

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU**

CRIMINAL APPEAL NO. 49 OF 2023

**ABDALLA SUKU ABDALLA APPELLANT
VERSUS**

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING OF THE COURT

31st January & 2nd February 2024

H. S. K. Tetere J.:

This ruling concerns the issue raised by the court Suo moto regarding the right of Audience of Advocate Abdalla Abdulrahim in a criminal appeal No. 49 of 2023.

Briefly, the appellant, Abdalla Suku Abdalla was convicted by the Regional Court at Vuga with the offence of possession of narcotic drugs contrary to section 15(1) (a) of the act No. 9 of 2009 as amended by section 11 (1) (a) of act No. 12 of 2011. He was sentenced to serve seven (7) years imprisonment.

Aggrieved with that conviction and sentence, he lodged petition of appeal to this court on 11/9/2023. The matter was assigned to me for determination and the appellant took first appearance while unrepresented on 18th December 2023. Thereafter, the case was fixed for hearing the appeal on 16th/1/2024. Subsequently, the hearing of the appeal couldn't

take place on the day fixed as responsible state attorney Mr. Ahmed Mohamed got an emergency. Thus, the case was adjourned and fixed for hearing the appeal on 19th/1/2024 and on 19 /1/2024, the appellant obtained a legal representation from Advocate Abdalla Abdulrahim who prayed for the leave of the court to amend the grounds of the petition of appeal filed in court on 11/9/ 2023. The prayer was not objected by the state attorney. Consequently, the court granted the prayer and the same ordered to be filed on 23/1/2024. Then the hearing of the appeal scheduled on 26/1/2024.

On 26/1/2024, Mr. Abdalla Abdulrahim the learned counsel, entered appearance for the appellant whereas Mr. Ahmed Mohamed State Attorney represent the Respondent (DPP). Before the hearing of the appeal commenced, Mr. Ahmed, the State Attorney for the Respondent, raised a legal concern on the competence of the amended petition of the appeal. Following the long discussion on the legal concern raised by state attorney, this court fixed the matter for delivery of its ruling on 1/2/2024.

Subsequently, before the delivery of the said ruling, the court was brought into light that Mr. Abdalla Abdulrahim has not obtained his practicing certificate for the year 2024. In my quick reference to the office of registrar responsible for approval of the active Advocate in the Judiciary electronic

system, this court was informed that the name of Advocate Abdalla Abdulrahim was not among the list of active Advocate.

Following the above information this court issued a hearing notice on 31/1/2024 and asked the parties to address on the status of the right of audience of Advocate Abdalla Abdulrahim in court proceedings dated 19/1/2024 and 26/1/2024.

At the hearing of the issue raised by the court, Mr. Abdalla Abdulrahim appear for the Appellant whereas Mr. Annuar Saadun, Principal State Attorney appeared for the Respondent.

Mr. Abdalla, the learned counsel, was the first to submit and he was on the view that he has a locus to appear before the court as he has obtained all necessary documents and submitted the same to the office of registrar. He stressed that when he uploaded all required documents in Judiciary electronic system, his application was refused and ordered to rectify tax clearance with ZRA. However, on being probed by the court on his approval status, he conceded that he has not obtained practicing certificate yet but he has all required documents. Also, when he was asked on the status of the court proceedings of 19/1/2024 and 26/1/2024. He had nothing to say and let the matter to court disposal.

On the other hand, Mr. Saadun, submitted that though he is not conversant with the law but what he knows for an advocate to have right

of audience in court he must have a locus by obtaining valid practicing certificate. He added that if the Advocate appear in court without having practicing certificate he is against the law and in that case all the proceeding he was administered his client is a nullity. He therefore, prayed to cease Advocate Abdalla Abdulrahim from proceeding with the case until he obtained his practicing certificate.

After having heard both parties, the point now for my determination is whether Mr. Abdalla Abdulrahim had a locus to appear to this court before his application for renewal practicing certificate is approved.

To determine this matter, I need first to make reference with Section 26 of Advocate Act No. 1 of 2020. It provides as follows: -

26-(1) there shall be a **practicing certificate** issued by the Registrar authorizing a person to practice as an Advocate or Vakil.

(2) An Advocate or Vakil shall **apply for practicing Certificate to the Registrar** in a such form and manner as prescribed in the rules.

(3) The **registrar shall, upon being satisfied and after receiving payment of prescribed**

fees, issue a practicing certificate to an Advocate or Vakil.

(4) An Advocate or Vakil shall take out **practicing certificate annually** and pay the prescribed fees.

(5)

(6)

Admittedly, a close reading of the above issue quoted provisions, it shows that for an Advocate to have a locus in court must have obtained a practicing certificate that issued by the office of Registrar annually. The procedure to obtained that practicing certificate in the current new system in my understanding is to make application to the registrar through Judiciary Electronic system and upon registrar satisfaction, the practicing certificate is issued.

In the present matter, the oral submission of Advocate Abdalla Abdulrahim leaves no doubt that he has not obtained the practicing certificate for the year 2024. Though it is not disputed that he had uploaded his application to the office of registrar with no success. The law under section 26 of Advocate act No. 1 of 2020 provides mandatory requirement for an advocate to have locus in court must have valid practicing certificate. It is clear from the records that when Mr. Abdalla appeared to this court on 19th

January 2024 and 26 January 2024, he had no practicing certificate. In so doing, it is my view that he has committed a professional misconduct in term of section 54 (b), (f), and (h) of Advocate act No. 1 of 2020. Thus, It is therefore eligible for this matter to be forwarded to the Chief Justice for disciplinary actions as per section 55-(1) of the act. However, taking consideration to the circumstances of the matter, I declined to take that mode instead decided to give strongly warning to Mr. Abdalla from repeating this professional misconduct and ordered him not to make appearance in any court or tribunals without obtaining practicing certificate. This also serves as a reminder warning to other advocates who do so without renewing their practicing certificates.

In regards to the status of the proceeding of 19/1/2024 and 26/1/2024, I need first to make the following remarks. Unlike other jurisdiction, in Zanzibar, there is no provisions in our Advocates' Act No. 1 of 2020 regarding to the status of proceedings administered by Advocate who has no valid practicing certificate. However, as it corrects to say, when there is a lacuna in our legal jurisprudence, the court can conveniently adapt procedures obtained in comparable jurisdiction.

In Tanzania Mainland, for example, Section 39 of Advocate Act provides essential criteria to be complied for a person to practice as an Advocate;

including valid practicing certificate and Section 41 of the same Act prohibits for unqualified person to practice without having practicing certificate. In the case **Edson Osward Mbogoro versus Dr. Emmanuel John "). Nchimbi and Another, Civil Appeal No. 140 of 2006), CAT (Unreported)** The court stated as follows at page **12-13** of that decision:

“..... After considering the above decisions of those three Commonwealth countries, that is to say England, Kenya and Uganda, we can say that although there is no specific statutory provision on the point, if an advocate in this country practices as an advocate without having a current practicing certificate, not only does he act Illegally but also whatever he does 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. It follows that the notice of appeal, the memorandum of appeal and the record of appeal which were prepared and filed in this court by Dr. Wambali purporting to act as an advocate of the appellant were of no legal effect.’

The position in Uganda to that effect is similar as in Tanzania Mainland, as it were held in the case of: **PROF. SYED HUQ versus THE ISLAMIC UNIVERSITY IN UGANDA, CIVIL APPEAL NO.47 OF 1995**, where the supreme Court of Uganda, clearly ruled that, a person practicing without valid practicing certificate commits an offence and thus the proceedings so attended are subject for dismissal.

Consequently, this court guided by the above authorities, it sustains the legal issue raised and as correctly argued by Mr. Saadun, the PSA for the respondent that the court proceedings administered by Mr. Abdalla Abdulrahim is nullity.

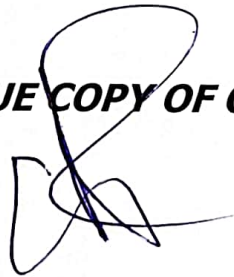
In the invent, the court proceedings dated 19/1/2024 and 26/1/2024 is hereby by declared nullity. I thus expunge them from the court proceedings and therefore the position remains as it was prior 19/1/2024. Its accordingly ordered.

DATED at ZANZIBAR this 2nd day of February, 2024.

Delivered in the presence of Mr. Ahmed Mohamed, learned Senior State Attorney for DPP and in the presence of the accused and his advocate, Advocate Abdalla Abdulrahim. Right of appeal explained.

Sgd: **H.S.K. TETERE-J**
02/02/2024

I CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL.



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REGISTRAR HIGH COURT
ZANZIBAR.

