



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI  
Civil Application 371 of 2008**

**IN THE MATTER OF RUMBA KINUTHIA ADVOCATE**

**AND**

**IN THE MATTER OF THE ADVOCATES ACT, CAP 16 OF THE LAWS OF KENYA**

**BETWEEN**

**MOSES KHAEMBA WASIKE.....APPLICANT**

**VERSUS**

**RUMBA KINUTHIA  
T/A RUMBA KINUTHIA & COMPANY ADVOCATES.....RESPONDENT**

**RULING**

This is a ruling in the Originating Summons dated 16<sup>th</sup> June 2008 and fled on the same date by the Applicant praying for orders:-

- “1. THAT the Respondent do render an account for the decretal amount and advocate fees in HCCC No. 2993 of 1995 NAIROBI.
2. THAT the Respondent to remit the balance of the decretal amount due to the Applicant.
3. THAT costs of this application be provided for.”

The Originating Summons is brought under Section 56 of the Advocates Act (Cap 16 of the Laws of Kenya), Order LII Rule 4 (1) (a), (b) and Rule 10 (1), Order XXX VI rule 7 of the Civil Procedure Act.

In accordance with a consent Court Order dated 22<sup>nd</sup> February 2010, the parties filed their respective written submissions on the basis of which I am writing this ruling.

The Respondent was instructed to represent this Applicant in High Court Civil Case No. 2993 of 1995 (HCCC No. 2993/1995) MOSES KHAEMBA WASIKE VS THE ATTORNEY GENERAL. On 18<sup>th</sup> March 2004, the Court in its judgment awarded Kshs.707,000/= plus costs and interest calculated at court rates to the Applicant herein.

It had been agreed by the parties that a retainer of 25% of the figure awarded as damages will be retained by the Respondent. According to the Applicant, the 25% was subsequently changed by hand and countersigned by the Respondent only to read 35%. The Applicant contents that he was not aware of such change and did not consent to it, even if he is a college educated person.

The Attorney General issued a cheque of Kshs.795,215/= payable to the Respondent in full and final settlement of the matter. The exact amount of money claimed by the Applicant is not clear. He says the Respondent made him sign a document purporting to pay the Applicant Kshs.440,000/= in full and final settlement of the final award but in reality the Respondent paid the Applicant Kshs.285,000/=.

He therefore argues that the Respondent still owes him Kshs.311,411.25 being the balance of the court award. However the Applicant says he is entitled to a total of Kshs.510,215/= the total decretal amount. The Applicant therefore filed this Originating Summons seeking orders requiring the Respondent to render an account of the decretal amount and Advocates fees and an order requiring the Respondent to remit the balance of the decretal amount due to the Applicant as well as the costs of this application.

According to the Respondent, the agreement was signed stating the Respondent would retain 35% over and above costs awarded, disbursements advances, court fees etc, of the total decretal amount. The Applicant knew that fact and is misleading the court. He retained a copy of the relevant instruction note which the Respondent says should be upheld the Respondent having handled the Applicant's case for 11 years and the Applicant having pocketed a substantial amount of money from the Respondent.

Moreover, it is premature for the Applicant to request for accounts whereas he has in writing committed himself to be patient until finalization of the matter as there is an appeal still pending filed by the Applicant in the Court of Appeal through the Respondent.

For me to conclude this ruling therefore: Whether the Respondent was or is accountable to the Applicant, the answer is yes. Whether the Respondent still owes money to the Applicant, the answer is yes, though the actual amount not determined in this ruling because the Respondent is still doing some work for the Applicant, notably with long delay. Whether the agreement between the Applicant and the Respondent herein is enforceable, the answer is not available under Order LII Rule 4(1) (a) and (b) of the Civil Procedure Rules.

Accordingly, I do hereby dismiss the Originating Summons dated 16<sup>th</sup> June 2008 with costs to the Respondent.

Dated this 30<sup>th</sup> day of April 2010.

J.M. KHAMONI

JUDGE

**Present**

Wandabwa Advocates for the Applicant  
Rumba Kinuthia & Company Advocates/Respondent  
Court Clerk: Kabiru.