



Samwel Owino Nyauke t/a Aluoch Odera & Nyauke Advocates v Adienge (Civil Case E004 of 2023) [2024] KEHC 5304 (KLR) (21 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL CASE E004 OF 2023**

KW KIARIE, J

MAY 21, 2024

BETWEEN

**SAMWEL OWINO NYAUKE T/A ALUOCH ODERA & NYAUKE
ADVOCATES PLAINTIFF**

AND

GEORGE ODHIAMBO ADIENGE DEFENDANT

JUDGMENT

1. Samwel Owino Nyauke, the plaintiff, is an advocate of the High Court of Kenya who trades as Aluoch Odera & Nyauke Advocates. He brought this suit against George Odhiambo Adienge, his client, for a claim of his unremitted Kshs fees. 230, 000/=.
2. The defendant was served but did not enter an appearance or file any defence. Therefore, the matter proceeded by way of formal proof.
3. In his statement, the plaintiff averred that on the 2nd day of December 2022, they entered into a written agreement with the defendant on the mode of payment of the balance of the fees for services rendered. The defendant failed to honour his undertaking, giving rise to this case.
4. The *Advocates Act* outlines the procedure for filing a lawsuit to recover advocates' fees, which can be found in sections 48 and 49. Section 49 (a) specifically provides as follows:

Where, in the absence of an agreement for remuneration made by section 45, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof—

- (a) no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;



5. Section 45 of the *Advocates Act* provides for agreements for remuneration between advocates and their clients, and such an agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized on that behalf.
6. Without the agreement under section 45 of the *Advocates Act*, the applicant should have filed the contested bill before the taxing master. The High Court is not the taxing master. The High Court's jurisdiction in matters of Advocate-client bills crystallizes after the taxation.
7. The plaintiff's suit herein disregarded the procedure and is struck out.

DELIVERED AND SIGNED AT HOMA BAY THIS 21ST DAY OF MAY 2024

KIARIE WAWERU KIARIE

JUDGE

