

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.C.CIVIL CASE NO.45 OF 1996**

**PROF. TABAN LO LIYONG PLAINTIFF
VERSUS
MUGAMBI IMANYARA & CO., DEFENDANT**

R U L I N G

The Plaintiff intended to purchase some property in Nairobi. He instructed the defendant, a firm of advocates to identify a suitable property and negotiate for the sale.

The defendants did identify the property and informed him accordingly. The purchase price was Shs.500,000/- The defendants were acting for both the vendor and the purchaser. The Plaintiff paid the defendant Shs.1,100,000/= as stakeholder upon the execution of the agreement. The sale did not materialize and the Plaintiff demanded his money back. The defendants paid him Shs.300,000/= remaining with a balance of Shs.800,000/=. That sum of Shs.300,000/= was paid to the Plaintiff through his new advocate K.N. OSMOND. The Plaintiff by way of this originating summons sought order that the defendant do deliver the amount of Shs.800,000/= to his advocate K.H. OSMOND. The matter came up for directions on the application of the defendant and directions were taken that the matter do proceed by way of viva voca evidence.

The Plaintiff by way of this notice of motion applies for review of that order on the ground that the Plaintiff is based in S. African and that the issue in dispute it is straight forward and does not require his presence. Having gone through the pleadings I am satisfied that the matter in dispute can be dealt with and conclusively decided by way of affidavits.

The Plaintiff did not play any personal role in the movement of the said money from his bank to the defendants and the defendants have conceded that they had received the said money and they even refunded part of it to the Plaintiffs advocate then on record K.N. OSMOND.

This application cannot be said to be lacking in merit and is allowed. The order of this court dated 18th December, 1998 is hereby reviewed and set aside and it is hereby directed that the suit do proceed by way of affidavits.

It is so ordered.

J.L.A. OSIEMO

JUDGE