



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION NO. 143 OF 2000 (O.S.)**

**IN THE MATTER OF AN APPLICATION FOR THE DELIVERY OF AN ADVOCATE/CLIENT  
STATEMENT OF ACCOUNT**

**IN LUCY WANJIRU KAMAU & VICTORIA FINANCE COMPANY LIMITED**

**AND**

**IN THE MATTER OF THE ADVOCATE ACT**

**BETWEEN**

**LUCY WANJIRU KAMAU.....APPLICANT**

**VERSUS**

**K.H. OSMOND ADVOCATES.....RESPONDENT**

**RULING**

1. The originating summons dated 24<sup>th</sup> September, 2008 is expressed to be brought under Order LII Rule 4(1) a and (2) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act. The Applicant seeks orders that the Respondent do deliver to her their advocate/client bill of accounts in HCCC No. 2163 of 1994., Lucy Wanjiru Kamau v. Victoria Finance Company Limited ('*the suit*') in which the Respondent was on record for and on behalf of the Applicant.
2. Vide her affidavit in support of the summons sworn on 24<sup>th</sup> September, 2008 the Applicant alleged that the Respondent represented her in the suit wherein she was awarded KShs. 500,000/= plus costs and interest totalling to KShs. 973,949/40 as at 12th September, 1995. She was later informed that the Defendant company had released to the Respondent a sum of KShs. 1,029,518/00 towards repayment of her debt. She lamented that she has only received KShs. 600,000/00 from the Respondent and that she was informed that the balance went towards settling the Respondent's professional fees. She stated that despite requests she has not been furnished with a comprehensive statement of accounts detailing the basis under which the Respondent reached the figures on which they purport to calculate their fees occasioning the filing of this summons.
3. When the summons came up for hearing, learned counsel for the Applicant Mr. Osiemo submitted that he relies on the grounds set out on the face of the summons while learned counsel for the Respondent Mr. Orina submitted that Mr. H.K. Osmond was not in a position to give account since it is Mr. Mwenesi who dealt with the Applicant and that payment was made to him. Mr. Orina referred court to the affidavit in support of the chamber summons dated 5<sup>th</sup> May, 2000.
4. H.K. Osmond contended in the affidavit referred to by Mr. Orina that out of KShs. 1,029,518/00 Mr. Mwenesi recovered from the Defendant, KShs. 730,000/00 was paid to the Applicant. He gave an account of how part of the money was spent thus; KShs. 80,000/00 was paid to the Applicant's daughter for her rent, KShs. 50,000/00 was transferred to the Respondent's office account after a fee note to that effect, KShs. 200,000/00 was Mr. Mwenesi's entitlement for the hours he invested in the suit. He stated that on the basis of the foregoing, Mr. Mwenesi directed that KShs. 225,400/00 be paid to National Industrial Credit for his Mercedes Benz which he was acquiring on hire purchase. He stated that Mr. Mwenesi was given a leeway by the Respondent to deal with clients trusting that being a senior and respectful advocate, he would uphold clients'

confidence and trust and deal with clients transparently and honestly. He stated that since Mr. Mwenesi left the Respondent a number of clients have made claims for refund or for accounts of files he handled or fraudulently earned fees and that this is not an isolated incident. He stated that he believes Mr. Mwenesi and the Applicant had reached an agreement as to the amount of payment. He stated that the Respondent only received KShs. 50,000/00 from the Applicant and it is entitled to fees amounting to KShs. 74,264/00. He stated that Mr. Mwenesi pocketed KShs. 3,400/00 from KShs. 10,000/00 the Applicant deposited and that the balance of the Respondent's fees is KShs. 18,264/00. That for the aforesaid reason, the Respondent is holding the Applicants KShs. 14,248/50 in the Applicant's client account for which the Respondent is exercising a lien on. He called for the enjoining of Mr. Mwenesi as a party to this summons for the proper and final determination of the issues raised by the Respondent for justice to prevail.

5. I have considered the depositions by the parties herein, it is my considered view that the Defendant's proposition to have Mr. Mwenesi enjoined in this proceedings is reasonable. I make orders that the Defendant does facilitate the enjoining of Mr. Mwenesi since it is them who claim that he was in conduct of the Plaintiff's matter. I am satisfied that enjoining Mr. Mwenesi will help in canvassing the issues herein justly and for the interest of all parties. Orders accordingly.

Dated, Signed and Delivered in open court this 27<sup>th</sup> day of March, 2015.

J. K. SERGON

**JUDGE**

In the presence of:

.....for the Appellant

.....for the Respondent