



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION

CIVIL CASE NO. E521 OF 2020 (O.S)

IN THE MATTER OF THE ENFORCEMENT OF A PROFESSIONAL UNDERTAKING

BETWEEN

MWAMUYE MZUNGU SOLOMON ADVOCATES LLP.....PLAINTIFF

AND

KIMANI HENRY NJUGUNA T/A NJUGUNA KIMANI NDUHIU ADVOCATES ...DEFENDANT

J U D G M E N T

1. **Mwamuye Mzungu Solomon Advocates LLP** came to court by way of Originating Summons against **Kimani Henry Njuguna T/A Njuguna Kimani Nduhiu Advocates** seeking to enforce a professional undertaking dated 18/11/2020.

2. The summons was supported by the affidavit of **Allan Mwamuye Muye Mzungu** who stated that he was an advocate of the High Court trading in the name of **Mwamuye Mzungu Solomon Advocates LLP**.

3. His case was that he had been instructed to act for **Dorica Ayugu Iyadi**, in the sale of **apartment No. A3 on L.R. No. 330-583 Salama Park Estate**, Ruiru Road to **Allan Ikok Adungo and Rodah Kalondu Kyalo**.

4. That it was a term of the agreement that all monies received by the defendant as purchase price prior to the successful registration of the property would be held by the defendant in trust for the plaintiff's client. That the plaintiff's client received some money directly into her account from the purchaser, save for Kshs. 5,640,000/= which was received by the defendant but not disbursed.

5. That the defendant issued a professional undertaking to the plaintiff vide a letter dated 18/11/2020. In that undertaking, the defendant undertook to pay the plaintiff's client, **Dorica Ayugu Iyadi**, the said sum of Kshs. 5,640,000/= by 24/11/2020.

6. Despite the sale having been completed and the terms of the professional undertaking becoming operative, the defendant failed to honour the same necessitating the filing of this suit.

7. Despite being served with the pleadings and notices, the defendant did not respond nor participate in this proceedings.

8. This Court has carefully considered the record. A professional undertaking is defined in the encyclopedia of Forms and Precedents 5<sup>th</sup> Edition at page 581 as:

**"An equivocal declaration of intention addressed to someone who reasonably places reliance on it and made by a solicitor or member of the solicitor's staff in the course of practice. An undertaking is therefore a promise made by a solicitor or on his behalf by a member of his staff, to do or refrain from doing something"**

9. It is also defined in Halsbury's Laws of England 4<sup>th</sup> edition re-issue, volume 44(1) at page 223 note 1 as;

**"an unequivocal declaration of intention addressed to someone who reasonably places reliance on it and made by a solicitor or a member of staff in the course of practice or a solicitor as 'solicitor' but in the course of practice whereby the solicitor becomes personally bound"**

10. The plaintiff averred that the defendant issued a professional undertaking vide a letter dated 18/11/2020 a copy of which he produced. It is in the letterhead of the defendant and signed by him. In that letter, the defendant promised to pay to the plaintiff's client, **Dorica Iyadi**, Kshs. 5,640,000/- not later than 24/11/2021. To this Court, that constituted a professional undertaking within the legal definition of a professional undertaking as known in law.

11. The averments by the plaintiff were neither controverted nor challenged. They remain the truth. The professional undertaking having been issued by the defendant in his position as an advocate, the same is enforceable against him.

12. Accordingly, the Court finds the plaintiff's suit be meritorious and judgement is entered accordingly. The defendant is directed to pay to Dorica Ayugu Iyadi through the plaintiff the balance of the proceeds from the sale of **Apartment No. A3 on LR No. 330-583, Salama Park Estate, Riara Road Nairobi**, in the sum of Kshs. 5,640,000/-. Interest thereon shall run from the date of judgment.

13. The defendant shall also bear the costs of the suit.

It is so decreed.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF AUGUST, 2021**

**A. MABEYA, FCI Arb**

**JUDGE**