



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC APPLICATION NO. 47 OF 2017

NELLY NAFULA MUTUA APPLICANT

VERSUS

SHIV AJI SIMON RESPONDENT

RULING

What is before the court for determination is the applicant's chamber summons dated 25th January, 2017 brought under **Section 60 (11) of the Advocates Act**, seeking the following orders:

1. Spent;
2. *The Order of the Law Society of Kenya Disciplinary Tribunal issued in Disciplinary Tribunal Cause No. 136 of 2015 on 19th September, 2016 filed herein be adopted and enforced as a judgment of this Honourable court;*
3. *The Honourable court do give the applicant leave to enforce the said order as a decree of this Honourable court;*
4. *The court be pleased to direct that the costs of this application be borne by the respondent.*

The application is based on the grounds that:

- a) *A report of the Disciplinary proceedings in Disciplinary Tribunal Cause No. 136 of 2015 was duly filed in court vide a letter dated 25th October, 2016 and a notice of filing was duly served upon the respondent.*
- b) *That no appeal has been filed by the respondent against the said decision by the Disciplinary Committee which was made on 19th September, 2016.*
- c) *That the Disciplinary Tribunal made an award against the respondent for payment of KShs.6,500,000/= plus interest of KShs.10,000/=.*
- d) *The respondent has been issued with a 21 days' notice requiring her to pay but has failed to do so.*
- e) *The applicant desires to enforce the award and urges the court to adopt the same.*

It is supported by the affidavit of **NELLY NAFULA MUTUA** in which she has deponed that on or

about August, 2015, she instructed the respondent, who was her former advocate, to act for her in a transaction involving **LR NO. NAIROBI 209/11378/64**, in which the respondent, as her advocate, was paid KShs.6,500,000/= for transmission to her account which the respondent refused and/or failed to transmit to her.

That she successfully lodged a complaint with the Disciplinary Tribunal in Disciplinary Tribunal Cause No. 136 of 2015 which was heard and determined and an award made on 19th September, 2016 in her favour. That no appeal has been preferred against the said decision and she desires to enforce the award. She has urged the court to grant her leave to enforce the same.

The court has considered the application and the submissions by the counsel for the applicant. The application proceeded ex-parte as the respondent failed to attend court and/or file a response to the application despite having been served.

This matter arises from the proceedings of the Advocates Disciplinary Tribunal in Cause No. 136 of 2015 wherein the respondent was ordered to pay a sum of KShs.6.5 million plus costs assessed at KShs.10,000/= and interest.

The respondent was issued with a 21 days' Completion Notice requiring her to pay the said sum but she has failed to do so. She has not preferred an appeal against the decision since 2016 when the order was issued by the Tribunal.

In the circumstances of this application, I see no reason why the orders sought herein should not issue. The application is hereby allowed in terms of prayer 2. The costs of the application are awarded to the applicant.

Dated, signed and delivered at Nairobi this 20th day of April, 2017.

.....

L NJUGUNA

JUDGE

In the presence of:

..... **for the Applicant**

..... **for the Respondent**