

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

Misc Civil Appli 836 of 2006 (O.S)

ERNEST MWAZAME MWALIKO.....PLAINTIFF

VERSUS

PETER MULONGO T/A MULONGO & CO. ADVOCATES.....DEFENDANT

RULING

The Plaintiff herein, Ernest Mwazame Mwaliko, took out an Originating Summons pursuant to the Provisions of Order LII rule 4 of the Civil Procedure rules in which he prayed for an order directing Peter Mulongo P/a Mulongo & Co. advocates to account for the sum of kshs. 259,780/= which came to him by virtue of advocate – client relationship. The Plaintiff further prayed for an order directing the aforesaid advocate to deposit the aforesaid sum into this court’s bank account. The Plaintiff further prayed for the advocate’s fees due to the Defendant to be determined and paid from the decretal sum upon which the balance should be released to the Plaintiff. The Originating Summons is supported by the affidavit deponed by the Plaintiff.

When the Originating Summons came up for interpartes, hearing the Defendant failed to appear. The Defendant did not also file a response to the Originating Summons despite havng been served. The Plaintiff was then granted leave to prosecute the summons exparte when this court was satisfied that the Defendant had been served with both the Originating Summons and a hearing notice.

The facts leading to the filing of the Originating Summons appear to be short and straightforward. The Plaintiff instructed the Defendant to prosecute a suit against Karimjee Hardware Stores. The Defendant compromised the action vide Mombasa C.M.C.C. 2163 of 2001 which gave rise to a consent judgment in the sum of Ksh. 259,780/= dated 14th August 2002. There is evidence that the Defendant was paid the judgment sum. It is the submission of the Plaintiff that the Defendant did not pay him anything from the aforesaid sum despite depositing the same in his firm’s bank account on 25th March 2003. It has also been claimed by the Plaintiff that the Defendant has not accounted for that money and this prompted him to seek the intervention of Kenya

Defence Fund to unearth the mystery of the whereabouts of the money. The Plaintiff has now beseeched this court to grant him the orders sought for in the Originating Summons to compel the Defendant to account for the funds.

From the onset, I am convinced from the facts deponed and the annexures attached to the Supporting affidavit of Ernest Mwazame Mwaliko that the Defendant actually received the judgment sum of kshs. 259,780/= on the 25th March 2003 in satisfaction of the consent judgment of 14th August 2002. I am further satisfied that the relationship between the Plaintiff and the Defendant is that of advocate-client relationship. It is crystal clear that the Defendant has kept the Plaintiff in the dark. In such a case this court is entitled to lift the veil and direct the culprit to make the necessary disclosures. In view of my above findings I make the following orders:

- (a) The Defendant is hereby ordered to account for the amount received plus interest earned if any within 15 days from the date hereof.
- (b) The Defendant is further directed to deposit the aforesaid sum with the Deputy Registrar of this court within 21 days from the date of this order.

(c) The Defendant is also directed to file and tax the client advocate bill within 45 days from the date hereof.

(d) The Deputy Registrar to release to the Plaintiff the decretal sum less the taxed advocate client bill.

(e) Costs of the Originating Summons to be paid by Defendant.

Dated and delivered this 24th day of November 2006.

J. K. SERGON

JUDGE