



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO 471 OF 2011 (O.S.)**

**1. JONATHAN FREDERICK LAUTZE**

**2. CHRISTINE MOCHECHE MAKORI.....PLAINTIFFS**

**V E R S U S**

**MAOBE MAOTSETUNG**

**(t/a MAOBE MAOTSETUNG & CO ADVOCATES).....DEFENDANT**

**R U L I N G**

1. The Plaintiffs are the former clients of the Defendant who is an advocate of this court. They have sought by **amended originating summons dated 5<sup>th</sup> April 2012** (the original originating summons is dated 14<sup>th</sup> September 2011) two main orders as follows -

**“1. That the Defendant do deliver a cash account to the Plaintiffs for the sum of KShs 2,780,000/00 made up of:**

**a . KShs 2,480,000/00 being monies paid by the Plaintiffs to the Defendant on 20<sup>th</sup> November, 2009 to cover the balance of the purchase price, stamp duty fees and legal fees to facilitate the completion of the purchase of plot numbers 15 and 20 (hereinafter together referred to as “the two plots”) on Land Reference Number 8784/33).**

**b. KShs 300,000/00 being monies paid to the Defendant on or about September, 2010 by Kamotho Maiyo & Mbatia, the advocates for Kingdom Capital Africa Limited who were the vendors of the two plots, being refund of the deposit that had been paid by the 1<sup>st</sup> Plaintiff for the purchase of plot number 20 for onward transmission to the 1<sup>st</sup> Plaintiff.**

**2. That the Defendant do pay to the Plaintiffs the sum of KShs 2,780,000/00 or such sum as may be found due on the account together with interest at court rates.”**

2. The summons is brought under **Order 52, rule 4 (1) of the Civil Procedure Rules (the Rules)** which provides –

**“4(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 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 in court of any such money or securities;**
- e. the delivery up of papers and documents to which the client is entitled.”**

3. The Plaintiffs’ case as set out in the supporting affidavit sworn by the 2<sup>nd</sup> Plaintiff is that they gave to the Defendant a total of KShs 2,780,000/00 in respect to two plots of land they were purchasing. The Defendant was acting for them in the transaction. In the event the transactions were not completed, and in a number of e-mails the Defendant undertook to refund the sums to the Plaintiffs. Those e-mails are annexed to the supporting affidavit. He did not make the refund even after a formal letter of demand addressed to him by the Plaintiffs present advocates.

4. The Defendant did not file any papers in response to the originating summons despite service. Nor did he appear at the hearing, again despite service.

5. The Defendant clearly embezzled funds deposited with him by the Plaintiffs in his capacity as their advocate in two land sale/purchase transactions. He then moved from his known offices and disappeared, and had to be served by registered post with leave of the court. It is a callous case of malpractice by an advocate of this court.

6. I have no hesitation at all in granting the reliefs sought in the amended originating summons. I will in the first instance grant prayer 1 of the application and direct that the Defendant do deliver a cash account to the Plaintiffs in respect to the sum of KShs 2,780,000/00 paid to him by the Plaintiffs **WITHIN FOURTEEN (14) DAYS** of service upon him of this order. That service may be by registered post.

7. There will be liberty to apply thereafter in respect to prayers 2 and 3 of the amended originating summons.

8. Those will be the orders of the court for now.

**DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF APRIL 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 4<sup>TH</sup> DAY OF APRIL 2014**