



**Murray v Kairu t/a Kimani Kairu & Company Advocates (Civil Case E564 of 2024)
[2025] KEHC 11012 (KLR) (Commercial and Tax) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E564 OF 2024**

PM MULWA, J

JULY 24, 2025

BETWEEN

VANESSA MURRAY APPLICANT

AND

**PETER KIMANI KAIRU T/A KIMANI KAIRU & COMPANY
ADVOCATES RESPONDENT**

JUDGMENT

1. By an Originating Summons dated 19th September 2024, the Applicant sued the Respondent, who is an Advocate, under the provisions of Sections 55 and 56 of the *Advocates Act* and Order 52, Rule 4 and 10 of the Civil Procedure Rules. The Applicant seeks the following orders:
 - i. That the Respondent be compelled to deposit the sum of USD 74,115.78 together with interest accrued from 9th June 2021;
 - ii. That in default of compliance, the Applicant be at liberty to execute for the said sum;
 - iii. A declaration that the Respondent engaged in professional misconduct in unlawfully and unjustifiably withholding the said sum; and
 - iv. That the costs of this application be borne by the Respondent.
2. The background to this application is that the Applicant, together with others, retained the Respondent, an Advocate of the High Court of Kenya, to act in the sale and purchase of three properties known as L.R. No. 1160/1137, L.R. No. 1160/1138 and L.R. No. 1160/798, situated in Karen, Nairobi County.



3. The Applicant's case is that the Respondent, in the course of the transaction, received and retained the sum of USD 74,115.78, which was due and payable to the Applicant as her share of the purchase price. Despite repeated demands, the Respondent failed and/or refused to remit the said amount, prompting the Applicant to approach this Court for redress.
4. The Applicant avers that the failure by the Respondent to remit the funds was not only unjustifiable but also constituted gross professional misconduct that undermines the trust and integrity expected of an advocate in the discharge of their fiduciary obligations.
5. The Respondent filed a replying affidavit sworn on 6th November 2024 in which he avers that the sum of USD 74,115.78 was subsequently paid to the Applicant on 8th October 2024. This fact is not disputed by the Applicant.
6. The Applicant filed submissions dated 8th January 2025.
7. It is not in dispute that the Respondent received the sum of USD 74,115.78 in the course of his professional engagement. It is further admitted that as at the date of filing the application, the said amount had not been remitted to the Applicant. The Court is thus called upon to determine:
 - i. Whether the Respondent's conduct amounts to professional misconduct under the Advocates Act; and
 - ii. Whether the Applicant is entitled to interest on the withheld sum.
8. Section 56 of the Advocates Act provides that where an advocate is found to have withheld client funds without justification, the Court may direct such advocate to pay the sum due together with interest. The duty of an advocate to promptly account for and remit funds received on behalf of a client is both statutory and fiduciary in nature.
9. In *Raghibir Singh Bains v Kenya Commercial Bank Ltd & Another* [2004] eKLR, the Court held that failure by an advocate to remit client funds without lawful excuse constitutes professional misconduct and is actionable.
10. In the present case, the sum in question was held by the Respondent from 9th June 2021 and was only remitted on 8th October 2024, a delay of over three years. The Respondent has not provided any credible or lawful justification for this delay. The mere eventual remittance of the funds does not absolve the Respondent of liability for the period during which the Applicant was unjustly deprived of her entitlement.
11. It is a settled principle that a person deprived of their money over a prolonged period suffers a financial loss and must be compensated by way of interest. As was held in *Naphtali Paul Radier v David Njogu Gachanja HCCC No. 582 of 2003 (O.S)*, where Waweru, J. stated:

“The defendant has withheld the plaintiff's money from August 2002. Justice demands that he pays it with interest.”
12. Further in *Nelson Andayi Havi t/a Havi & Company Advocates v Jane Muthoni Njage t/a J.M Njage & Company Advocates* (2015) eKLR where the defendant delayed payment of the amount of the



undertaking which had been agreed be payable within 30 days of release of the completion documents, and the court held:

“It may be said that, conduct such as being complicit or deliberately withholding plaintiff’s money would earn the advocate penalty in form of interest for having denied the plaintiff his money.”

13. I associate myself with the reasoning in the above decisions. In the absence of any justification for withholding the funds, the Court finds that the Respondent’s conduct was professionally improper and a breach of the duties imposed by law and the rules governing the legal profession.
14. Section 26(1) of the *Civil Procedure Act* empowers this Court to award interest at such rate as it deems reasonable. In the present case, considering the length of the delay and the fact that the Respondent was acting as an advocate under a fiduciary duty, it is just and equitable that the Applicant be awarded interest at court rates from 9th June 2021 until payment in full.
15. The Applicant filed this suit after the Respondent failed to remit her share of the proceeds arising from the sale of the properties hereinbefore mentioned. The Court is satisfied that the Applicant has proved her claim on a balance of probabilities.
16. Accordingly, I enter judgment in favour of the Applicant as follows:
 - i. A declaration is hereby issued that the Respondent’s withholding of the sum of USD 74,115.78 from 9th June 2021 to 8th October 2024 constituted professional misconduct.
 - ii. The Applicant is awarded interest on the sum of USD 74,115.78 at court rates from 9th June 2021 until the date of actual payment.
 - iii. In default of compliance, execution to issue.
 - iv. The costs of this application shall be borne by the Respondent.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Njuguna for Applicant

Mr. Marete for Respondent

Court Assistant: Carlos

