



**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**

**RULING**

1. This is a Ruling in respect of Notice of Motion dated 4<sup>th</sup> May 2020 in which the Applicant seeks entry of Judgement on admission against the Respondent. The Applicant had filed an Originating Summons against the Respondent in which he was seeking to enforce a professional undertaking given by the Respondent.
2. The Originating Summons was settled and it was agreed that the Respondent was to pay agreed costs of Kshs.250,000/=. A consent for payment of cost was drafted by the Respondent who forwarded it to the Applicant for signing and filing in court. The Respondent did some amendment to clause two of the consent and forwarded it back to the Respondent who instead of signing it and filing the same, kept it and remained quiet even after a follow up by the Applicant.
3. The Applicant contends that there is nothing to go for hearing in this matter as the Respondent has already admitted the amount of Kshs.250,000/=which was actually negotiated and agreed upon. The Applicant therefore contends that there should be entry of Judgement on admission.
4. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 1<sup>st</sup> October 2020. The Respondent contends that the delay in remitting the money which resulted in breach of the professional undertaking was caused by his client Ms Wanandegge Savings and Credit Cooperative Society which he intends to bring in these proceedings as a second Respondent and that therefore he should not be condemned to pay the amount when he was not to blame for the delay in disbursing the money.
5. The Respondent further contends that the chairman of his client had assured him that he was going to undertake negotiations on payment of the costs but that the Chairman has not communicated to him about the matter. The Respondent argues that he has already filed an application seeking to enjoin his client which he believes should shoulder the costs.
6. The parties were directed to file brief written submissions. It is only the Applicant who filed submissions. I have considered the Applicant's application together with the opposition thereto by the Respondent. I have also considered the submissions by the Applicant. The only issue which emerges for determination is whether Judgement on admission should be entered.
7. There is no contention that the costs of Kshs.250,000/=were negotiated and agreed upon. A consent was done by the Respondent in which he had proposed to settle the costs within 14 days from the date of filing the consent. The Applicant amended clause two of the consent which appears to have made the Respondent not to execute the consent and thereafter file it in Court.
8. The Application which the Respondent filed in which he sought to enjoin his client has already been heard and the same dismissed. The professional undertaking was made by the Respondent. It was the duty of the Respondent to ensure that he had been put in funds before he gave the undertaking. The Respondent cannot therefore be heard to say that it is his client who ought to meet the costs. As Justice Gikonyo said in the case of **Havi & Co. Advocates Vs J M Njage & Co. Advocates HCCC No.59 of 2000**, an Advocate must ensure that he is in funds before giving an undertaking.

9. The Respondent having settled the sum in the undertaking and gone ahead to negotiate costs which he undertook to pay within 14 days of filing of the consent which he himself drafted, cannot again turn around and say that it is his client who should pay. I find that the Applicant's application is merited. I allow the same as prayed.

It is so ordered.

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

**E.O.OBAGA**

**JUDGE**

In the virtual presence of:-

Mr Kirika for Mr Kimathi for Applicant

M/s Atieno for Mr Opiyo for Respondent

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**