



**Mwongela v Tarus & Company Advocates (Miscellaneous Civil Application
85 of 2023) [2024] KEHC 5987 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 85 OF 2023**

DKN MAGARE, J

MAY 6, 2024

BETWEEN

NICHOLAS MASILA MWONGELA PLAINTIFF

AND

TARUS & COMPANY ADVOCATES DEFENDANT

JUDGMENT

1. This is a claim for delivery of cash account for PMCC 37 of 2018. *Nicholas Masila Mwongela v Logistics Link Co. Ltd.* The plaintiff was able to show that payment xxxxxx was made on 17/2/2021 for Ksh. 938,580. He filed suit against his erstwhile advocates. He is not the first to file suit against the advocate who appears to have kept house.
2. This was made by British Americans Assurance Co. Ltd (Britain). The Respondent is an advocate of the High Court. He received a good and lawful sum of Kshs. 938,580 in Kaloleni PMCC 31/2018 the plaintiff inquires from the insurers who confirmed that they paid.
3. According to the plaintiff judgments was entered of Kshs. 800,000/= on 26/1//2021 by Hon. L.N. Wasige. I have perused the police abstract and note that the insurers were Britam.
4. I am satisfied that a sum of Kshs. 800,000/= together with costs paid to the Defendant on 17/2/2021. The Applicant has not paid. The Applicant has not paid. The plaintiff indicated that the same was based on a contingency. There is no evidence of the fees agreement.
5. Consequently, I shall direct that the pailn be paid 938,580 less 25% contingency as fees for the Advocate less Kshs. 3000/= being disbursements for the medical
6. This works out as follows amount received 935,580;-
Less 3000
935,580



Less 25% (234,648)

= Ksh. 703,935

7. Consequently, I direct that the defendant shall pay a sum of Kshs. 703,935 to the plaintiff. The amount was paid on 17/2/2021. The respondent should have paid by 17/3/2021 but did not. The amount of Ksh. 703,935 shall attract interest at 12% from 17/2/2021. The same to attract interest from 17/3/2021 until payment in full.
8. The Plaintiff acted in person. He is still entitled to disbursement. I note that he travelled from Makueni for a number of times. I shall indicate a sum of Ksh 21,000 as his disbursements or traveling, filing and service.

Determination

9. The upshot of the foregoing I make the following orders: -
 - a. Judgment is hereby entered for the plaintiff against the defendant for Ksh. 703,935 together with Disbursements of Kshs. 21,000/=.
 - b. The said amount of Ksh. 703,935 shall attract interest from 17/3/2021.
 - c. Stay 30 days.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 6TH DAY OF MAY, 2024.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Appellant in person

No appearance for the Defendant

Court Assistant- Brian

