



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 267 of 2003

JOSEPH KIMANI WAWERU t/a KIMANI WAWERU & COMPANY  
ADVOCATES.....PLAINTIFF

VERSUS

PETER LEO ONALO t/a ONALO & COMPANY ADVOCATES.....  
.....DEFENDANT

J U D G E M E N T

In a ruling dated 24<sup>th</sup> and delivered on 25<sup>th</sup> November, 2005 the court ordered that the Defendant do honour his professional undertaking (as contained in a letter dated 27<sup>th</sup> March, 2002 addressed to him by the Plaintiff and given in his reply dated 23<sup>rd</sup> May, 2002) within fourteen (14) days from the date of delivery of the ruling. That undertaking was in two parts. The first part was that the Defendant would pay to the Plaintiff a sum of KShs.6,750,000/00 on or before 20<sup>th</sup> June, 2002, net of all bank charges and without any deductions whatsoever. The second part was that the Defendant would pay to the Plaintiff the sum of KShs.31,600/00, the same being their handling charges on a discharge of charge, within fourteen (14) days after the registration of the discharge of charge.

In the event, the Defendant did not honour his unambiguous and unequivocal professional undertaking as ordered. The Plaintiff has therefore come back to court for necessary enforcement orders under Order 52, rule 7 (2) of the Civil Procedure Rules. It will be noted that the Defendant never entered appearance at all in these proceedings. The Plaintiff has therefore always proceeded *ex parte*. I am satisfied that the order of 24<sup>th</sup> November, 2005 was duly served upon the Defendant, and that he has failed to honour his professional undertaking as ordered. I therefore have no hesitation whatsoever in giving the necessary enforcement orders as follows:-

- 1. *There shall be judgment for the Plaintiff against the Defendant in the total sum of KShs.6,781,600/00.***
- 2. *Interest has been claimed at commercial rates from the date of breach of the professional undertaking. But I see no justification for awarding interest at commercial rates or from the date of breach. In my view interest at commercial rates ought to be allowed only where a contract between the parties provides for it. I shall therefore award interest at court rates from the date of filing suit until payment in full.***
- 3. *The Plaintiff shall have the costs of this suit plus interest thereon at court rates from the date of filing the suit.***

Those shall be the orders of the court.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 9<sup>TH</sup> DAY OF JUNE, 2006.

H.P.G. WAWERU

JUDGE