



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1172 of 2003

1. Land and Environmental Law Division

2. Subject of main suit:-i) Professional undertaking by an advocate of the High Court of Kenya on a Land transaction LR209/12908, Nairobi

ii) Order LII Civil Procedure Rules direction order LII r 10 Civil Procedure Rules

iii) Professional undertaking made on 21 October 1998 to pay sum of Ksh.3,117,782/20 being refund amount from the Commissioner of Lands towards intended purchase of LR 209/12908,Nairobi

iv) Advocate failed to pay.

v) Memo of appearance but failed to appear attend court through his advocate.

3. Arguments by applicant

i) Advocate failed to pay

ii) Requests judgment together with 25% interest

4. Held:

Order advocate to honour professional undertaking.

Judgment be and is duly entered against him with 12% interest rate and not 25% interest rate.

5. Case law – nil

6. Advocates:

M. Billing of Guram & Co. Advocates for the plaintiff/applicant

Musyoka Annan & Co. Advocates for the defendant/respondent-absent

VERSUS

RAMESH PATEL t/a RAMESH K. PATEL ADVOCATE.....DEFENDANT

RULING

I: Application under order LII Civil Procedure Rules Advocates Professional undertaking.

A: Background of application.

1: M/s Skywhite Properties Limited are the plaintiffs in the Originating Summons brought under order LII rule 6 a Civil Procedure Rules Cap.21 Laws of Kenya and under the advocates Act Cap.16 Laws of Kenya.

2. Ramesh K. Patel an advocate of the High Court of Kenya and trading as Ramesh K. Patel Advocate gave a professional undertaking to M/s Ndungu & Njoroge and Kwach advocate that he will remit to them a sum of Ksh.3,102,874.20 on or before 6 November 1998.

3. He in the meantime paid 3,102,874/- through a cheque of 319989. This was sometime on 21 October 1998. The funds was as a result of refund made to him by the Commissioner of Lands towards an intended purchase of property LR 209/12908 Nairobi for Ksh.3,102,874. According to the plaintiff this remained unpaid.

4. A suit was filed on 14 November 2003 by way of an Originating Summons. The defendant entered appearance through M/s Musyoka-Annan and Co. Advocate who failed to attend court.

5. Directions under Order LII r 10 Civil Procedure Rules was taken and a date fixed for hearing.

6. At the time of hearing the defendant failed to attend court and the hearing proceeded by way of submissions under Order IXb r 3 (a) Civil Procedure Rules.

II: Findings

7. The plaintiff has annexed the letter of undertaking and amount to be paid to Ndungu Njoroge & Kwach dated 21 October 1998. The correspondence thereafter show the promises and attempts by the advocate to make payments but has failed to do so. There is in effect no defence.

8. I hereby find that judgment against the said advocate Ramesh K. Patel be accordingly entered for the sum of Ksh.3,102,874/- of being the sum undertaken to pay. I further order that the interest rate to this sum be at 12%. There are the courts rates and would have the said interest rate be computed with effect from 6 November 1998 for almost ten years ago.

9. I award costs to the applicant.

Dated this 11th day of October 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

M. Billing of Guram & Co. Advocates for the plaintiff/applicant

Musyoka Annan & Co. Advocates for the defendant/respondent-absent