



**Orego & Odhiambo Advocates v Independent Electoral & Boundaries Commission
(Miscellaneous Case E235 of 2023) [2025] KEHC 6721 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 6721 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MISCELLANEOUS CASE E235 OF 2023
A. ONG'INJO, J
FEBRUARY 13, 2025**

BETWEEN

OREGO & ODHIAMBO ADVOCATES APPLICANT

AND

**INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION RESPONDENT**

RULING

1. Before this court for determination is the applicant's Notice of motion application dated 28th September 2023 seeking the following orders: -
 - a. That this Honourable court be and is hereby pleased to enter judgment against the Respondent in the sum of Kenya Shillings Two Million Three Hundred and Twenty Thousand Only (Kshs. 2, 320, 000.00/=) being the agreed legal fees arising as per the instruction letter dated 12th September 2017.
 - b. That this Honourable court be pleased and is hereby pleased to award interest on the aforementioned amount at court rates from the date of judgment until payment in full.
 - c. That the costs of this Application be provided for.
2. The application is premised on the grounds on the face of the application and supported by the affidavit of Olendo Cecilia of even date. In the said affidavit, the Applicant avers that on 12th September 2017 the Respondent sought for provision of legal services where the Applicant was to act for the Respondent in Migori HCEP No 1 of 2017 *Joseph Obiero Ndiege & 2 Others v The Independent Electoral & Boundaries Commission and Others*.
3. The Applicant stated that the correspondence set out the legal fees payable to the applicant to be in the sum of Kshs. 2, 320,000.00/= inclusive of legal fees, disbursements, 16% Vat and withholding tax.



- Regardless of lack of deposit by the Respondent, the Applicant proceeded to enter appearance, file requisite documents in defense of the Respondent and took general conduct of the matter.
4. According to the Applicant, the matter was heard and judgment was delivered by the Trial Magistrate on 27th February 2018. Following the decision of the Trial Court, the Applicant sent a correspondence informing it on the successful outcome of the judgment. It is on this basis that the Applicant raised its fee note seeking to have its legal fees of Kshs. 2, 320,000.00/= settled but the same has been futile.
 5. In opposition to the application, the Respondent filed a Replying affidavit dated 26th April, 2024 sworn by Chrispine Owiye. In the said affidavit, he deposes that he is the Director Legal Services at IEBC and agrees that the applicant was instructed to represent the Respondent in Migori High Court Election Petition No. 1 of 2017-*Joseph Obiero Ndiege & 2 others v IEBC and 2 others* at an agreed legal fee of Kshs. 2,000,000/= exclusive of VAT.
 6. The Respondent deposes that the filing of this application seeking entry of judgment against it is premature and unnecessary as the Respondent has not given any indication that it is unwilling to pay the fees owing. That the Applicant's fees is part of the many pending bills for which the Respondent is waiting for allocation from the National Treasury so as to settle the same.
 7. The Respondent has been petitioning parliament to allocate its resources so as to clear the pending bills including those owed to lawyers it had previously instructed to handle its various matters.
 8. It was deposed by the Respondent that the President appointed a pending bills committee to scrutinize and recommend settlement of the pending bills. The committee finalized its work and it is hoped that the pending bills will be fully settled.
 9. That it was evident the Respondent was committed to settling all the pending bills including that owed to the Applicant once it receives funds from the Exchequer.
 10. The Respondent stated that the Applicant has not demonstrated any deliberate breach, refusal or failure to pay the fees owing to warrant the filing of the instant proceedings and the grant of the reliefs sought. The instruction letter relied upon did not provide any specific timelines within which the fees were payable but the same is dependent on remittance from the Government. The Respondent prays that the application be dismissed for being premature and the Respondent be accorded an opportunity to settle the pending bills upon receipt of the funds from the Exchequer.
 11. This application was canvassed by way of written submissions. Both parties complied and filed their respective written submissions. The Applicant's submissions are dated 21st May 2024 whereas the Respondent's submissions re dated 24th June 2024.

Applicant's submissions

12. The Applicant submitted that the relationship between it and the Respondent was governed by the instruction letter dated 12th September 2017 which defined the terms and conditions in respect of the legal fees that the Applicant was entitled. The instruction letter was addressed to the Applicant instructing the firm to represent and or defend the commission in Migori CMCC Election Petition No. 1 of 2017 Joseph Obiero Ndiege & 2 others v The Independent Electoral & Boundaries Commission and others. The specific amount to be paid to the Applicant for legal services to be rendered in the sum of Kshs. 2,000,000.00/= all inclusive plus 16% VAT. This is evident in clause 1 (b) of the agreement.



13. The Applicant urged that Section 45 (6) of the *Advocates Act* provides that;

“subject to this section, the costs of an advocate in any case where an agreement has been made fixing the amount of the advocate’s remuneration shall not be subject to taxation nor to section 48 of the Act.”
14. The Applicant while relying on the cases of *Omulele & Tollo advocates v Mount Holdings Ltd* CA 75 of 2015 and *Ali Mohammed Egal v Maina Onsare Partners Advocates* (2021) eKLR, submitted that correct legal position is that an advocate is entitled to the full instruction fees should there be a legal and binding agreement between an advocate and his or her client and that the same is binding, provided it is in writing, and signed by the client or his agent.
15. It was submitted that upon conclusion of the matter, the Applicant informed the Respondent and supplied it with a fee note which has not been satisfied by the Respondent and therefore breaching the terms of the instruction letter dated 12th September, 2017. The Respondent wants to hold that the reason that it has failed and refused to pay the legal fees due to the applicant is because the National Treasury has not allocated monies. This is a narrative that the Respondent has been relying on for a period of more than five years to escape paying legal fees owed to the Applicant.
16. The applicant argued that it is on this basis that the Applicant confirms that it acted for the Respondent who are neglecting to pay it and therefore persuades the court to enter judgment in the sum of Kshs. 2, 320,000.00/= being the agreed legal fees. The applicant put reliance on *Shiva Enterprises v Mwangi Njenga & Company Advocates* (2020) eKLR and urged this court to allow the application dated 28th September 2023 with costs.

Respondent’s submissions

17. The Respondent in its submissions reiterated the contents of the replying affidavit and further submitted that it is uncontested that the instruction letter set out the legal fees as Kshs. 2, 000,000/= exclusive of VAT.
18. The Respondent further submitted that the Applicant’s application is not merited as it is premature and unnecessary. That the Respondent had on several occasions corresponded with the Applicant to the effect that it is not unwilling, neither has it indicated that it is unwilling to pay out the outstanding legal fees. The Respondent explained that the only reason that the fees are yet to be paid is because the fees forms part of the many pending bills for which the Respondent is waiting for allocation of funds from the National Treasury to settle the same.
19. It was urged by the Respondent that it has been petitioning parliament to allocate resources so as to enable it clear all the pending bills which include that of the applicant. The Respondent has showed commitment to settling the pending bills and is only awaiting funds from the National Treasury. The Respondent has also urged that the relationship between the parties is governed by a contract, the court should be reluctant in interfering with the contract when there is no breach of the terms of the contract.
20. The Respondent also submitted that the instruction letter which forms the basis of the relationship between the parties does not provide any specific timelines within which the fees were payable but the same is dependent on remittance from the Government and the Respondent has demonstrated commitment to pay the fees upon receipt of the funds. The Respondent put reliance on the case of



African Gas and Oil Company Limited v Attorney General & 3 others (2016) eKLR, where the court stated as follows;

“Further, there was no document annexed in the replying affidavit of the 3rd Respondent to support the explanation that the cause of delay was because of the budget processes. At the time of urging the application which was after the budget had been read, there was no proposal made by any of the Respondents of the funds being paid out soon.”

21. In this case, the Respondent argued that it petitioned parliament to allocate resources which resulted in the National Assembly’s Justice and Legal Affairs Committee requesting the National Assembly to consider allocating the Respondent funds to enable it settle its pending bills. It is further uncontested that a pending bill committee resident at the National Assembly to scrutinize and recommend settlement of the pending bills.
22. The Respondent urged that the Applicant’s application dated 28th September 2023 lacks merit as it is premature and should thus be dismissed with costs.

Analysis and Determination

23. I have considered the application, the response thereto and the submissions by both parties as well as the authorities cited. I find that the sole issue arising for determination is whether the application dated 28th September 2023 is merited.
24. The Applicant in its application is seeking for judgement in the sum of Kshs. 2, 320,000/= interest and costs for being agreed legal fees payable for representing the Respondent in Migori CMCC Election Petition No. 1 of 2017 *Joseph Obiero Ndiege & 2 others v The Independent Electoral & Boundaries Commission and others* as per letter of instruction dated 12th September, 2017 which clearly stated that the Applicant shall be paid legal fees of Kshs. 2,000,000/= exclusive of VAT.
25. The Respondent in both its replying affidavit dated 26th April, 2024 and submissions, does not dispute the outstanding legal fees owed but urges that the same shall be settled once the National Treasury remits funds to settle the pending bills including that of the applicant.
26. The Applicant having been instructed and duly executed the instructions until judgment was delivered is entitled to its legal fees for the work performed. The Respondent had submitted that it is committed to settle all the pending bills once funds are allocated.
27. Being that there is no contestation regarding the instruction letter and the fees payable to the Applicant this court finds that the application dated 28th September, 2023 is merited and the following are the final orders of this court:-
28. That judgment be and is hereby entered against the Respondent in the sum of Kenya Shillings Two Million only (Kshs. 2, 000, 000.00/=) together with VAT at 16% as per the instruction letter dated 12th September 2017.
 - i. That the applicant is awarded interest from the date of filing of the application herein until payment in full.
 - ii. That cost of this application shall be borne by the Respondent.

Orders accordingly

DELIVERED DATED AND SIGNED IN MIGORI THIS 13TH DAY OF FEBRUARY, 2025.

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A. ONGIJO
JUDGE

