



REPUBLIC OF KENYA



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**Orego & Odhiambo Advocates v Independent Electoral & Boundaries Commission
(Miscellaneous Case E236 of 2023) [2025] KEHC 6722 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 6722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MISCELLANEOUS CASE E236 OF 2023
A. ONG'INJO, J
FEBRUARY 13, 2025**

BETWEEN

OREGO & ODHIAMBO ADVOCATES APPLICANT

AND

**THE INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION RESPONDENT**

RULING

1. Before this court for determination is the Applicant's Notice of motion application dated 27th September 2023 brought pursuant to Section 45(1) of the *Advocates Act* 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 Eight Hundred and Twelve Thousand Only (Kshs. 812, 000.00/=) being the agreed legal fees arising as per the instruction letter dated 25th August 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 its face and supported by the supporting affidavit of Olendo Cecilia of even date. In the said affidavit, the Applicant avers that the Respondent instructed and sought for provision of legal services where the applicant was to act for the Respondent in Migori CMCC Election Petition No. 1 of 2017 Michael Odong Agunda & 2 others vs The Independent Electoral & Boundaries Commission and Others.



3. The Applicant states that the agreed fees as per the instruction letter dated 25th August 2017, Clause A (1b) was a sum of Kshs. 812,000/= inclusive of legal fees, disbursements, Vat and withholding tax. Alternatively, a sum of Kshs. 700,000/= plus 16% VAT.
4. She stated that no deposit was made by the Respondent and the firm proceeded to enter appearance and filed the requisite documents in defense of the Respondent.
5. According to the Applicant, the matter was heard and judgment was delivered by the Trial Magistrate on 23rd February 2018 and the Trial court allowed the prayers sought by the Petitioner as per the Petition dated 6th September 2017. Following the decision of the Trial Court, the Applicant sent a correspondence informing it on the way forward while noting the legal alternative to be pursued and the Applicant attached the final fee note seeking to have the outstanding legal fees settled.
6. The Applicant contends that legal fees has not been settled prompting the themt to file this instant application seeking judgment against the Respondent.
7. In response to the application, the Respondent filed a Replying affidavit dated 26th April, 2024 sworn by Chrispine Owiye. In the said affidavit, the deponent deposes that he is the Director Legal Services at IEBC and agrees that the Applicant was instructed to represent the Respondent in Migori Chief Magistrate's Court Election Petition No. 1 of 2017-Michael Ondong Agunda & 2 others vs IEBC and 2 others at an agreed legal fee of Kshs. 700,000/= exclusive of VAT.
8. The Respondent deposes that the filing of this application seeking entry of judgment against Respondent is premature and unnecessary as the Respondent has not given any indication to the Applicant that it is unwilling to pay the fees as agreed. 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.
9. That the Respondent in a show of good faith has been petitioning parliament to allocate it resources so as to clear the pending bills including those owed to lawyers it had previously instructed to handle its various matters.
10. It was deposed that following the said engagements with Parliament over the issue, the National Assembly's Justice and Legal Affairs committee in May, 2023 requested the National Assembly to consider allocating the Respondent funds towards settling pending bills owed to lawyers.
11. The Respondents avers 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.
12. It was averred that it was evident that the Respondent is committed to settling all the pending bills including that owed by the Applicant once it receives funds from the Exchequer.
13. 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. That the instructions 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.
14. This application was disposed of 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

15. The Applicant in its submissions raised a single issue for determination; whether this Honourable court should enter judgment against the Respondent for the outstanding legal fees arising as per the instruction letter dated 25th September 2017.
16. In regards to the issue raised, the Applicant submitted that the relationship between the Applicant and the Respondent was governed by the instruction letter dated 25th September 2017 which defined the terms and conditions in respect of the legal fees that the Applicant was entitled to after rendering legal services in Migori Chief Magistrate's Court Election Petition No. 1 of 2017-Michael Ondong Agunda & 2 others vs IEBC and 2 others.
17. It was submitted that the instruction letter was addressed by the Respondent to the Applicant instructing it to act on its behalf in the aforementioned matter. Further, it stipulated the specific amount to be paid to the Applicant for legal services to be rendered in the sum of Kshs. 700,000/= all inclusive plus 16% VAT. This is evident in clause 1 (b) of the agreement.
18. The Applicant argued 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.”
19. The Applicant while relying on the cases of Omulele & Tollo advocates vs Mount Holdings Ltd C.A. 75 of 2015 and Ali Mohammed Egal vs 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.
20. The applicant contends that upon conclusion of the matter, the Respondent was supplied with a fee note dated 28th February 2019 which has not been executed by the Respondent to-date thus breaching the terms of the instruction letter dated 25th August 2017.
21. That the Respondent's reason for refusing and/or neglecting to pay to pay the legal fees due to the Applicant being failure by the National Treasury to allocate monies 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.
22. The Applicant argued that it is on this basis that the Applicant confirms that it acted for the Respondent but it is yet to be paid its outstanding legal fees, a fact admitted by the Respondent in its Replying affidavit.
23. The Applicant persuades the court to enter judgment in the sum of Kshs. 812,000.00/= being the agreed legal fees together with interest as well as costs of the application. The applicant put reliance on Shiva Enterprises vs Mwangi Njenga & Company Advocates (2020) eKLR and urged this court to allow the application dated 28th September 2023 with costs.

Respondent's submissions

24. The Respondent in its submissions raised a sole issue of whether the applicant's application is merited?
25. The Respondent did not contest that it sought for provision of legal services from the Applicant in Migori Chief Magistrate's Court Election Petition No. 1 of 2017-Michael Ondong Agunda & 2 others



vs IEBC and 2 others vide instruction letter dated 25th August 2017 at legal fees as Kshs. 700,000/= exclusive of VAT which legal fees are yet to be settled by the Respondent.

26. According to the Respondent, the Applicant's application is not merited as it is premature and unnecessary as no cause of action has crystalized. 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.
27. It was submitted that the Respondent in the correspondence with the Applicant had explained that the only reason that the fees are yet to be paid is because the fees form part of the many pending bills for which the Respondent is waiting for allocation of funds from the National Treasury to settle the same.
28. The Respondents submitted that it has been petitioning Parliament to allocate its resources to enable it clear the pending bills including that of the Applicant. Further, the National Assembly's Justice and Legal Affairs committee in May 2023 requested the National Assembly to consider allocating the Respondent funds towards settling the pending bills.
29. The Respondent submitted that it has shown commitment to settling the pending bills and is only awaiting funds from the National Treasury. The Respondent has also argued that the relationship between the parties is governed by a contract as has been submitted by the Applicant and the court should be reluctant in interfering with the contract when there has been no breach of the terms of the contract.
30. 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 vs 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.”

31. It was submitted further that the Respondent had illustrated 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.
32. The Respondent urged that the Applicant's application dated 27th September 2023 lacks merit as it is premature and should thus be dismissed with costs.

Analysis and Determination

33. 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 27th September 2023 is merited.
34. The Applicant in its application is seeking for judgement in the sum of Kshs. 812,000/= interest and costs for having represented the Respondent in Migori Chief Magistrate's Court Election Petition No. 1 of 2017-Michael Ondong Agunda & 2 others vs IEBC and 2 others.



35. The Applicant was instructed by the Respondent vide an instruction letter dated 25th August, 2017 which clearly stated that the Applicant shall be paid legal fees of Kshs. 700,000/= exclusive of VAT.
36. The Respondent in both its replying affidavit dated 26th April, 2024 and submissions, does not dispute the outstanding legal fees owed but argued that the same shall be settled once the National Treasury remits funds to settle the pending bills including that of the applicant.
37. 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 by the National Treasury.
38. It is not disputed that the Respondent gave the Applicant instructions to represent it as per the letter dated 25th August 2017 and having executed the instructions the Applicant is entitled to be remunerated accordingly as per the instructions given by the Respondent. In the circumstances this court allows the application dated 27th September, 2023 as it is merited. The following orders are hereby issued: -
- i. THAT judgment be and is hereby entered against the Respondent in the sum of Kenya Shillings Seven Hundred Thousand Only (Kshs. 812, 000.00/=) plus VAT at 16% as per the instruction letter dated 25th August 2017.
 - ii. THAT the Applicant is awarded interest from date of filing of the application until payment in full.
 - iii. THAT Applicant is awarded costs of this application.

Orders accordingly

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

A. ONGINJO

JUDGE

