



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**MISCELLANEOUS CAUSE NO. 373 OF 2016**  
**IN THE MATTER OF RUARAKA SABUNI DEVELOPMENT CO.**  
**LTD.....APPLICANT**

**-VERSUS -**

**IN THE MATTER OF MARTIN KIAI NUTHU T/A KIAI NUTHU & ASSOCIATES,**  
**ADVOCATES.....RESPONDENT**

**RULING**

1. The application before the court is for the delivery to the Applicant, of a Cash Account in respect to monies paid to the account of the Respondent as 10% deposit, in respect to the sale of **L.R. No. 13338/9 (Original 1338/4/5)**.
2. As far as the applicant was concerned the said payment of 10% deposit was in the sum of Kshs. 10,500,000/-.
3. The money was allegedly paid by **WELDING ALLOYS LIMITED**, who purchased the land in issue, from the Applicant.
4. In response to the application, the Respondent, **MARTIN KIAI NUTHU Trading As KIAI NUTHU & ASSOCIATES ADVOCATES**, confirmed that he did receive the deposit in question. He said that the deposit was paid to him in December 2012.
5. The Respondent says that after he received the deposit, 2 directors of **RUARAKA SABUNI DEVELOPMENT Co. LIMITED** approached him. The said directors are **GEORGE GATHECA** (*the Chairman*) and **SAMMY KARIUKI** (*the Secretary*), and they asked the Respondent to release the funds to them.
6. The Respondent later released funds to the 2 directors as follows;
  - a. **Sammy Kariuki – Kshs. 100,000/- on 3<sup>rd</sup> March 2011; That was received on behalf of the Company.**
  - b. **George Gatheca – Kshs. 500,000/- on 8<sup>th</sup> January 2013; That was paid through George’s Company Friends Coffee & Tea Merchants Engineering.**
  - c. **Sammy Kariuki – Kshs. 500,000/- on 8<sup>th</sup> January 2013; That sum was credited directly to**

**Sammy's Bank Account.**

**d. Sammy Kariuki – Kshs. 250,000/- on 10<sup>th</sup> April 2013; That was credited directly to Sammy's Bank Account.**

7. The Respondent did produce copies of documents to demonstrate all those 4 payments.

8. In his further affidavit, George Gatheca said that Sammy Kariuki confirmed to him that he had received the money from the Respondent. However, Sammy had explained that the money was advanced to him pursuant to a personal arrangement.

9. As the arrangement was a personal one, George Gatheca said that it was never sanctioned by the Company.

10. It was noteworthy that George Gatheca did not deny the payments which the Respondent made to him, save to say;

**“15. THAT an advance to the directorship of the company of Kshs. 950,000.00 is acknowledged but I wish to state that the said amount was specifically on a friendly basis to be reimbursed upon conclusion of the transaction between the parties?.**

11. Whether the Respondent had paid out Kshs. 1,300,000/- as he has said, or Kshs. 950,000/- as the 2 directors have indicated, there is still a large sum of money which remains unaccounted for, out of the deposit of Kshs. 10,000,000/-.

12. Furthermore, even if the Respondent was entitled to a fee of Kshs. 3,600,000/-, as he has alleged, there would still be a need for him to give an account.

13. Incidentally, the figure of Kshs. 3,600,000/- was derived from paragraph 25 of the Respondent's Replying Affidavit, where he says that he was to retain that sum as his fees for the work he had done.

14. The parties do not appear to be in agreement about the fee payable to the Respondent, in respect of the work he had done with regard to the sale of **L.R. No. 13338/9 (original 1338/4/5)**.

15. If the parties fail to agree on the fee payable, the Respondent may have to present his Advocate/Client Bill of Costs for taxation.

16. On a *prima facie* basis, it appears to me that the sum of Kshs. 5,100,000/- remains un-accounted for, at the very least. That figure is derived from the Respondent's own contention that after he had paid George Gatheca and Sammy Kariuki a total of Kshs. 1,300,000/-; and after assuming that he was entitled to retain Kshs. 3,600,000/- as his fees.

17. I do hereby direct the Respondent to provide the Applicant and the Court with a detailed “*Cash Account?*” within the next 30 days.

18. The court will fix a returnable date, when the case will be mentioned, with a view to verifying compliance with this order.

19. The Respondent shall pay to the Applicant, the costs of the Originating Summons.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> day of May 2017.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

Gacomo for the Applicant

No appearance for the Respondent

Collins Odhiambo – Court clerk.