



REPUBLIC OF KENYA



Orego & Odhiambo Advocates v Independent & Electoral Boundaries Commission (Miscellaneous Civil Application E077 of 2023) [2024] KEHC 5690 (KLR) (14 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5690 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL APPLICATION E077 OF 2023**

KW KIARIE, J

MAY 14, 2024

BETWEEN

OREGO & ODHIAMBO ADVOCATES APPLICANT

AND

**THE INDEPENDENT & ELECTORAL BOUNDARIES
COMMISSION RESPONDENT**

RULING

1. The applicant herein moved the court through a Notice of motion dated 29th day September 2023. It was brought under section 45 (1) of the *Advocates Act*. The applicant is seeking the following orders:
 - a. That this honourable court be and is hereby pleased to enter judgment against her respondent in the sum of Kenya shillings One Million Seven Hundred and Forty Thousand Only (Kshs.1,740,000.00/-) being the balance from the agreed legal fees arising as per the instruction letter dated 25th September 2017.
 - b. This honourable court is 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 cost of this application be provided for.
2. The application was premised on the following grounds:
 - a. The respondent herein sought for the provision of legal services where the applicant was to act for the respondent in the case at Homabay Election Petition No.1 of 2017, Hon. Joseph Oyugi Magwanga versus The Independent Electoral & Boundaries Commission and others.
 - b. The agreed fees as per the Instruction Letter Clause A(1b) summing up to Kenya /shillings Three Million Four Hundred and eighty thousand only (Ksh.3,480,000/-) inclusive of legal fees, disbursements, VAT and withholding Tax. Alternatively, yet very precisely, the agreed fee



was in the sum of Kenya Shillings Three Million only (Ksh.3,000,000.00) plus 16% VAT, which equates to and/or translates to the same amount.

- c. Following the instruction letter, the respondent made a deposit of Kshs. 50%, which the applicant acknowledged. The firm proceeded to enter an appearance for the respondent, filed the requisite documents in defence of the respondent, and took the general conduct of the matter.
 - d. Subsequently, the matter came up for hearing, and judgment was delivered by the honourable J.R. Karanja on 20 February 2018, in which he allowed the prayers sought by the petitioner in their petition dated 6 September 2017.
 - e. Following the terms of the judgment, the applicant wrote to the respondent in a letter dated 28 February 2018 informing it of the way forward while noting the legal alternatives to be pursued. Further, the applicant attached the final fee note seeking to settle the outstanding legal fees.
 - f. The same has yet to be settled, thus prompting the applicant to file this instant application seeking payment of the outstanding balance of the agreed legal fees arising from the instruction letter.
 - g. It is in the interest of justice for this honourable court to grant the orders sought herein.
3. The application was opposed on the following grounds:
 - a. The application lacks merit.
 - b. That the claim has been forwarded as part of pending bills.
 4. The indebtedness is not denied; the respondents are pleading inability to pay and shift the blame to the treasury. This may be so, but the applicant entered a service contract with the respondent.
 5. On the 20th day of February 2018, this court entered judgment in favour of the applicant. The respondent cannot be heard to say that the applicant is not patient. This claim goes way back to 2017.
 6. I, therefore, allow the application in terms of prayers a and b with costs.

Delivered and signed at Homa Bay this 14th day of May 2024

KIARIE WAWERU KIARIE

JUDGE.

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