

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Before VISCOUNT SIMONDS, LORD OAKSEY, LORD TUCKER AND  
MR. L. M. D. DE SILVA

MAHARAJ KRISHAN BHANDARI, *Appellant*

v.

THE ADVOCATES COMMITTEE. *Respondents*

Privy Council Appeal No. 39 of 1955

Advocate—Professional misconduct—Functions of Appellate Court—Standard of proof—Kenya Advocates Ordinance, 1949, sections 9 (1) (b), (9) (3) (i) (ii) (iii), 10 (3) and 15 (1) and (2).

This was an appeal from the decision of the Court of Appeal in Civil Appeal No. 29 of 1955, 22 E.A.C.A. 260, dismissing the appellant's appeal from the finding by the Supreme Court that he had been guilty of professional misconduct.

It was submitted that as the Advocates Committee was not a Court empowered to arrive at any determination or give any judgment, but only to report if a prima facie case had been made out, the Court of Appeal was wrong in dealing with the matter as if it were a case of concurrent findings of fact by two lower Courts. Alternatively even if the principle of concurrent findings applied there was in this case no evidence to support a finding of concealment. It was further submitted that the Court of Appeal had laid down an erroneous standard of proof for such a case as this.

*Held* (11-10-56).—(1) Although this case did not come literally within the well-known rule with regard to the functions of an appellate Court where there are concurrent findings of fact by subordinate Courts, all the reasons for the rule applied with equal or even greater force to cases where professional domestic tribunals are established for investigating and finding the facts in cases of alleged misconduct by members of their own profession. The words "prima facie case" in section 9 (3) (iii) of the Advocates Ordinance did not have the effect of assimilating the functions of the Advocates Committee to those of Committing Magistrates or of in any way relieving them of the duty of determining the facts, and it was clear that the Committee in fact so acted.

(2) There was ample evidence to support the decision of the Supreme Court.

(3) With regard to the onus of proof the Court of Appeal had said: "We agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities". This seemed to their Lordships an adequate description of the duty of a tribunal such as the Advocates Committee and there was no reason to think that either the Committee or the Supreme Court applied any lower standard of proof.

Appeal dismissed.

No cases.

JUDGMENT (delivered by LORD TUCKER).—The appellant is an advocate and partner in the firm of Bhandari & Bhandari practising in Nairobi. He was found guilty of professional misconduct by the Supreme Court of Kenya on consideration of a report and findings by the Advocates Committee, a body established by the Advocates Ordinance for the purpose, *inter alia*, of considering and reporting upon charges of misconduct against advocates. His appeal to the Court of Appeal for Eastern Africa was dismissed and he now appeals by special leave of that Court to Her Majesty in Council.