

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL DIVISION

HCCC NO 418 OF 2013 (O.S.)

MAINA & MAINA ADVOCATES.....PLAINTIFF

VERSUS

NELSON KABURU ADVOCATES.....DEFENDANT

R U L I N G

1. The **originating summons dated 16th September 2013** herein is for enforcement of an advocate’s professional undertaking. It is brought under **Order 52, rule 7(1) (b)** of the **Civil Procedure Rules, 2010** (the **Rules**). Both parties are advocates of this court. The Defendant entered appearance but did not file any replying affidavit. He was not required to file any replying affidavit, or indeed to enter any appearance. See **rule 10(2)** of the same Order.

2. The background to this dispute is brief and is as follows. The Plaintiff was acting for a client when the client instructed the Defendant to take over the matter. The Plaintiff released the client’s file to the Defendant upon his professional undertaking “to pay to you KShs 40,000/00 upon receipt of the settlement or judgment sum” That is common ground.

3. It is also now common ground (though previously denied by the Defendant) that some time back he recovered some KShs 143,673/00 towards the judgment sum. He has declined to pay to the Plaintiff his KShs 40,000/00 from this sum. His argument is that he must first recover the **entire** decretal sum before he can pay the Plaintiff.

4. I find the Defendant’s interpretation of his professional undertaking to be unduly restrictive, narrow and self-serving. The undertaking does not state in terms that he must first recover the **entire** or **full** judgment sum in order to pay the Plaintiff. Surely it falls to reason that as soon as he recovered enough to discharge his professional undertaking he must first do so! He recovered more than enough quite some time ago – KShs 143,673/00 to be precise. He at first denied this recovery and only admitted it at the hearing of the originating summons.

5. I will in the event allow the originating summons and direct as follows –

(i) The Defendant shall within fourteen (14) days of delivery of this ruling honour his professional undertaking by paying to the Plaintiff KShs 40,000/00.

(ii) In default the Plaintiff may execute for that sum, plus interest thereon at court rates from the date of filing these proceedings, as a decree of the court.

(iii) The Defendant shall pay to the Plaintiff costs of these proceedings to be agreed or taxed.

6. All the other reliefs sought are not within the jurisdiction of the court and are refused. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF OCTOBER 2014

H P G WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 10TH DAY OF OCTOBER 2014