

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 86 OF 2011(OS)

PETER KIMANI NJIRIRIPLAINTIFF

VERSUS

JULIUS K. MUTHANWA}

T/A MUTHANWA & CO. ADV.} DEFENDANTS

J U D G M E N T

The Plaintiff Peter Kimani Njiriri brought an originating summons against Julius K. Muthanwa t/a Muthanwa and Company Advocates seeking to enforce a professional undertaking given by the Defendant. On 27th October 2010, the Plaintiff herein entered into a Sale Agreement with one John Michael Mbugua for sale of land known as LR 1144/55 Grant I. R. 50344 at Naivasha. The Plaintiff was the purchaser in the transaction. Both the purchaser and vendor engaged the services of the law firm of Muthanwa & Co. Advocates.

The Plaintiff agreed with the firm of Muthanwa & Co. Advocates that the property was to be transferred into the Plaintiff's name as agreed in the agreement. The Plaintiff was required to pay stamp duty in respect of the transaction. Towards this, the Plaintiff deposited Kshs. 170,000 into the firm's account for stamp duty. The Plaintiff thereafter felt that the firm of Muthanwa & Company Advocates had delayed the completion of the transaction. The Plaintiff engaged the services of the firm of Kidiavai & Co. Advocates who then called for the necessary documents from the firm of Muthanwa & Co. Advocates to enable them complete the transaction.

In a letter dated 19th April 2011, the firm of Muthanwa & Co. Advocates gave professional undertaking to release the necessary documents to the firm of Kidiavai & Co. Advocates within 7 days from the date of the letter. They further gave a written undertaking to refund Kshs. 170,000 paid towards stamp duty within 30 days from the date of the letter. The documents which the firm of Kidiavai & Co. Advocates required were actually given to them on the same day the undertaking was given.

The Plaintiff waited for the firm of M/S Muthanwa to honour their professional undertaking but they did not do so forcing the Plaintiff to file this originating motion. In the meantime, the firm of Kidiavai & Co. Advocates went ahead to have the property transferred into the Plaintiff's name. The Defendant who had been duly served neither entered appearance nor responded to the originating summons.

At the hearing, the Plaintiff produced the Sale Agreement (*exhibit 1*) which contains the conditions of sale. He also produced the professional undertaking by the firm of Muthanwa & Co. Advocates as contained in their letter dated 19th April, 2011 (*exhibit 2*). The Plaintiff also produced two pay-in slips dated 10/12/2010 and 14/12/2010 for Kshs. 32,000 and Kshs. 140,000 respectively paid into the account of Muthanwa & Co. Advocates held at Family Bank {*exhibit 3(a) and (b)*}. The Plaintiff explained that the 2,000 over and above the agreed stamp duty of Kshs. 170,000 was meant for Mr. Muthanwa's lunch which he had requested from the Plaintiff. The Plaintiff also produced an acknowledgment by Aggrey L. Kidiavai his new lawyer for the documents given to him by M/S Muthanwa & Co. Advocates (*exhibit 4*).

It is clear from the Plaintiff's evidence that the Plaintiff had engaged the services of Muthanwa & Co. Advocates to act for him. When the firm did not complete the transaction as required, the Plaintiff

had to engage another law firm to complete the transaction. He had already paid Kshs. 170,000 for stamp duty to the firm of Muthanwa & Co. Advocates. Mr. Julius Kamau Muthanwa of Muthanwa & Co. Advocates gave a written professional undertaking to refund the Kshs. 170,000 within 30 days from 19th April, 2011. He has not done so. It is clear that he is in breach of the professional undertaking given by him. I find that the Plaintiff has proved his case on a balance of probability. His originating summons succeeds as prayed. The Plaintiff is entitled to the refund of Kshs. 170,000. An order is accordingly given compelling the Defendant to honour his professional undertaking. The Plaintiff shall have costs of this originating summons.

Dated, signed and delivered in Open Court on this 10th day of July, 2013.

E. OBAGA

JUDGE

In the absence of parties. Parties to read contents of the judgment at the registry.

Court Clerk: Joan.

E. OBAGA

JUDGE

10/07/2013