



IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO. 209 OF 2011

PETER AGUKO ABOK.....1ST PLAINTIFF

PETRONILA AKECH.....2ND PLAINTIFF

VERSUS

CHARLES LUTTA KASAMANI C/O KASAMANI &

CO. ADVOCATES.....DEFENDANTS

R U L I N G

- 1). The notice of motion dated 12-11-2012 by the plaintiffs/applicants pray for the following reliefs:
 1. **Judgment be entered against the defendant for the sum of Kshs. 913,030.20/= together with interest thereon at the average prevailing commercial rate of 23% pa from 9-7-2014 until payment in full.**
 2. **That by way of an alternative judgment an admission be entered for the plaintiff against the defendant for the sum of Kshs. 580,000/= being the sum admitted by the defendant in his papers filed therein together with interest at the average commercial of 23% from 6-6-2005 till payment in full.**
 3. **Costs.**
- 2). The facts herein are not in dispute. The respondent acted for the applicants in Kisumu HCC No. 135 of 1996. Judgment was awarded in favour of the applicant for the sum of Kshs. 913,030.20. The cheque was issued in favour of the respondent for the said amount which was obviously to be transmitted to the applicant. This cheque No. 000863 was collected on 6-6-2005 by one Wesonga whom I believe was the respondent's agent.
- 3). The respondent filed grounds of opposition which has raised some legal grounds. In his reply however to the originating summons the respondent does not deny the indebtedness. He agrees that he found himself in some trouble with LSK where he was suspended. He further concedes that he owes the appellant the sum of Kshs. 550,000/= and he prays to settle the same by installments.
- 4). I have perused the submissions by the parties herein. The respondent's assertion in respect to the originating summons is to say the least on attack on form rather than substance. The respondent save for the exact amount due does not dispute the indebtedness. Frankly, since the respondent was restored by LSK, there is nothing to show that he has mitigated this indebtedness. Actually this was professional misconduct on his part. There was no justification in failing to pay the client his dues less his fees if any once the same was paid. Moreover, the respondent's application for indulgence to pay by installments never materialised till this application was effected.

5). In my finding therefore, I think this is such a suit where Article 159 of the constitution seeks to cure as well as the provisions of section 3 and 3A of the Civil Procedure Act. As Much as there may not have been directions taken in respect to the originating summons, that does not prevent this court from invoking its inherent jurisdiction to determine this suit once and for all.

6). The parties have not shown this court any agreement to the effect that there was an agreement to pay the sum of Kshs. 686,000/= to the applicant save for the dishonoured cheque for the said amount. However, there is an admission that the sum of Kshs. 100,000/= was acknowledged by the applicant. In the premises I shall allow the application which in effect disposes the entire suit. The amount of Kshs. 913,030 is reduced by Kshs. 100,000/= thus making a total of Kshs. 813,030.20/=. This amount shall attract a penalty of 14% interest per annum from 6-6-2005 when the cheque was collected by the respondent from court. The issue of the respondent's fee can be argued separately as there is no evidence to that effect herein.

7). Consequently, the application is allowed on the following terms:

- a. **The amount of Kshs. 813,030/= together with interest from 6-6-2005 at 14% per annum be paid to the applicants within 30 days from the date herein.**
- b. **The costs of this suit and the appeal shall be borne by the respondent.**

Orders accordingly.

Dated, signed and delivered at Kisumu this 23rd day of July, 2014.

H.K. CHEMITEI

JUDGE