**Belgo Holdings Ltd v Esmail**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 23 July 2004

**Case Number:** 244/04

**Before:** Lenaola J

**Sourced by:** LawAfrica

*[1] Advocate – Appearing in court without practicing certificate – All proceedings therein invalid.*

**Editor’s Summary**

The defendant sought orders that the orders issued by the court on 30 April 2004 be recalled and that all pleadings filed by the firm of K Getanda and

Co Advocates be struck out because Mr Getanda,,advocate, had no practicing certificate at all material times. Counsel for the firm of K Getanda and Co Advocates opposed the application on the grounds that since there was a stay order as regards proceedings in the suit, it was mischevious of the applicant to file the application before court. Secondly, that if the applicant was unhappy with the order of stay, he ought to have sought a review thereof and not to file fresh matters as he had done and, thirdly, that the court could not in the circumstances of the case recall its orders in the manner suggested by the applicant.

**Held** – When the Advocates Act set out in *extensor* the steps to be taken by a person wishing to practice the discipline of law, there was good reason for that, namely, that no quack can pretend to practice law and those who are indeed qualified renew their commitment and adherence to their oath of office every year.

If a person does not meet any of the conditions, precedent set out in section 9 of the Advocates Act, such a person is, thereby, rendered an unqualified person to practice law.

Where an advocate failed to take out a practicing certificate, the matter was no longer a mistake on his part but in fact, it deprives him of any capacity to sue as an agent of any litigant under the provisions of

Civil Procedure Rules – *Prashilee Ltd v Rabai Road Estate Ltd* High Court civil case number 2336 of

1994 adopted; *Njagi v Kihara* [2001] EA 167 distinguished.

It is a criminal offence to practice law without a practicing certificate.

It does not matter that a party may suffer the effect of striking out its pleadings because of its actions. When an offence is committed; when contempt of court is committed; when statute is breached, the law must take its full course and the injured party has a remedy against the advocate whose actions caused the injury to it.

Where there is an apparent contempt of court, the earlier orders can be recalled even if no party so applies.

The intention of the Legislature must be looked at in interpreting law and where the intention is clear, effect must be given to it – *Dubai Bank Kenya Ltd v Cane Cars Africa Ltd* High Court civil case number

68 of 2003 followed.

Application allowed with costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Dubai Bank Kenya Limited v Cane Cars Africa Ltd* High Court civil case number 68 of 2003 – **F**

*Njagi v Kihara* [2001] 1 EA 167 – **D**

*Obura v Koome* [2001] 1 EA 175

*Prashilee Ltd v Rabai Road Estate Ltd* High Court civil case number 2336 of 1994 – **A**