



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISC. CIVIL APPL. NO. 961 OF 2011(O.S)**  
**IN THE MATTER OF: ODHIAMBO S. E. & CO. ADVOCATES**  
**AND**  
**ENFORCEMENT OF A PROFESSIONAL**  
**UNDERTAKING ISSUED BY JOYCE J. CHESARO T/A J. J. CHESARO ADVOCATES**  
**IN THE MATTER OF: ORDER 52 RULE 7 OF THE CIVIL PROCEDURE RULES, 2010**  
**AND UNDER SECTION 1B, 1A AND 3A OF THE CIVIL PROCEDURE ACT, 2010**  
**BETWEEN**  
**ANTHONY MAGOR.....APPLICANT**  
**V E R S U S**  
**JOYCE J. CHESARO T/A**  
**J. J. CHESARO & CO. ADVOCATES.....RESPONDENT**

**JUDGMENT**

1. The Originating Summon dated 13<sup>th</sup> December 2011 is for enforcement of professional undertaking for the amount of Kshs. 178,689/- as provided under Order 52 Rule 7 of the Civil Procedure Rules.
2. The professional undertaking was given by the Respondent by her letter dated 28<sup>th</sup> July 2011. The pertinent part of that letter is as follows-  

**“Our instructions are therefore to give you our professional undertaking as follows-**

**“That we will within sixty (60) days of receiving the Title Deed of Plot No. Kwale/Mnanasini/399 pay you a sum of Kshs. 105,000.00 only and that upon our failure to pay you the said sum of Kshs. 105,000.00 within the said period, we will return to you the said Title in the condition we recovered from yourselves.”**
3. When the matter came up for hearing on 1<sup>st</sup> July 2014 judgment was entered by consent against

Respondent for Kshs. 105,000/- which amount was by that consent to be paid within 45 days from the date of consent. Parties agreed to address the balance of the claim by written submissions which they did.

4. I have considered those submissions where Applicant seeks enforcement on the amount of Kshs. 178,689/- which amount was due as at 24<sup>th</sup> August 2011 when the title was released to the Respondent. Respondent on the other hand is of the view enforcement can only be for the amount of Kshs. 105,000/- contained in her letter reproduced above.

5. The jurisdiction to enforce professional undertaking was the subject of the case **PATEL –Vs- KAIRU [1999]2 EA 279** where the Court stated-

**“The jurisdiction of the Court in an application for enforcement of a professional undertaking (is) a summary jurisdiction over advocates which should be exercised only in a clear case. It (is) an inherent jurisdiction which the Court (has) over advocates who (are) officials of the Court. It (is) a jurisdiction exercised, not for purposes of enforcing legal rights, but for purposes of enforcing honorable conduct on the part of the Court’s own officials. The court (has) to be satisfied that there had been a breach of an undertaking given by an Advocate acting professionally.”**

6. In the case of **KENYA REINSURANCE CORPORATION LTD –Vs- MURIU [1995-1998]1 EA 107**, it was held that-

- i. **The undertaking must be unambiguous, unequivocal and binding on the Advocate.**
- ii. **The undertaking must be capable of being enforced.**

7. Bearing the evidence before me I do find that there was breach of an undertaking as per Respondent’s letter dated 28<sup>th</sup> July 2011. That undertaking in my view was unambiguous, unequivocal and binding on the Respondent.

8. Where I part company with Applicant’s argument however is that the Respondent undertook to pay the additional amount of Kshs. 178,689/-. By the letter of undertaking dated 28<sup>th</sup> July 2011 Respondent gave a professional undertaking to pay Kshs. 105,000/- within 60 days of receiving the title deed. The title deed was forwarded to the Respondent and received by her on 24<sup>th</sup> August 2011. The Respondent did not undertake to pay Kshs. 178,689/-.

9. As stated before judgment was entered by consent for the amount of Kshs. 105,000/-. The only outstanding issue in my view is of costs and interest.

10. I therefore grant the following orders-

- a. **Judgment is hereby entered for interest at Court rate on the amount of Kshs. 105,000/- from 25<sup>th</sup> October 2011 until payment in full.**
- b. **Applicant is granted costs of the suit.**

**DATED and DELIVERED at MOMBASA this 3<sup>RD</sup> day of MARCH, 2015.**

**MARY KASANGO**

**JUDGE**