



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Suit 278 of 2005

**IN THE MATTER OF: ADVOCATES ACT CHAPTER 16
OF THE LAWS OF KENYA**

ALI SALIM NGONIPLAINTIFF

VERSUS

KENNEDY OGERO MOKAYADEFENDANT

R U L I N G

In an Originating Summons taken out pursuant to the Provisions of Order LII rule 4 of the Civil Procedure Rules, Ali Salim Ngoni, the applicant herein, applied for the following orders against one Kennedy Ogero Mokaya, the Respondent herein:

- (a) An order directing the respondent to account for and to deposit with this court a sum of Kshs.857,860/- being the decretal sum in Mombasa H.C.C.C No. 549 of 2001.
- (b) An order directing that the advocate/client bill be determined so as the balance may be released to the applicant.

The applicant filed an affidavit in support of the

Originating summons he swore on the 28th day of February 2006.

On his part, Mr. Kennedy Ogero Mokaya opposed the application by filing a replying affidavit he swore on the 9th day of February 2006.

The brief history of this case was set out in my ruling of 17th March 2006. I think it is worth to give a brief overview of the matter before considering the merits and the demerits of the originating summons. The applicant's house which stood on plot No. 2716 Diani was razed down on 7th June 2001 by fire caused by an electric fault. The applicant instructed the firm of Mokaya Ogutu & Co. Advocates to sue Kenya Power & Lighting Co. Ltd. for compensation hence the institution of Mombasa H.C.C.C. No. 549 of 2001. The applicant was awarded judgment in the sum of Kshs.1,050,000/- which amount was reduced by consent to Kshs.857,860/-. A Cheque for the same amount was forwarded to the firm of Mokaya Ogutu & Co. Advocates on 20th May 2005.

In the Originating Summons the applicant has complained that the advocate has failed to account for the money and he fears the money may be squandered if this court does not grant the orders prayed for in

the Originating Summons. He has accused his advocate of dodging him on several occasions when he visited his offices. The applicant does not dispute that the firm of Mokaya Ogutu & Co. Advocates have a claim in form of Legal fees which amount should be ascertained and deducted from the sum in the advocate's possession. When the applicant was cross-examined he admitted that a sum of Kshs.300,000 had been paid to him by the Respondent.

The Respondent opposed the Originating Summons in a replying affidavit sworn by Kennedy Ogero Mokaya, on the basis that the firm of advocates has a lien over the amount received. Mr. Maosa advocate urged this court to instead make an order for account instead of delivery because a cash account is needed before the originating summons is determined.

This matter in my view appears to be simple and straightforward. It is not denied that the firm of Mokaya Ogutu & Co. Advocates received a sum of Kshs.857,860/- in settlement of Mombasa H.C.C.C. No.549 of 2001. It is not also in dispute that the money has not been released to the applicant in full. There is no dispute that the advocate has a lien over the money. It has been admitted that the Respondent paid a sum of Kshs 300,000/- to the applicant while this matter was pending in court. The purpose of Order LII of the Civil Procedure is to determine such disputes expeditiously otherwise it would serve no useful purpose. After a careful consideration of the arguments for and against the Originating Summons I am satisfied that the applicant has established the Originating Summons. I think a fair order in the circumstances of this case is to order the respondent to deposit the sum of Kshs.857,860/- less Kshs.300,000/- in court within 30 days from the date hereof. This is to avoid further mistrust between the applicant and Respondent. The Deputy Registrar of this court is to hold the money until the advocate/client bill is taxed between the applicant and Respondent. The Deputy Registrar shall release the money to the applicant less the taxed fees which amount should then be released to the Respondent. The advocate/client bill should be filed, if not yet filled, within 15 days from the date hereof. The same should be determined on priority basis.

Each party to bear his own costs.

Dated and delivered this 16th Day of May 2006.

J.K. SERGON

J U D G E

In the presence of Mr. Abubakar for the Applicant

No appearance Maosa for the Respondent.