certificate. Instead, the learned counsel averred, the pleadings contain a document titled **Affidavit of Delay** deponed by one Hamisi Saidi Kibola, dated 25th October 2021. Mr. Nyaisa maintains that such a document is unknown creature under the Advocates Disciplinary Rules. To buttress his point, Mr. Nyaisa cited the case of **Erick Nicolous Ndwela Vs. Tulo Yohana Shekumkai and The Advocates Committee Misc. Civil Appeal No 1 of 2020** 

Mr. Nyaisa went on to submit that he had noticed the appellant had attached correspondence alleging that the secretary [of the Advocates Committee] couldn't supply him with the certificates. The learned counsel firmly believes that the remedy was not to file the affidavit of delay but rather to seek for other remedies such as Judicial Review. Alternatively, the learned counsel averred, the appellant should have applied for extension of time in this court and once granted that's when he could have filed the appeal. To buttress his point, the learned counsel cited the case of **Star System International Co. Ltd Vs. Agatha Cyril Nangawe Civil Appeal No 10 of 2015** Mr. Nyaisa concluded his submission by praying that the court dismisses the application with cost.

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Replying to the arguments put forth by Mr. Nyaisa on the first PO, learned counsel for the appellant Mr. Zakaria Daudi contended that the right to appeal is a constitutional right under **Article 13(1) and (6)A of the Constitution of the United Republic of Tanzania of 1977** and that, any person who has been aggrieved by the decision of a lower court has a right to appeal or to seek for any other remedies available to the higher court without any discrimination.

Mr. Daudi averred that Section 24A of the Advocates Act does not restrict appeals from non-advocates. Expounding on his point, the learned counsel submitted that the section provides for a right of appeal to any person who has been aggrieved by the decision of the Advocates Committee. Mr. Daudi is of a firm belief that there is no word or wording, in the section, which restricts the right to appeal to non-advocates.

Mr. Daudi submitted that the Advocates (Disciplinary and Other Proceedings Rules) of 2018 made under section 14(1) of the Advocates Act specifically Rule 17(1) provides for the right of appeal to a PERSON. The learned counsel stressed that the wording of that rule is "a person who has been aggrieved". The learned counsel is of a firm opinion that under this provision, the right to appeal of the appellant has been embodied.

Concluding his submission countering the first limb of the preliminary objection, Mr. Daudi submitted that the same is devoid of merit and should be dismissed with costs.

Moving on to the second limb, Mr. Daudi submitted that he is partly in agreement that with Mr. Nyaisa that Section 24(1) of the Advocates Act provides for the right of appeal to Advocates who have been aggrieved by the decision of the Advocates Committee. Mr. Daudi submitted further that his client, the appellant in this matter, does not purport to be an advocate. Therefore, the learned counsel so reasoned, that provision is not applicable to the appellant. Mr. Daudi is of a firm belief that The Advocates Act and the Advocates Disciplinary Rules do not provide for the time limit within which to file an appeal pursuant to **Rule 17(1)** of the Disciplinary Rules. The learned counsel pointed out that in the absence of such a provision, the fallback position is the **Law of Limitations Act Cap 89 RE 2019** specifically part 2 item 2 to the schedule of the Act.

Mr. Daudi submitted that he is aware that under Rule 17(3) of the Disciplinary Rules, the Secretary is required to certify the ruling, drawn order and proceedings and to supply the same to the parties. The learned counsel submitted further that he is equally aware that under Rule 17(2) of the

Disciplinary Rules, any party who wishes to appeal has to file a petition of appeal accompanied by certified copies of the ruling and drawn orders. Mr. Nyaisa went on to display his unquestionable awareness of the procedure provided under Rule 17(4) of the Disciplinary Rules to the effects that it is the secretary to the committee who has power to issue a certificate of delay.

Having exhibited enviable gifting in paying attention to the details, Mr. Daudi opined that his client, being a lay person, had requested for a certificate of delay both orally and through two letters addressed to the Secretary of the Advocates Committee but he only received an oral response that the Secretary had never made any such certificate before and, the learned counsel contended, he (Secretary) advised the appellant to file an affidavit. Mr. Daudi submitted further that based on this advice, the appellant proceeded to file an affidavit. Despite being served with such as affidavit, Mr. Daudi contended, the Secretary never filed any counter affidavit to dispute the said statement.

It is Mr. Daudi's firm position that since the appellant is a lay person, directed by the secretary who is a party to these proceedings and learned, this court should apply the Overriding Objective principles under **Section**3A of the Civil Procedure Code and accept the affidavit in spite of its

inadequacy. To buttress his argument, the learned counsel referred this court to the Court of Appeal decision in Mediterranean Shipping Co. (T)

Ltd v. Afritex Civ. App 165 Court of Appeal of Tanzania 2017

Mr. Daudi also opined that the case of **Ndwela (supra)** cited by the learned counsel for the second respondent in his submission is distinguishable to the matter at hand because while under section 90(1) of the Court of Appeal Rules the Registrar is not a party to the proceedings, under Rule 17(4) of the Advocates Disciplinary Rules, the secretary is a party to the proceedings. Building on the holding of this case, Mr. Daudi pleaded with this court not to dismiss the application at hand, as prayed for by counsel for the second respondent, but rather, strike it out without cost, should it find that the affidavit filed pursuant to the advice given by the Secretary to the Advocates Committee was inadequate or even that the appeal is time barred.

Pleading further that this court makes no order for costs, the learned counsel opined that his client had a genuine case, not a frivolous or vexatious one and that the appellant is struggling to meet justice after being aggrieved by the decision of the Advocates Committee. Mr. Daudi strongly emphasized that should the court find that the appeal is time barred as

argued by counsel for the second respondent, the same shouldn't be regarded as the appellant's fault but rather misdirection on the side of the Secretary to the Advocates Committee. Mr. Daudi concluded his submission by a humble prayer that that this court finds the two preliminary objections devoid of merit and allow the appeal.

No sooner had the learned counsel for the appellant concluded his submission than the appellant, who was keenly following the proceedings, prayed to address the court with the intention of highlighting some aspects of his appeal that he believed, had escaped the attention of his lawyer. This rather unexpected occurrence in my chamber necessitated consultation with counsels for both parties whereupon a consensus was reached to allow a short adjournment during which Mr. Daudi could consult his client and address the court, on his behalf, should he find it prudent to do so.

Upon consultation with his client, Mr. Daudi submitted that it was not disputable that his client had no right of appeal in terms of Section 24A of the Advocates Act. He further submitted that his objection is misconceived because 24A of the Advocates Act has no application to this Appeal and should not be applied at all. The learned counsel asserted that the appellant had not said that he was appealing pursuant to the cited provision of the



Advocates Act. Mr. Daudi emphasized that it was his client's belief that section 24A of the Advocates Act is discriminatory and it goes against the principle of equality before the law as enshrined under Article 13(1) and (2) of the Constitution of the United Republic of Tanzania of 1977 which provides that no discriminatory law shall be made by any authority in the country.

Expounding on the nature of discrimination occasioned by the law, Mr. Daudi asserted that had it been the complainant was an advocate he could have been permitted to appeal. In the contrary, the learned counsel opined, doors are locked for his client simply because he is not an Advocate. The learned counsel submitted that under Rule 17 and Section 24A of the Disciplinary Rules and the Advocates Act respectively, there are two persons namely an Advocate and a person.

Mr. Daudi is of a firm stand that since counsels for the first and second respondents had submitted that they checked the Tanzania Advocates Management System (TAMS) and informed this court that the complainant's name was not on the Roll, there was no dispute that he had no right of appeal. Having so admitted, albeit contrary to his earlier submission, the learned counsel went on to assert that such disparity amounted to

discrimination as it denied the right to appeal to his client simply because he is not an Advocate.

Mr. Daudi concluded his submission by an assertion that the Constitution of the United Republic of Tanzania spoke loud and clear to this court that the right to appeal is a basic, fundamental and inalienable right. He submitted further that the drafting of the Advocates Act may have been done by overlooking that right but pleaded that such an oversight should not deny this court the right to determine the appeal pending before it. Mr. Daudi prayed that both points of the preliminary objection be dismissed and the appeal proceeds to be heard and determined on merit.

In his rejoinder, Mr. Nyaisa started by addressing his learned colleague's submission after consultation with his client. The learned counsel averred that there was no dispute that the right to appeal is a constitutional right as submitted by counsel for the appellant who sought inspiration from Article 13(1) and (6)A of the Constitution of the United Republic of Tanzania.

It is Mr. Nyaisa's belief that although an appeal is a constitutional right it is extended to a person whose rights have been determined in that particular decision. The learned counsel averred that in this particular case,



the decision was determining the rights, duties and conduct of Advocates hence it is those persons who are affected by that decision who can appeal against it.

Mr. Nyaisa submitted further that Article 13(1) and (2) of the Constitution of the United Republic of Tanzania must be read in tandem with Article 13(6)(a). The key message of the articles, the learned counsel contended, is a directive that such a right be directed to a person whose rights and duties have been determined. Mr. Nyaisa emphasized that the Advocates Act does not determine any right, duties or conducts of non-advocates. To this end, the learned counsel submitted that the Advocates Act is properly enacted in the purview of Article 13(6)(a).

Faulting Mr. Daudi's interpretation of the word "person" as used in Rule 17(1) of the Advocates Disciplinary Rules Advocate Nyaisa contended that the meaning of the word person in the rules has to be sought from the parent Act. Mr. Nyaisa went on to provide that even if this rule is taken to mean any person can lodge a notice of appeal, the same does not offer the right but rather the procedure of lodging an appeal. It is Mr. Nyaisa's firm opinion that the rules cannot override the Principal Act. To buttress his argument,

Mr. Nyaisa cited Section 36(1) and 38(1) of the Interpretation of Laws Act Cap 1 RE 2019.

With regards to assertion by the appellant that the Advocates Act is discriminatory, Mr. Nyaisa submitted that the question of discrimination does not arise because the said law is only meant for a particular section of the society. He stressed that because this particular statute has guaranteed rights to a person affected by the decision of the Advocates Committee that means the law is constitutional. To this end, the learned counsel reiterated his submission in chief that the appellant has no right of appeal under this statute and this makes the appeal untenable in law and should be struck out with costs.

Moving on to the second limb of the preliminary objection, Mr. Nyaisa's rejoinder was rather brief. He faulted Mr. Daudi's attempts geared at seeking refuge to what he termed misdirection by secretary to the Advocates committee. He submitted that had it been that the secretary who advised the appellant on the course he took, he was supposed to file an affidavit to that effect. Mr. Nyaisa emphasized that such information should have appeared in the applicant's affidavit rather than merely coming from the bar. Mr. Nyaisa submitted further that a person whose advise was relied upon to

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arrive to a decision of filing an erroneous document must file an affidavit to that effect. To buttress his argument, the learned counsel cited the case of Sahara Media Group versus Board of Trustees of NSSF Misc. Civ. App. No 27/2020

Mr. Nyaisa strongly contested the assertion that the appellant is a layperson who acted upon advice by the learned secretary to the Advocates Committee hence should not be punished. He averred that the appellant had enjoyed the services of the same counsel (Advocate Zakaria Daudi) at the committee level as well as before this court. Mr. Nyaisa went on to submit that the appellant had all the resources at his disposal and even if that wasn't the case, the learned counsel reminded this court that "Ignorance of law is not a defence."

Responding to Mr. Daudi's prayer that this court takes cognizance of overriding objective principle, Mr. Nyaisa is of a firm belief that overriding objectives do not apply where rules of procedure have been breached. He stressed that time limitation goes to the root of the matter as it touches upon jurisdiction of the court.

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As for Mr. Daudi's further prayer that this application, be struck out and not dismissed as per **Ndwela's case (supra)** Mr. Nyaisa averred that the case of Ndwela was distinguishable from the current matter since the appeal in **Ndwela** was under the Advocates Act while the current appeal is under The Law of Limitations Act.

The learned counsel went on to submit that Section 3 of The Law of Limitations Act requires any time barred application whose limitations is derived from the Act be dismissed. Mr. Nyaisa concluded his rejoinder by reiterating his prayer that the appeal be dismissed with costs.

I have dutifully considered the extensive submissions by learned counsels for both parties. I am inclined to determine two issues:

- (i) Whether the appellant has a right of appeal under Section 24A of the Advocates Act Cap 341 RE 2019 and
- (ii) Whether the appeal is time barred.

I intend to analyze the first issue with some considerable length and come back to the second issue only when it is absolutely necessary to do so. To achieve this, I have divided the task into three subtasks namely; the right to appeal, statutory construction and allegation on discrimination.

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With regards to the first subtask namely the right to appeal from the decision of the Advocates Committee, it goes without saying that appellate remedies are an important ingredient in the protection of fundamental rights. According to a researcher on the role and significance of appellate remedies (See Cassandra Burke Robertson "The Right to Appeal" 91 N.C.L. REV. 1219 p. 1225)

"Legal scholars have identified a number of different functions that a robust appellate system serves including correcting legal and factual errors, encouraging the development and refinement of legal principles, increasing uniformity and standardization in the application of legal rules and promoting respect for the rule of law." (Emphasis supplied)

Premised on the importance of appellate remedies, the Constitution of the United Republic of Tanzania of 1977 places particular emphasis on the right of appeal against the decision of any court or tribunal affecting any person in the country. For avoidance of any doubt the relevant article is reproduced bellow:

- "6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:
- (a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other



legal remedy against the decision of the court or of the other agency concerned."

The idea for appellate remedies, as comforting as it sounds, it is, unfortunately, not automatic See Paul A. Kweka & Hilary P. Kweka Vs. Ngorika Bus Service and Transport Company Limited, Civil Appeal No. 129 of 2002, CAT at Arusha (Unreported). I find Mr. Daudi's argument that his client has a constitutional right to appeal to be too general to assist me in the instant matter. On the other hand, I agree with the reasoning of Mr. Nyaisa that this court has repeatedly held that the right to appeal is a creature of statute and subject to provisions of that particular statute. It is, indeed, subject to statutory provisions both substantive and procedural. See Attorney General Vs Shah (1971) EA 50.

Admittedly, it is tempting to think of the right to appeal as an automatic, constitutionally guaranteed right. Unfortunately, this is not the case not only in Tanzania but also in many if not most other common law jurisdiction with which we share the legal tradition. The Supreme Court of the United States of America, for example, has repeatedly been called upon to recognize the right to appeal as an automatic right but it has maintained 19<sup>th</sup> and 20<sup>th</sup> century dicta to the contrary. See for example **Cobbledick v. United States**, 309 U.S. 323, 324-25 (1940) for persuasive purposes,

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where the Supreme Court held that "[T]he right to a judgement from more than one court is a matter of grace and not a necessary ingredient of justice..."

I windup this subtask by reiterating the position of this court that the right to appeal is a creature of statute and not automatic. This takes me to the second subtask involving construction of the relevant statute to find out what it provides on the right to appeal.

The immortal words of Lord Denning L.J. in **Seaford Court Estates Vs. Asher**, (1949) 2 K.B. 481 (498) as quotes *in extenso* bellow may provide an important entry point into accomplishing this subtask.

"A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some other ambiguity. It would certainly serve the judge's trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge can not simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..."

It is noteworthy that the need for statutory construction arises only when there is ambiguity or when opinions differ on what a particular item refers to. In the instant matter at hand, Counsels for both parties have

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conflicting views on proper construction of The Advocates Act, Cap 341 RE 2019 and, to a larger extent, the **Advocates (Disciplinary and Other Proceedings) Rules** (GN No. 120 of 2018). To this end, as Lord Denning advised, I cannot fold my hands and simply blame the draftsman. The most appropriate rule of statutory interpretation for our purposes is the Mischief Rule or, as it is also known in scholarly circles, the Heydon's Rule. This rule interrogates the intention of Parliament by seeking to understand the mischief and defect it had intended to cure.

The **Long Title to the Advocates Act** provides "An Act to provide for the law relating to advocates and for connected matters." As I read through the long title to the Act, it does not take much thought to realize that the parliament intended the Act to regulate the conduct among Advocates. The word Advocate as earlier on alluded to, is defined by Section 2 of the Act to "any person whose name is duly entered as an advocate upon the Roll." I am in total agreement with Mr. Nyaisa that all Regulations made pursuant to the Act cannot be construed in isolation from the Parent Act. This includes the word "person" as used in the Disciplinary Rules. I wind up this subtask by holding that appellate provisions contested by learned counsels are meant for Advocates. This takes me to the third and last subtask

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where I intend to find out whether this restrictive interpretation (that excludes non-advocates) is discriminatory as alleged by the applicant.

It is with great interest that I pursued the point of discrimination as raised by the appellant upon consultation with his counsel Mr. Daudi. This is partly due to the fact that the appellant is a layperson and respondents are learned counsels in their own right who also double as officers of this court. Their duty includes assisting this court in dispensing justice.

The Oxford Dictionary of Law 5th Edition (Oxford University Press 2011) defines discrimination as "Treating one or more members of a specified group unfairly as compared with other people." The key phrase here is "members of a specific group". In the instant matter at hand, the appellant (non-advocate) and respondents (advocates) are not members of a specific group. The issue of discrimination would only have arisen where the law discriminates against advocates in their own group or non-advocates such as the applicant in their specific group.

In my view, when a Parliament enacts a piece of legislation to regulate a particular section of the social, economic or political endeavor, it is not engaging in an act of discrimination. I am in agreement with Mr. Nyaisa that laws that focus on a particular profession are many in this country. They include but not limited to laws regulating members of the Medical Profession, Engineers, Laboratory Technicians and even the Police, to mention but a few. These laws confer some rights to members of the profession being regulated to the exclusion of everyone else. These are called legal rights. In the field of Jurisprudence, a respected jurist **Wesley Newcomb Hohfeld** (1879–1918) attempted to cure the misconception of the concept of right by showing how the term right could refer to eight different concepts. This is not a place to embark on the highly technical Hohfeldian Analysis. Suffices it here to clarify the concept of legal rights. In a persuasive decision of the Supreme Court of India **State of Rajasthan vs Union of India**, 1984 AIR 1675, 1985 SCR (1) 700 the court stated that

"Legal rights in strict sense are correlatives of legal duties and legal rights are defined as the interests which the law protects by imposing duties on other persons. But the legal rights in the strict sense means right in the immunity from the legal powers of another."

There are several ways of looking at the parameters of a right including but not limited to human rights, legal rights and contractual rights, to mention but a few. By way of an illustration human rights are universal to all human beings, they apply to any one simply because he/she is human.

Legal rights, on the other hand (such as the right to practice law in a particular country) do not apply to all human beings but only those that have met the criteria set forth by a particular law of that country. Narrowing down even further, the right to receive a salary from a specific employer (and other employment benefits) does not apply to all human beings out there or all lawyers in a particular country. It is restricted to individuals that have entered into a contract of employment with that particular employer. Legal rights also impose duties. In the matter at hand, an Advocate in Tanzania has a right to practice law but also a duty to observe ethics and etiquettes governing the legal profession. It goes without saying that a non-advocate who isn't bound by those duties also doesn't enjoy certain rights thereof.

The first limb of preliminary objection is hereby sustained. This issue is enough to dispose of the matter in its entirety as I am going to do so shortly. However, before I pen off, I wish to comment briefly on the aspect of cost. Responding to the second limb of the preliminary objection, counsel for the applicant prayed this court not to order costs against his client since, the learned counsel pleaded, this application is neither frivolous nor vexatious. I partly agree. The applicant has indeed displayed tremendous interest in the matter to the extent of requesting to address the court in spite

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of the fact that he had enjoyed the services of the learned counsel Zakaria Daudi since commencement of the proceedings at the committee. I also agree with Mr. Nyaisa that the applicant can pursue other remedies such as Judicial Review because, as we have seen, the current law is not designed to move the court to grant his prayer. The constitutional provisions cited also are open to other remedies. This is the way to go.

In my view, ardent citizens like the applicant Dr. Hamisi Saidi Kibola are important in ensuring that frontiers of our jurisprudence are continuously enlarged far and wide to address and protect fundamental legal rights beyond those envisioned during enactment of a particular statute. Nevertheless, enthusiastic citizens like the current applicant need to be properly guided on both substantive and procedural aspects of our law. Having sustained the first point of the preliminary objection, this application is hereby dismissed. I make no order as to costs.

E.I. Laltaika

Judge

14.12.2021