



Kaur v Donald Odhiambo Rabala t/a Rabala & Co. Advocates (Miscellaneous Civil Application E1267 of 2020) [2025] KEHC 542 (KLR) (Commercial and Tax) (23 January 2025) (Judgment)

Neutral citation: [2025] KEHC 542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E1267 OF 2020**

AA VISRAM, J

JANUARY 23, 2025

BETWEEN

MOHINDER KAUR PLAINTIFF

AND

**DONALD ODHIAMBO RABALA T/A RABALA & CO.
ADVOCATES DEFENDANT**

JUDGMENT

1. I have considered the Originating Summons dated 2nd December, 2020, together with the supporting affidavit filed on even date and the various annexures. I have also considered the various documents filed in response by the Advocate in opposition to the same, the submissions of the parties and the applicable law.
2. In opposition to the Originating Summons, Counsel for the Defendant argued that the Advocate represented the client in numerous matters beyond the present case. He submitted that there are numerous other Bills of Costs pending, and that making an order based on the present case alone would prejudice him.
3. Counsel submitted that fees are owed to his law firm, but did not state how much was owing to his firm, and whether the amounts retained by his firm are all due and owing.
4. He further contended that the matter is before the disciplinary tribunal, and in the event the ruling is in favour of the Advocate, he may have paid the money, when he is not, in fact, culpable.
5. Counsel submitted that the matter before the tribunal was filed in 2017, and was of the view that the tribunal could make an order for payment of the sums sought by the Plaintiff in the present mater. He



could not however point out the law applicable, giving the tribunal such jurisdiction, and thereafter submitted that the tribunal could make a recommendation for proposals and repayment only.

6. Having considered the oral and written submissions, I take note from the outset that the Application is made under Order 52 rule 4 of the Civil Procedure Rules, and that the applicable procedure is set out under Order 52 rule 10 of the Rules, which contemplates a self-regulating and exhaustive procedure intended to secure quick resolutions of disputes between Advocates and Clients, utilizing a simplified procedure.
7. Having stated the above, I do not think that the Statement of Defence and Counterclaim dated 18th January, 2021, the Witness Statement, Affidavit to Show Cause dated 31st January, 2022; and numerous other documents on record and filed by the Defendant, are the appropriate means of responding to the present application. A simple replying affidavit would have sufficed, and under the rules, is not even necessary. The filing of such voluminous and numerous documentation in opposition to the Originating Summons, in my view, served to defeat the purpose of Order 52, and the court cannot help but think that this was the intention of the Defendant, and draw adverse inferences from the same.
8. Further, it is not lost on the court that the present matter was filed almost 5 years ago, once again, under what is supposed to be a simplified procedure, and to date, the substantive issue had not been dealt with owing to the litany of applications filed by the Defendant in opposition to, and in response to the Originating Summons which have delayed the hearing of the substantive issue.
9. Having stated the above, the court takes note of some of the following documents on the record, which are pertinent to the matter at hand, and resolve some of the issues raised by the Defendant. These include: the Advocate-Client Bill of Costs taxed on 12th November, 2021, in which a further sum of Kshs. 210,000/- was allowed in favour of the Defendant; Certificate of Taxation found at pages 5 and 8 of the Plaintiff's Further Affidavit; ruling of the Taxing Officer dated 12th November, 2021, at page 5 of the Plaintiff's Exhibits, in which the court determined the issue of whether an Advocate-Client relationship existed between the parties in the affirmative, and which decision has not been overturned or set aside to date.
10. As regards the issue raised by the Defendant concerning the jurisdiction of this court on the basis that the matter is presently before the disciplinary tribunal, the said argument is in my view, a non-starter. In my view, the issues are different. That is a disciplinary issue, and this is the appropriate procedure under Order 52 rule 4, relating to orders for delivery by an Advocate of cash accounts and, or payment of money. I am therefore satisfied that the Plaintiff is properly before this court based on the orders sought in the Originating Summons.
11. In any event, the disciplinary matter has been pending before the tribunal since 2017, with no progress. Further, the tribunal is not cloaked with jurisdiction to make all the orders sought in the Originating Summons. Specifically, it may not make an order and award for payment of the sums sought by the Plaintiff.
12. Finally, I take that on 10th June, 2022, the Defendant filed a Statement of Accounts. I have looked at the same in detail and the same form part of the record, to which I will refer as may be appropriate.
13. Having taken note of various findings of fact as expressed in the documentation above, the only issue remaining is whether or not the Defendant is holding the Plaintiff's money arising out of the proceeds of sale he had received on her behalf? And if so, how much?
14. It is not disputed that the Defendant received the entire purchase price of Kshs.67,000,000/- on account of sale of LR number 209/3754. The said purchase price is indicated in the Sale Agreement



attached to the Exhibits. Moreover, based on paragraph 21 and 22 of the Defendant's replying affidavit dated 18th January, 2021, the Defendant admitted having retained the sum of Kshs. 11, 136,547/- after receiving the full purchase price. It is therefore clear to me that at the very least, this amount of Kshs. 11, 136, 547/- is owing to Plaintiff.

15. In addition, looking at the statement of account relating to sale of land in South B, it is evident that out of the purchase price of Kshs. 66, 975,000/-, a total of Kshs. 56,413,453/- was disbursed, leaving a balance of Kshs. 10,561,547/-.
16. The above figure based on the statement contradicts the figures referred to by the Defendant in his replying affidavit. The figures produced therein, speak to the sum of Kshs. 55, 863,53/- as having been paid out. The discrepancy between the two figures being the sum of approximately, Kshs. Two Million.
17. In view of contradictory admissions, I am persuaded that the Defendant is unlawfully holding the Plaintiff's funds, being the additional sum of approximately, Kshs. Two Million.
18. In *John Karungai Nyamu & Another v Muu & Associates Advocates* 2008 eKLR, the court stated as follows:-

“The Advocate has no right under any law to hold monies that which have come to him for onward transmission to his client as lien, at least no such law has been cited to the court. What the Advocate is doing by holding onto the Plaintiffs' monies, is irregular and the court cannot condone the same.”

19. Further in *Ouma Njoga & Company Advocates v Kisumu Teachers Co-operative Savings & Credit Society Ltd* [2016] KECA 492 (KLR), the Court of Appeal stated that:-

“Rule 4 of Order 52 of the Civil Procedure Rules empowers the court, where the relationship of Advocate and client exists or has existed, to make an order for delivery by the Advocate of their cash account and for the payment or delivery up by the Advocate of money. An application under that provision is by Originating Summons supported by affidavit. No doubt the client and the Advocate would have an opportunity to be heard before orders of the court are issued under those provisions.” (emphasis mine)

20. Guided by the above, given there is already a finding that there exists an Advocate and Client relationship between the parties, it is appropriate for this court to make an order for delivery and or payment of the sums held by the Advocate. I say so because, an Advocate has a duty to provide documentary evidence to his client, and to pay up sums held by him on behalf of the client.
21. In my view, the funds held by the Defendant for the last five years have been held unlawfully and irregularly. The same ought to be released and returned to the Plaintiff less the Advocate's agreed legal fees, which based on the record before me, I am persuaded, is the sum of Kshs. 820,000/- plus the further sum of Kshs. 210,000/- arising out of taxation of the Bill of Costs, totaling Kshs. 1,030,000/-.
22. I am further persuaded by the Plaintiff's argument, that the various disbursements listed in the statement of account are not supported by any evidence, and ought not be allowed in the absence of the same.
23. Accordingly, I find and hold that the difference between the amount released by the Defendant to the Plaintiff and unlawfully withheld by the Defendant is the sum of Kshs. 13, 152, 047/-. The orders of the court are as follows:-



- a. I hereby order payment or delivery up by the Advocate to the Plaintiff of the sum of Kshs. 13, 152, 047/- within the next 14 days together with interest at court rates from the date of filing the Originating Summons until payment in full.
- b. In the event of default, judgment is hereby entered against the Defendant for the above amount together with interest at court rates from the date the filing of the suit until payment in full.
- c. Costs shall be paid by the Defendant.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 23RD DAY OF JANUARY, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

.....Court Assistant

.....For the Plaintiff

.....For the Defendant

