



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISC. APPLICATION NO. 51 OF 2017**

**MAURIZIO DALPIAZ.....APPLICANT**

**VERSUS**

**1. LAHORI JETHANAND MANGHNANI**

**2. NABHAN SWALEH SALIM**

**3. GEORGE FREDRICK ODULL all practicing as SACHDEVA & COMPANY and/or**

**4. SACHDEVA, NABHAN & SWALEH ADVOCATES.....RESPONDENTS**

**RULING**

1. The matter before me has been brought by way of Originating Summons under Order 52 rule 4 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 48 of the Civil Procedure Act, Rule 12 of the Advocate (Accounts) rules, 1966 and all other enabling laws. The Originating Summons is dated 3<sup>rd</sup> March, 2017. It seeks the following orders:-

(i) That the firm of Sachdeva & Company and/or Sachdeva Nabhan & Swaleh Advocates do deposit in court the sum of Euros 60,142 being sums transferred by the applicant to the said firm as balance of the purchase price of portion Number "A" L.R Number 5054/275;

(ii) That the firm of Sachdeva & Company and/or Sachdeva, Nabhan & Swaleh Advocates deliver to the court the statement of accounts in respect to the said deposit; and

(iii) That costs be to the applicant.

2. The application is supported by the grounds in support of it and affidavit of Maurizio Dalpiaz sworn on 3<sup>rd</sup> March, 2017. The respondents' Counsel Kamoti Omollo & Company filed a memorandum of appearance on 30<sup>th</sup> March, 2017 but filed no replying affidavit on behalf of the 1<sup>st</sup> respondent ostensibly for the reason that Mr. Manghnani the (1<sup>st</sup> respondent) of Sachdeva & Company Advocates has been ailing for some time. The 2<sup>nd</sup> respondent filed a replying affidavit on 30<sup>th</sup> May, 2017.

3. Mr. Omollo for the respondents stated that Order 52 rule 10(2) of the Civil Procedure Rules provides that an affidavit in reply to an application of this nature is not necessary and therefore sought audience to make submissions for all the respondents in the absence of replying affidavits by the 1<sup>st</sup> and 3<sup>rd</sup> respondents.

4. Mrs. Omondi for the applicant submitted that the application herein arises from a sale agreement dated 24<sup>th</sup> November, 2004 for purchase of suit property LR No. 5054/275 for the sum of Kshs. 10,000,000/= where the firm of Sachdeva & Co., represented the vendor and the purchaser, who paid a deposit of Kshs. 4 Million. Through a subsequent agreement dated 28<sup>th</sup> September, 2006, the purchaser was to pay Kshs. 6 Million to the said law firm on receipt of a title deed. The said amount was to be held in trust on behalf of the purchaser, who paid 60,142 Euros, which was transferred to the account of Sachdeva & Co. Advocates who acknowledged receipt of the said money.

5. Counsel submitted that the property in issue was not transferred to the applicant, which resulted in the filing of Mombasa ELC case No. 206 of 2015. Mrs. Omondi further stated that Sachdeva & Co. Advocates admitted having received Euros 59,968.60 and not 60,142 and that the former amount translates to Kshs. 5,352,273.00. In her view, the exchange rate at the time of transfer should have yielded Kshs. 6 Million.

6. She prayed for the law firm of Sachdeva & Co. Advocates to be compelled to produce the statement of accounts to show that the amount received was less than that wired. She further stated that the said law firm is no longer representing the applicant as her law firm had been instructed by him. Counsel added that the law firm of Soni & Muthee Advocates was representing the vendor but they were unwilling to open a joint bank account for deposit of the amount in issue. Counsel prayed for the sum of Kshs. 6 Million to be deposited in court pending the hearing and determination of the ELC case. Mrs. Omondi concluded by stating that this court has jurisdiction to supervise Advocates thus the present application.

7. In response to the foregoing, Mr. Omollo submitted that Mr. Nabhan Swaleh filed an affidavit on 30<sup>th</sup> May, 2017 wherein he states that the law firm of Sachdeva Nabhan & Swaleh Advocates was registered on 9th February, 2015. A copy of the certificate of registration of the business name was attached to the said affidavit. Counsel submitted that it is deposed in the said affidavit that Mr. Manghnani is not a partner in the law firm of Sachdeva Nabhan & Swaleh Advocates, while Mr. George Fredrick Odull is an employee of the said law firm, as such, in Counsel's view, the claim against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents is a non-starter.

8. It was further submitted that Counsel for the applicant has not indicated in paragraph 1 of the application why the amount of Euros 60,142 should be deposited in court but only stated from the bar that the deposit was to be made pending the hearing of ELC case No. 206 of 2015 (ELC case), Linicus Investments Limited vs Maurizio Dalpiaz.

9. In reference to the agreement dated 28th September, 2006 Mr. Omollo submitted that it involves two parties yet the vendor, Linicus Investments Ltd., has not been made a party to this application. He made reference to a letter attached to the applicant's affidavit addressed by the 1<sup>st</sup> respondent to Messrs Omondi Waweru & Co. Advocates stating that at the date the deposit was made, the bank exchange rate was Kshs. 89.25 to the Euro, thus an amount of Kshs. 5,352,273.00 was realized and not the amount of Kshs. 6 Million as alleged. Counsel stated that they could deliver to the applicant the statement of accounts with regard to the said payment. In his view, this application should have been made in the ELC case. He prayed for dismissal of the Originating Summons.

10. In a rejoinder to the foregoing, Mrs. Omondi informed the court that the firm of Sachdeva & Co Advocates is no longer in operation. She added that it is the High Court which has supervisory jurisdiction over Advocates and not the Environment and Land Court. She prayed for the amount in issue to be deposited in court.

11. On the issue of this court having jurisdiction to deal with the present application, the provisions of Order 52 rule 4 of the Civil Procedure Rules are anchored on the Advocates Act Cap 16 Laws of Kenya. Order 52 rule 4(1) provides as follows:-

***"1. Where the relationship of advocate and client exists or has existed the court may, on the application of the client or his legal personal representative, make an order for-***

***(a) The delivery by the advocate of a cash account;***

***(b) The payment or delivery up by the advocate of money or securities;***

***(c) The delivery to the applicant of a list of the money or securities which the advocate has in his possession or control on behalf of the applicant;***

***(d) The payment into or lodging into court of any such money or securities;***

***(e) The delivery up of papers and documents to which the client is entitled.***" (emphasis added).

12. There is no doubt whatsoever that the law firm of Sachdeva & Company Advocates received a sum which he refers to as Euros 60,000. That is explicitly admitted in a letter written on 15th March, 2008 to the law firm of Omondi Waweru & Co. Advocates. The said letter forms part of the bundle of documents attached as MD3 to the applicant's supporting affidavit. In the said letter, Mr. Manghnani however indicated that the bank exchange rate was 89.25 (sic) thus the sum of Euros 60,000 yielded the sum of Kshs. 5,352,273.00 and not Ksh. 6 Million. The agreement made on 28th September, 2006 attached to the said affidavit and marked as MD2 states in the 5<sup>th</sup> paragraph that Messrs Sachdeva & Company would hold the funds in trust and pay the same to the vendor on successful registration of the transfer in favour of the purchaser at the land registry Kilifi.

13. The applicant in paragraph 10 of his affidavit deposes that the sale transaction has never been completed and the matter is pending in court in ELC case. Contrary to Mr. Omollo's submissions, Mrs. Omondi's application for the deposit of the Kshs. 6 Million in court pending the determination of the ELC case, is well covered in paragraph 23 of the applicant's affidavit.

14. The affidavit of the 2<sup>nd</sup> respondent and the annexure thereto, being a certificate of registration shows that the law firm of Sachdeva, Nabhan and Swaleh Advocates was registered as number BN/2015/339376 under the Business Names Act, on 9th February, 2015. The sole proprietor of the said business is Mr. Nabhan Swaleh Salim. It is thus clear that the said Advocate was not a partner in the law firm of Sachdeva & Company Advocates when the issue the subject of this application arose.

15. Counsel for the respondent submitted that the seller of the property in issue, Linicus Investments Limited should have been made a party to this suit. Although that would have been the ideal position, failure by the applicant to enjoin the said party does not render the Originating Summons fatally defective as the applicant's aim is to safeguard the money that he paid to the 1<sup>st</sup> respondent to hold in trust pending the completion of the sale transaction. The 3<sup>rd</sup> party therefore stands to suffer no prejudice at all for its non-joinder in this application.

16. Having considered the submissions of both Counsel, the affidavit of the applicant and the replying affidavit of the 2<sup>nd</sup> respondent in which he exonerates himself from the transaction in issue and discloses that the 3<sup>rd</sup> respondent is his employee, this court finds that the orders sought are justified against the 1<sup>st</sup> respondent.

17. In **Ufanisi Capital & Credit Limited vs Stephen Kipkenda Kiplagat & Another** [2011] eKLR, Dulu J granted orders for the deposit an amount that was in issue in court to safeguard it.

18. The orders I make here below are anchored on the Originating Summons herein:-

(i) Lahori Jehanand Manghnani t/a as Sachdeva & Co Advocates shall within 21 days from today deliver to the applicant's Advocate a statement of accounts in respect to the sum of Euros 60,142 transferred to its account by the applicant;

(ii) Lahori Jehanand Manghnani t/a Sachdeva & Company Advocates shall deposit in court under

the present case file number, the equivalent of Euros 60,142, in Kenya shillings, being the amount transferred by the applicant to the said law firm. The said amount shall be deposited with the court within 21 days from today;

(iii) In the event that the law firm of Sachdeva & Co. Advocates is no longer a going concern, Mr. Lahori Jehanand Manghnani Advocate will personally comply with order Nos. (i) and (ii) above;

(iv) Counsel for the applicant herein will move the court for release of the said money at an opportune time; and

(v) Costs are awarded to the applicant.

**DELIVERED, DATED and SIGNED at MOMBASA on this 25<sup>th</sup> day of September, 2017.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Mrs. Omondi for the applicant

Mr. Omollo for the respondent

Mr. Oliver Musundi - Court Assistant