

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Appli 1041 of 2005

PANCRAS NDUNGU KIRORI.....PLAINTIFF

VERSUS

FRANCIS MUTUA T/A MUTUA MBOYA & NZISSI ADVOCATES.....DEFENDANT

RULING

This application by way of Originating Summons brought by the Applicant under Order LII Rule 4 (1) (a) and (b) and Rule 2 of the Civil procedure Rules seeks orders that Mr. Francis Mutua Advocate do deliver to the applicant herein a detailed cash account in respect of monies received on the Applicant's behalf in respect of HCCC NO. 293 OF 1998 – FRANCIS NDUNGU KIRORI BVS. JOSEPH GITAU WAWERU & PAUL MBURU MUTHUMBI; that Mr. Francis Mutua Advocate do pay the Applicant herein within 7 days from the courts order, the full sum of monies with interest accruing since then at court rates, received on behalf of the applicant in the said suit; that the Respondent do bear the costs of this application.

The application is supported by an affidavit sworn by the Applicant on 7th July 2005. The facts as gathered from the affidavit evidence are that the Applicants motor vehicle registration NO. KAB 642B was involved in an accident. The Applicant filed a suit being HCCC NO. 293 OF 1998 and judgment was entered in his favour. He had instructed the Respondent to file and prosecute the suit. The judgment award was Shs.1,423,520/= plus costs and interest.

The total amount all inclusive was Shs.2,018,532/= and it was agreed by consent of the parties that payments would be as follows:-

- | | |
|--------------------------|----------------|
| 1. STALLION INSURANCE | Sh. 672,844/= |
| Less Legal fees | Sh. 248,712/= |
| Payable | Sh. 424,132/= |
| 2. PANCRAS NDUNGU KIRORI | Sh.1,345,688/= |
| Less Legal fees | Sh. 345,688/= |
| Payable | Sh.1,000,000/= |

The Applicant concedes that he owed the Respondent a sum of Shs.200,000/= which he had advanced to him as a friendly loan.

From the submissions by both counsel and the annexures on record, I have come to the conclusion that the Applicant is entitled to a sum of Shs.1,000,000/= less Shs.200,000/= which the Respondent had advanced to him as a friendly loan and which amount is not denied.

Accordingly it is ordered that the Respondent do pay the applicant a sum of Shs.800,000/=. The Applicant is also entitled to costs of this application and it is so ordered.

Dated and delivered at Nairobi this 17th day of July 2007.

J.L.A. OSIEMO

JUDGE