**Kenya Power and Lighting Co v Mahinda and another**

**Division:** Court of Appeal of Kenya at Nyeri

**Date of judgment:** 10 June 2004

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**Case Number:** 148/04

**Before:** Omolo, O’kubasu and Deverell JJA

**Sourced by:** Lawafrica

*[1] Advocates Act – Practising certificate – When a practicing certificate comes into effect – Person*

*with the duty of issuing a practicing certificate – Effect of signing a document without a practicing*

*certificate.*

**Editor’s Summary**

The applicant filed an application for the respondent’s appeal to be struck out on the grounds that the notice of appeal and the memorandum of appeal were signed by an advocate who did not have a practising certificate at the time. The advocate was issued to the said advocate on 22 September 2004, while the notice of appeal was signed and lodged on 25 June 2004; the memorandum of appeal was signed and lodged on 13 July 2004 (*sic*). The respondent, however, submitted that the said advocate had applied for a practising certificate and paid the fees demanded by the law society as early as 25 Mach 2004.

**Held** – If a party to an appeal is not appearing in person, he can only act in relation to an appeal through an advocate, unless the party is a corporation which has complied with rule 22(2) or is a person under disability where rule 22(3) has been complied with. An advocate representing a party must be an advocate competent to practice under section 9 of the Advocates Act. The issue of a practicing certificate is the responsibility of the registrar of the High Court and not that of the Law Society. It cannot be validly argued that, prior to the date of issue of that certificate, the advocate had in force a practicing certificate. Hence, when the advocate signed the memorandum of appearance and notice of appeal, he was not qualified to act as an advocate with the effect that the documents were incompetent. If no practising certificate had been issued when the act was done, the advocate was not qualified to do that act at the time he did it. Application allowed.

**No cases referred to in judgment**