



**Orego Odhiambo Advocates v Independence Electoral & Boundaries Commission
(Miscellaneous Civil Application 143 of 2023) [2024] KEHC 8465 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CIVIL APPLICATION 143 OF 2023**

TA ODERA, J

JULY 3, 2024

BETWEEN

OREGO ODHIAMBO ADVOCATES APPLICANT

AND

**THE INDEPENDENCE ELECTORAL & BOUNDARIES
COMMISSION RESPONDENT**

RULING

1. The applicant filed the Notice of motion dated 2.10.23 seeking:
 1. That this court enters Judgement for the plaintiff against the defendant in the Sum of Kshs. 812,000/= being the agreed legal fees arising as per the instruction letter dated 5.9.2017.
 2. interest on above from the date of judgment till payment in full.
 3. costs of the application.
2. The application is based on the annexed affidavit of Olendo Cecelia advocate and the grounds that:
 - a. The respondent sought legal services of the applicant to act for it in Kisii Election Petition no.4 of 2017 *Abel Ochwari Onindo v Independent Electoral & Boundaries Commissions & 2 others*.
 - b. The agreed fees was Kshs. 812,000/= inclusive of legal fees disbursements, VAT and withholding tax, alternatively the agreed fees was in the sum of Kshs 700,000/=plus 16% VAT which equates or translates to the same amount.
 - c. The firm entered appearance and filed the requisite documents in defence of the respondent and took the general conduct of the matter.



- d. The matter came up for hearing and petitioner filed an application to withdraw the petition. The ruling on the withdrawal was delivered on 19.1.2018 by Hon E.A Obina (P.M).
- e. The applicant consequently wrote to the respondent informing it of the development and attached its fee note for settlement but this did not elicit any response from them.
- f. They attempted to engage with respondent over the fees in vain and later on sent them a letter dated 1.4.2021.
- g. The respondent failed and or neglected to settle the fees and hence this application.

In her affidavit dated Olendo Cecilia advocate who reiterated the contents of the application and annexed Instruction letter – CO1, a copy of the ruling CO2 dated 19.1.2018, letter dated 23.2.2018 CO3 and letter dated 1.4.2021-CO4.

The application was served but the respondent neither appeared nor filed any response herein.

3. I have carefully considered the application, the supporting affidavit and the annexures. Section 45 of *Advocates Act* provides that

(1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

(a) before, after or in the course of any contentious business [Civil or Criminal Court] make an agreement fixing the amount of the advocate’s remuneration in respect thereof;

(b)

(c)

and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

4. In the case of *Abuodha & Ominion Advocates vs Kakuta Mai Mai Hamisi* Misc App 46 of [2015] eKLR, the Court observed;

“....In my view for a document to constitute a valid and binding agreement for fees for the purposes of section 45 of the *Advocates Act*, the same must not only be so as to bar the advocate from taxing his costs more so as there is no evidence that the client accepted the proposal by the advocate even if it were to be found that the letter dated 20th June 2013 was a proposal on the final fee note. An agreement must contain an offer and acceptance and where one condition is not satisfied there is no binding agreement...”

5. It has emerged that the respondent engaged the applicant to represent it in Kisii Election Petition no.4 of 2017 *Abel Ochwari Onindo versus Independent Electoral & Boundaries Commissions & 2 Others* and the fees was agreed at Kshs. 700,000(all inclusive) plus 16 % VAT. I note from the ruling that all parties entered appearance in the matter and attended court on 13.12.17 and 14.12.17 and the petition was later withdrawn on 19.1.18. The applicant is a legal firm and they duly represented the respondent. The applicant made several demands for payment of its legal fees after the withdrawal but it says that the same did not elicit any response from the respondent and hence the instant application. Though the petition did not go to full hearing, the legal fees was agreed upon by the parties at the time that the instructions were given. The agreement is in a clear and ordinary language and the parties signed it and thus it is binding on them.



6. The respondent has an obligation to settle the said fees as agreed.
7. I find merit in the application and I proceed to enter judgment for applicant against the respondent in the sum of Kshs. 700,000/= plus 16 % VAT. I also award costs of this application.
8. On interest this is a liquidated claim and so I award applicant interest at court rates from the date of this ruling till payment in full.

T.A ODERA

JUDGE

3.7.24

Delivered virtually via teams platform in the presence of:

Atonga for Applicant.

Court Assistant: Oigo

