



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC CASE NO 58 OF 2019 (OS)**

**PATRICK KIMATHI MUCHENA T/A**

**ARIMI KIMATHI & COMPANY ADVOCATES.....APPLICANT**

**=VERSUS=**

**OCHIENG OPIYO T/A OCHIENG**

**OPIYO & COMPANY ADVOCATES.....RESPONDENT**

**WANANDEGE SAVINGS & CREDIT**

**COOPERATIVE SOCIETY.....INTENDED 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 23<sup>rd</sup> September 2020. The application is brought by the Respondent /Applicant. It seeks to enjoin Wanandeg Savings and Credit Cooperative Society as the 2<sup>nd</sup> Respondent in these proceedings.
2. The matter originated from a professional undertaking given by the Applicant to the Respondent on 27<sup>th</sup> August 2018. When the Applicant failed to honour the professional undertaking, the Respondent filed an originating summons on 20<sup>th</sup> February 2020 seeking to enforce the undertaking.
3. The parties herein negotiated and the undertaking was fulfilled. The parties then negotiated costs which was agreed at Kshs.250,000/-. The Applicant sent a consent on the costs which he had signed to the Respondent who was to sign his part. The Respondent amended paragraph (ii) of the consent and returned it to the Applicant for his signature.
4. It would appear that the Applicant did not send back the amended consent for filing in court. This is what forced the Respondent to file an application seeking entry of Judgement on admission. The court gave directions as to the disposal of the Respondent's application by way of written submissions. On 23<sup>rd</sup> September 2020, the counsel for the Applicant who was the Respondent in the application of 4<sup>th</sup> May 2020 indicated to court that they had not filed a response to the application as they had instructions to file an application seeking to enjoin Wanandeg Savings and Credit Cooperative Society. The counsel indicated that they were to file the said application by close of business on that day. The court however reserved a date for ruling in respect of application dated 4<sup>th</sup> May 2020.
5. In deed as indicated, the Applicant filed the current application in which he contends that it is important for his client to be enjoined in these proceedings as the 2<sup>nd</sup> Respondent because it was the one which delayed in disbursing the funds which led to breach of the professional undertaking. The Applicant wants his client to be enjoined to explain the delay in disbursing the amount which was the subject of the undertaking.
6. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 2<sup>nd</sup> October 2020. The Respondent contends that this application is frivolous as an advocate is supposed to ensure that he has been put in funds before he gives an undertaking.
7. The Respondent argues that the Applicant is at liberty to pursue his client for compensation. The Respondent further contends that this application was filed on the day the court reserved its ruling date demonstrating the ill will on the part of the Applicant.
8. I have carefully considered the Applicant's application as well as the opposition thereto by the Respondent. The only issue for determination is whether the Applicant's client should be enjoined in these proceedings. The issue herein was a professional undertaking.

The Applicant had refused to honour his professional undertaking forcing the Respondent to file an originating summons seeking to enforce the same. The matter was settled and the parties were at the verge of recording a consent on costs when things went quiet.

9. There is absolutely no need to enjoin the Applicant's client in these proceedings to merely come and explain the delay. The professional undertaking was between the parties herein. If the Applicant made the undertaking without first ensuring that there were funds, then that is his own problem. I find no merit in this application which is hereby dismissed with costs to the Respondent.

It is so ordered.

**Dated, Signed and Delivered at Nairobi on this 12<sup>th</sup> day of October 2020.**

**E.O.OBAGA**

**JUDGE**

In the Virtual Presence of :-

Mr Kirika for Mr Kimathi for Respondent

M/s Atieno for Mr Opiyo who is the Respondent

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**