



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Case 630 of 2009

ALICE WANGECI THUO.....PLAINTIFF

-VERSUS-

ALICE WAHOME T/A ALICE WAHOME ADVOCATE.....DEFENDANT

RULING

The application before the Court is brought by an Originating Summons dated 19th August 2009, and is made under **Order XXXVI Rule 7, and Order LII Rule 4 of the Civil Procedure Rules; Section 3A of the Civil Procedure Act (Cap 21) Laws of Kenya and All Other Enabling Provisions of the Law.** The Applicant thereby seeks from the Court orders that –

- 1. The Defendant do within Fourteen (14) days deliver to the Plaintiff and file in this court a cash account of all monetary dealings between the parties hereto as Advocate and Client or on behalf or otherwise.**
- 2. The Defendant do within Fourteen (14) days give an account to the Plaintiff of all the proceeds of the Sale received by the Defendant on behalf of the Plaintiff in respect of sale of L.R. No. 4953/1022-Thika.**
- 3. The Defendant do within Fourteen (14) days pay the Plaintiff such sums as may be found due to the Plaintiff upon giving of accounts on the sale of L.R. No. 4953/1022 – Thika.**
- 4. That in default of any sums that would be due from the defendant to the plaintiff judgment for such sums be entered against the Defendant.**
- 5. The Defendant do within Fourteen (14) days deliver to the Plaintiff the Client file for Nairobi HCCC NO. 1827 OF 1998 (O.S) – ALICE WANGECI THUO AND STANLEY THUO which is in her possession having ceased to act for the plaintiff in that matter.**
- 6. The Defendant do pay the Plaintiff the costs of this suit.**

The application is supported by the annexed affidavit of ALICE WANGECI THUO the plaintiff herein and is based on the grounds that –

- (a) The Defendant generally acted as an advocate for the Plaintiff.**
- (b) That among the matters wherein the Defendant acted as her Advocate is in respect of the Sale of L.R. No. 4953/1022 Thika; wherein the plaintiff was to receive the proceeds of the sale.**

- (c) That the Defendant has never disclosed to the deponent the purchase price of the said parcel of land; she has however informed the deponent that the said property was indeed sold.
- (d) That despite the sale being finalized and the deponent continued demands to the Defendant to be supplied with the accounts for the proceeds emanating from the said sale the deponent's demands have not borne any results.
- (e) That the Defendant owes the Deponent monies emanating from the sale of the aforementioned property as no monies have even been paid to the deponent as the beneficiary.
- (f) That as a result, the deponent previously instructed other Advocates to demand for the Accounts from the Defendant and she has failed, despite the said demands, to so account.
- (g) That the Defendant similarly acted on behalf of the Deponent in High Court Civil case No. 1827 of 1998 (OS) –ALICE WANGECHI THUO AND STANLEY THUO; a suit which is still pending in Court; and which she has failed to prosecute to its conclusion.
- (h) That the Deponent on several occasions requested for the file relating to the said case from the Defendant who has persistently failed to release the file.
- (i) That from the foregoing, it is clear that the defendant has not been acting in the interest of the deponent and therefore it is necessary that she forward to the deponent her file to enable her instruct another Counsel in the matter.
- (j) That the Defendant's refusal to forward the Deponent's file is prejudicial to the deponent's efforts to conclude the said case.

Opposing the application, the Defendant filed a replying affidavit sworn by ALICE MUTHONI WAHOME, the Respondent herein, on 23rd November, 2009. In that affidavit, the Deponent deposes that the Applicant has been her client since the year 1988 during which period she has provided professional legal services to her by acting for her in various matters; that the amount of fees paid to the deponent by the plaintiff/Applicant is KShs. 120,000/= only; that when the Applicant approached the deponent to act for her, the Applicant had no money to pay the legal fees and only paid KShs. 15,000 by way of deposit. The rest of the money (KShs. 115, 000) was retained by the deponent after recoveries made in the Divorce Cause. The property is still neither registered in the name of the Purchaser, nor is the purchaser in possession thereof. Therefore, no money is due and payable to the Applicant until the sale of **L.R. No. 4953/1022 Thika** is legally complete. The Respondent is holding the sale proceeds pending the legal completion of the sale of the suit property and /or determination of High Court Civil Case No. **596 of 2007**. Furthermore, the applicant owes the Deponent a sum of money that is in excess of KShs. 5,000,000/= by way of outstanding legal fees and disbursements. The Deponent intends to file various Bills of costs in respect of all the matters that she acts or has acted for the Applicant and thereafter require the Applicant to settle the legal fees in accordance to the law unless the amount payable is agreed between the parties.

Both the Applicant and the Respondent filed written submissions.

Having considered the pleadings, written submissions of the respective parties, and the authorities cited therein, I take the view that the main issue for determination is whether the applicant is entitled to the orders sought.

It is the applicant's case that the Respondent has conceded to having received money on behalf of the Applicant. In her response, the Respondent contends that the suit property has not been transferred to the intended Purchaser and that the property is still registered in the name of Mr. Stanley Thuo, who is the applicant's former husband and is also the judgment debtor in **NAIROBI HCCC NO. 1827 OF 1998**. She also maintains that Mr. Stanley Thuo is still in occupation of the said property.

I agree with the Respondent that the proceeds of the purported sale to the intended purchaser could only become due and payable to the Applicant once the intended sale is completed. It must be noted that as an Advocate, the Respondent has a duty to hold money as a stakeholder until the sale is complete. This court is of the view that in the absence of the completion of the sale, the applicant has no right to demand the release of the funds held by the Respondent while the transfer of the title has not been effected which renders the sale incomplete.

The Respondent has also shown that there is a suit pending wherein the intended purchaser has prayed for a refund of his money. I concur with the Respondent that it would be imprudent and unreasonable for the Respondent to release the money to the Applicant at this stage since the suit has not been determined and its outcome is unknown.

The Applicant may wish to follow the right procedure to withdraw instructions from the Respondent in respect of all other matters being handled by the Respondent. In my view, the applicant has failed to follow the right procedures in withdrawing the instructions from the Respondent despite the fact that she acknowledges that their relationship is strained. Clearly, the right procedure should be followed in accordance with the provisions of the Advocates Act.

In the absence of sufficient material brought before this court and failure to adhere to the laid down provisions of the law, this court finds that the application is not meritorious and consequently it is hereby dismissed with costs to the Respondent.

Orders accordingly.

L. NJAGI

JUDGE

DATED and DELIVERED at NAIROBI this 15th day of November, 2012

OGOLA
JUDGE