



**Kwayera t/a Tele News Africa and Atlantic Region v Nyakambi p/a Maosa and Co. Advocates
(Civil Case E063 of 2024) [2025] KEHC 13357 (KLR) (Civ) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E063 OF 2024

AM MUTETI, J

SEPTEMBER 17, 2025

**IN THE MATTER OF THE ADVOCATES ACT, FOR ADVOCATE
MAOSA THOMAS GICHANA NYAKAMBI P.105/1481/85**

AND

**IN THE MATTER OF ILLEGAL AND UNLAWFUL DIVERSION OF CLIENT MONEY
INTO A PRIVATE PERSONAL ACCOUNT JOINTLY OWNED BY ADVOCATE
MAOSA THOMAS GICHANA NYAKAMBI AND BETTY JANE MWAISEJE**

AND

**IN THE MATTER OF GROSS PROFESSIONAL MISCONDUCT BY ADVOCATE
MAOSA THOMAS GICHANA NYAKAMBI P/A MAOSA AND CO. ADVOCATES**

AND

**IN THE MATTER OF THEFT BY AGENT AND MONEY
LAUNDERING BY MAOSA THOMAS GICHANA NYAKAMBI**

BETWEEN

**SIMPSON SENDA KWAYERA T/A TELE NEWS AFRICA AND ATLANTIC
REGION APPLICANT**

AND

**MAOSA THOMAS GICHANA NYAKAMBI P/A MAOSA AND CO.
ADVOCATES RESPONDENT**



JUDGMENT

1. The applicant in this matter by way of Originating Summons dated 25th March 2024 moved this court in (Under Order 52 Rule 4(1) and (2) of the Civil Procedure Rules, 2010, section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law) seeking the following orders:
 - i. That this Honourable Court be pleased to issue an order that Advocate Maosa Thomas Gichana Nyakambi P/a Maosa and Co. Advocates to pay the Applicant Kenya Shillings Sixty Two Million, Nine Hundred and Fifteen Thousand, Nine Hundred and Fifty(Kshs.62,915,950.00) within seven (7) days of the order of this Court being the balance of the decretal sum due to him in Misc. Civil Suit (OS) No. 148 of 2012 between the Applicant herein versus The Attorney General and the Permanent Secretary Ministry of Trade.
 - ii. That the Respondent do pay compound interest at commercial rates on the client's money above from 12th July, 2021 when the Respondent received the same in his Advocate-Client Account (but deliberately refused to disburse to the client) until payment in full.
 - iii. That this Honourable Court be pleased to make any other or further orders as may be necessary to ensure that the Respondent pays out the decretal sum to the Applicant.
 - iv. That the Respondents do pay costs of this summons.
2. Analysis and Determination

Background

3. The court on 22nd July 2024 after hearing counsel for both parties issued directions that the Originating Summons was to be heard and disposed of by way of affidavit evidence.
4. In the date the court issued directions for disposal of the matter by way of affidavit evidence none of the parties sought to adduce viva voce evidence and in the court assessment this was a matter that could be adequately dealt with by way of affidavit considering the subject matter of the dispute and the pleadings by the parties.
5. In Kenya Commercial Bank Ltd Vs. Osebe Civil Appeal No. 60 of 1982 the court held that:

“the procedure for Originating Summons is intended for simple matters and enables the court to settle them without expense of bringing action. The procedure is not intended for determination of matters that involve serious questions. The procedure of Originating Summons is designed for summary or ad hoc determination of points of law, construction or certain specific facts for obtaining specific directions of the court such as trustees ,administrators or the courts execution officers.”
6. The Originating Summons basically seeks an order for release of funds by the respondent which sum is quantified at Kshs. 62, 915,950.00 being the balance of a decretal sum due to the applicant in Misc. Civil Suit (O.S) No. 148 / 2012 between the applicant , the Attorney General and the P.S Finance.
7. The applicant also sought a further order for the advocate to pay compound interest at Commercial rates on the clients money , plus costs.
8. The issues that emerge from the Originating Summons are:-



- a. Whether the respondent received the sum Kshs. 62,915, 950.00 for and on behalf of the applicant.
 - b. Whether the sum has been paid to the applicant by the respondent.
9. The Originating Summons is thus purely based on accounting for monies held by the respondent as an advocate which sum ought to have been paid to the client.
 10. The court on the 14th August 2025 was informed by Mr. Otieno for Mr. Maosa that there has been rendered a decision by the Advocates Disciplinary Committee requiring the respondent to pay the sum claimed to the applicant.
 11. Mr. Otieno sought to have this court declare that since there is a decision by the committee then this matter is spent and there should be no need to deliver judgment.
 12. Mr. Otieno was not courteous enough to produce the said decision before this court or at least summon courage and urge the court to have the matter settled in the terms of the decision of the Disciplinary Tribunal thus this court dismissed his request and reserved the matter for judgment.
 13. The judgment of the Disciplinary Tribunal was however availed to this court by way of an affidavit sworn by the applicant on 23rd April 2025 opposing an application by the respondent to have this court refer the pleadings in this file to the Director of Criminal Investigations for investigations.
 14. The parties to the motion have each filed written submissions which this court has carefully considered.
 15. The court has also considered the Judgement of the Disciplinary Committee in DTC Case No. 112 of 2024 delivered on 10th February 2025 in which Mr. Maosa respondent was found guilty of withholding the applicant's money amounting to Kshs. 62, 915, 950.00.
 16. It is this same judgment that Mr. Otieno urged the court to take cognizance of and declare that this suit is spent.
 17. It is important for me to state that the fact that the Disciplinary Committee had pronounced itself on the dispute before it does not as of necessary render proceedings pending in this court otiose. It is important to note that the decisions of the Disciplinary Committee do not bind this court and that the committee is subordinate to the High court.
 18. Secondly, the decision of the Advocates Disciplinary Committee are subject to appellate jurisdiction of this court thus the fact that the committee has pronounced itself on a matter that is not the end of the matter.
 19. This court is thus minded to independently consider and evaluate the evidence tendered by the two parties through the affidavits and annexures thereof.

Applicants Case

20. The applicant in the face of the Originating Summons has detailed how the respondent vide a decree and certificate of costs received instructions from him to recover Kshs. 110, 061,691.00 from the Ministry of East African Affairs, Commerce and Tourism (formerly known as Ministry of Tourism).
21. According to the applicant the decretal sum was paid in installments and the last tranche was paid on 12th July 2021.
22. The amount according to the applicant was Kshs. 85,735. 950.



23. The applicant contended that it was immediately after receipt of the money that the respondent became evasive to the extent of failing to pick his telephone calls.
24. The applicant went further to state that the finds were paid directly to Mr. Maosa's Advocate client account at Sidian Bank on 12th July 2021.
25. The applicant has further narrated that on a date he does not specify they went to the Bank together with the respondent and one Mr. Joseph Biwott(advocate) and Michael Rotich was the applicants business associate to go and give the bank instructions on disbursements but while in the banking hall the respondent vanished leaving them in the banking hall and that was when he became suspicious of the applicant's conducts.
26. The applicant further stated that he wrote to the bank cautioning it from releasing the funds to anyone in his absence and Mr. Michael Rotich.
27. According to the applicant he later learnt that the bank had secretly released the funds to a personal account held by the respondent and one by the name Betty Jane Onwaiseje a Tanzanian national and a non lawyer.
29. The applicant gave the account number as 0100387583400 as being the account used to move the finds.
30. The applicant further contended that he has made numerous attempts to get the respondent pay up the money but it has all been in vain thus prompting him to file the suit.
31. The applicant further contended that the respondent still holds his Kshs. 62, 915, 950 out of which he was to deduct the sum of Kshs.15,000,000 as his fees.
32. The court was also told that the respondent has so far received Kshs. 50,000,000 from previous payments thus according to the applicant he has been adequately remunerated and should just pay his Kshs.62,915,950.
33. The applicant made reference to what he terms as previous record of the respondent in regard to his handling of clients money but this is not inclined to veer into that trajectory since what is before this court is a specific claim premised on specific pleadings and evidence.
34. To entertain matters that fall outside the pleadings would be to engage in irrelevances that would not assist in the just determination of the instant suit.
35. The court has taken note of the fact that money was paid to the respondent which sum the applicant claims is yet to be released to him.
36. The affidavit of Simpson Senda Kwayera sworn on 25th March 2024 at paragraphs 15,16,17,18,19,20,21,22,23,24,25,26 and 27 details the process leading to the payment which I find necessary to capture in this judgment:-

“ 15. However, the last payment of Kshs. 85,735,949.79 that came on 12th July,2021 saw Mr. Maosa change tact. He became increasingly cagey and elusive and most of the time he would not pick my calls. This was extremely frustrating since I was craving for information and conclusion of my payments that I had waited since 2004. (Attached herewith and marked SSK-4 is a copy of a letter from the Ministry of Tourism and Wildlife dated 25th April,2022 confirming that indeed the said decretal sum was paid out to the Respondent's Bank Account M/s Thomas Maosa & Company Advocates on the 12th July, 2021 to the Bank Account Number 01003XXXX427).



16. Indeed, the Attorney General, Auditor General, Parliament, Minister for Finance, the Permanent Secretary, all advised the parent ministry that the remaining outstanding payment had to be paid at ago since the 26% interest being charged was draining government funds. They made arrangements to offset the funds at once through the 2021/2022 Budget. It is important to demonstrate that the aforesaid payments were processed legally and lawfully as follows.

D. Mr. Maosa makes first move in initiating payment of Ksh. Kshs. 85,735,950 by directly engaging the Ministry.

17. On 7th July, 2020, my lawyer, Thomas Maosa vide letter referenced TM/SSK/16/1 wrote to the Ministry of Tourism and Wildlife and stated that the outstanding amount due to me was Kshs. 74,000,000. This letter was a follow up of a meeting that had earlier on been held personally between the Hon. Safina Kwekwe Tsungu, CBS who was the Principal Secretary Ministry of Tourism and Wildlife and the said Mr. Thomas Maosa, the Respondent herein. The letter provides in part as thus:

Outstanding payment due to Mr. Simpson Senda wa Kwayera t/a Tele News Africa & the Atlantic Region

We refer to the above subject.

As a follow up to the meeting held as your offices between yourself and the undersigned, the following issues were deliberated and agreed upon in a bid to resolve the same;

- (i) A path be found to finalize the above matter which has been lingering for quite some time now.
- (ii) The question of of interest accruing on the outstanding account be rationalized and capped to enable the ministry to have a definite figure which it should settle by mobilizing its available internal accounts in order to finally settle the payment.
- (iii) The final settlement be channeled through the Claimant's Advocates, M/s Maosa and Company Advocates as per the previous remittances.
- (iv) There is no further litigation on the matter for the same is currently in the hands and jurisdiction of the Parliamentary Accounts Committee (PAC).

In conclusion, it was agreed that the amount payable stands in the sum of Kenya Shillings Seventy-Four Million (Kshs. 74,000,000) the amount accrued interest as at 8th June, 2020 the date when the Parliamentary Accounts Committee was examining the Accounts of the Ministry of Tourism and Wildlife.

The Ministry shall in response expedite the payment process so as to finally settle the outstanding account within the existing month of July,2020; wherein time shall be of essence in the circumstances.



We shall be most obliged to hear from you.

Yours faithfully,

Thomas Maosa

(Attached herewith and marked SSK-5 is a copy of the said letter)

D. Tenacious Maosa not giving in pursuit of my money: he directly engages PAC

37. Unfortunately, the said sum of Kshs. 74,000,00 was not settled in the month of July,2020 as anticipated and therefore the same continued to attract interest at the rate of 26%. On 5th August, 2020, Mr. Thomas Maosa through a letter referenced TM/SSK/20/1 wrote to the Chairman Public Accounts Committee requesting the matter to be referred to the Parliamentary Accounts Committee abbreviated as "PAC" for further deliberations and settlement of the pending claim. In the said letter, Mr. Maosa made extensive reference to a PAC meeting of 8th June,2020 where the issue of the pending claim had been discussed and the way forward agreed. He emphasized that the 8th June,2020 meeting was attended by key officials from the Ministry of Tourism and Wildlife, including him in his capacity as my lawyer and therefore wondered why payments had not been made notwithstanding an indication that a settlement had been reached. (Attached herewith and marked SSK-6 is a copy of the said letter dated 5th August,2020). E. Maosa optimistic and full of expectation, forwards Bank details to Ministry and notifies Bank of impending payments emanating from a court judgment.
38. There was all along indication from my lawyer Mr. Maosa that the payment of Kshs. 74,000,000 was going to be made in the year 2020; and as a result of that expectation, Mr. Maosa wrote to his Bank on 5th October,2020 through a letter referenced TM/SSK/15/11 and notified the bank of the impending payment in settlement of my payments emanating from a Court Judgment delivered by the High Court in Nairobi High Court Civil Case Number 148 of 2012(O.S). (Attached herewith and marked SSK-7 is a copy of the said letter dated 5th October, 2020).
39. Equally, in the same year of 2020, on 19th June,2020, my lawyer, Mr. Maosa wrote a letter to the Principal Secretary Ministry of Tourism and Wildlife referenced TM/SSK/16/1 forwarding his bank details in preparation to receive my payments amounting to Kshs. 74,000,000 emanating from Nrb HCCC Number 148 of 2012. (Attached herewith and marked SSK-8 is a copy of the said letter dated 19th June,2020).
40. The payments did not come as anticipated, and my lawyer Mr. Maosa did not give up in pursuit of the same on my behalf. He, on 24th February,2021 through a letter referenced TM/SG/C/2004 wrote to the Principal Secretary, Ministry of Tourism and Wildlife, Hon. Safina Kwekwe Tsungu, CBS and now made a claim for Kshs. 85,735,949.79 the same having arisen from Kshs. 74,000,000 due to interest at the rate of 26% p.a. (Attached herewith and marked SSK-9 is a copy of the said letter dated 24th February,2021). F. Light at the end of the tunnel: Maosa issues an Irrevocable Professional Undertaking to the Ministr.
41. This new claim with enhanced interest triggered a lot of activities between the Ministry of Tourism and Wildlife in form of official meetings and numerous correspondence between the Ministry Officials and my lawyer, Mr. Maosa culminating into a settlement whereby Mr. Maosa on 30th June,2021 issued an Irrevocable Professional Undertaking to the Ministry in regard to fully settling the matter upon receipt of Kshs.85,735,950, and that I will not have any further claim in respect thereto. (Attached herewith and marked SSK- 10 is a copy of the said Professional Undertaking dated 30th June,2021 issued by Mr. Thomas Maosa).



F. AG'S advice for settlement of the entire claim

42. Crucially, the Office of the Attorney General had issued his recommendation earlier on 17th January, 2017 for the settlement of the outstanding claim. (Attached herewith and marked SSK-11 is a copy of the said letter dated 17th January, 2017 to the Ministry of Tourism). G. Auditor General's report recommending the pending bill to be settled.
43. Noteworthy, The Auditor General, FCPA Edward Ouko, had on more than two occasions advised the Ministry to settle the pending claim due to me to avoid escalation of interest and thereby loss of public funds in the process. In his Report for the year 2016/2017 dated 31st December, 2018, at page 316 of the said Report he opined as thus: "Consequently, there is risk of further loss of public funds through continued accumulated interest and penalties occasioned by the Ministry's officials. Further the Ministry should fast track the settlement of this issue to avoid further interest and penalties." (Attached herewith and marked SSK-12 is a copy of said report for the year 2016/2017 with the relevant pages). H. PAC recommendation for the pending bill to be settled
44. Equally, and as already noted, the PAC meeting of 8th June, 2020 had sanctioned the Ministry to make payments upon considering the opinion of the Attorney General's office on the matter, in which it was advised that my claim be settled in its entirety to avoid escalating costs to the public. This information is well documented in the Report on the Examination of the Report of the Auditor General on the Financial Statements for the National Government for the Financial year 2018/2019 as adopted by the House on Thursday 2nd May, 2022 at 2.30PM. (Attached herewith and marked SSK-13 is a copy of the said Report item 1466 with the relevant pages in which it was observed that the payments due to me were eventually settled in full). Treasury acknowledges payments of the claim
45. Importantly, my payments for Kshs. 85,735,950 are captured in Treasury records in a September 2021 report for General Economic Affairs (GECA) Sector under "Analysis of Court Awards." Attached herewith marked SSK-14 is a copy of the said report with the relevant pages).
- J. Maosa's about-turn: Payments disbursed to his Advocate- Client Account on 12th July, 2021...the now elusive, dodgy, cagey Advocate
46. I must admit, Mr. Thomas Maosa played an important role in pursuing these payments through legal channels as demonstrated hereinabove. He heavily corresponded with Treasury, Attorney General's Chambers, Ministry of Tourism and PAC among other government agencies. He guided me all the time that our claim would be settled, if not, we had recourse in court. And as a consequence of his commitment and hard work in pursuit of my claim, the funds were released to his Advocate-Client Account at Sidian Bank on Kenyatta Avenue Branch on 12th July 2021. However, things changed immediately, he did not disclose this to me. Instead, he would sporadically deposit some funds into my account and misled me that he was using his personal resources to keep me going as he waited for the payment to be received into his Account from the Ministry."
47. The applicant further at paragraph 45 of the affidavit deposes:-
- “ 45. From the Kshs. 85,735,950.00, Mr. Maosa received from the Ministry of Tourism on my behalf, he has cumulatively paid Tele News and Atlantic Region a sum of Ksh. 22,820,000 (Kshs. 6,770,000 directly to me and Kshs. 16,050,000 to my business associate Mr. Rotich). Mr. Maosa remained with Kshs. 62,915,950.00 out of which he was to take a whopping Kshs. 15,000,000 as legal fees and pay me the rest (Kshs. 47,915,950.00). I am advised by my Advocates on record which advise I verily believe to be true that what Mr.



Maosa obtained in the initial payments, a sum in excess of Kshs.50 million is sufficient, and therefore my claim is for Kshs. 62,915,950.00. There is no justification whatsoever for a lawyer's fees to constitute more than 70% of the decretal sum, and Mr. Maosa's actions are unconscionable, and punitive.”

48. The applicant's case rests with the evidence as set out in his affidavit and all the accompanying documents and its on that basis that he seeks relief from this court to have the respondent reliance his funds.

Respondent's Case

49. The respondent in answer to the Originating Summons filed an affidavit in reply sworn on 24th April 2024.
50. In his response the respondent admits having been instructed by the applicant to pursue the ministry of Trade and the Attorney General in a bid to recover Kshs. 110,061, 691.00
51. The respondent at paragraphs 4 and 11 of the affidavit in reply states:-
- “ 4. That, in answer to Paragraph 12 of the applicant's Affidavit, I wish to state that contrary to what he avers, I never collected funds in three tranches as alleged, but rather the payment of the initial Kshs. 65,000,000/= arising from the consent entered into between Mr. E. Wafula the former Counsel of the applicant and Ms Muthoni Kimani Senior Deputy Solicitor-General on behalf of the Attorney-General was initially paid through the Attorney- General Office through the Court and my Chambers.
11. That, the payment of Kshs. 85,000,000/= came at the last payment in the litany of payments from the Ministry of Tourism and Wildlife in mid July, 2021, and which sum was disbursed to the applicant, his partner and the known facilitators who facilitated the payment to the full knowledge of the Applicant.”
52. The two paragraphs leave no doubt that the respondent received a total of Kshs. 150,000,000 over and above the Kshs. 110,061,691.00 which he had been instructed to pursue payment for.
53. The respondent contends that the last tranche of Kshs. 85,000,000 which is the subject of the dispute was received by him and disbursed to the applicant, his partner and the known facilitators who facilitated the payment to the full knowledge of the applicant.
54. Interestingly, the respondent at paragraph 12 of his affidavit states that the Kshs. 60,000,000 and Kshs. 85,000,000 were supported by any contract ,court decree and or any lawful document to support the payment save for commendations made by one Howard Sasaka and the facilitators at the ministry of Tourism and Wildlife who neglected to undertake due diligence.
55. The respondents own affidavit at paragraph 12 stated that he paid the alleged facilitators Kshs. 85, 735, 949. 79
56. Further the respondent contends that there was no legal basis for the payment of the said sum of Kshs. 85,735,950 for there was no pending court decree in favor of the applicant save for the sum of Kshs.65,000,000.



57. The respondent goes on to state at paragraph 21 and 23 that :-

“ 21. That, the said sum of Kes. 85,735,950/= was crafted and computed by one Mr. Howard Sasaka at the behest and instructions of the applicant and his business partner Mr. Michael F. Rotich and which amount was facilitated by the Ministry of Tourism and Wildlife, hence the instructions from the applicant to make disbursements, to himself, his associate Mr. Michael F. Rotich and the various facilitators who occasioned the payment.

23. That, the further payment of Kshs. 60,000,000/- which the applicant is reluctant to disclose, together with Kshs. 85,735,950/= was fraudulently paid due to lack of any decree and/or contract and/or other valid reason for the payment.”

58. It is clear that monies were received by the respondent but he contends that the only legitimate sum that ought to have gone to the applicant was Kshs.60,000,000

59. It is the respondents position that the applicant has lodged these proceedings as a cover up of the fact that the sum of Kshs. 60,000,000 and Kshs. 85,000,000 was fraudulently processed and paid to Tele News Africa and the Atlantic Region by the Ministry of Tourism and Wildlife.

60. In a nutshell the defence of the respondent is that the sum of Kshs.85,000,000 was not backed by any decree of the court and that the money went to the applicant’s partner Michael F Rotich and the facilitators at the ministry.

Analysis of the Evidence

61. The evidence provided by both parties leaves no doubt about the following:-

- a. That the applicant instructed respondent as an advocate to pursue the Ministry of Tourism and Trade for the payment of Kshs. 110,061,191.00
- b. That the respondent accepted the brief and engaged the ministry concerned as well as the Attorney General
- c. That following the effort of the respondent funds were released to Tele-News Africa and the Atlantic Region in two tranches:-
 - i. Kshs.60,000,000
 - ii. Kshs. 85,000,000
- d. The funds were all channeled by the Ministry to the respondent who does not deny receiving the same.

62. The point of contention in the matter is whether in the face of the evidence supplied by both parties the applicant was entitled to Kshs. 85,000,000 which was the last tranche paid or any sum thereof.

63. The position of the applicant is that all the monies received by the respondent other than the agreed fee was his money and as such the respondent should remit to him the sum of Kshs. 62, 915, 950.00 being the sum owing and due to him.

64. The applicants position is that the money received by Mr. Maosa from the Ministry was lawfully paid to Mr. Maosa for onward transmission to him.



65. The respondent on the other hand contends that though he received the money, the same was fraudulently paid to him and he utilized the same to pay one Michael Rotich and some unnamed individuals whom he loosely referred to as facilitators.
66. I must begin by stating that given the nature of this dispute there was absolutely no need to approach this matter by way of a viva voce evidence because the issue is simple and does not require any complex inquiry into any facts.
67. An advocate has 4 cardinal duties. The duties are:
- a. A duty to the court
 - b. A duty to the client.
 - c. Duty to society
 - d. And the duty to oneself
 - e. Duty to profession
68. All advocates swear to uphold the rule of law and endeavor in serving the public to promote justice even as they advance their clients interests.
69. The duty extends to advocates not engaging in unlawful or improper actions such accepting instructions to commit crimes.
70. Rule 21 of the Code of Standards professional practice and Ethical conduct – Legal Notice No. 5212 sets out the overriding values and principles of professional practice and Ethical conduct.
71. The principles include:-
- i. Independence
 - ii. Honesty and Integrity
 - iii. Fidelity to the Law
 - iv. Conflict of interest
 - v. Advocate- client confidentiality
 - vi. Professional undertakings
 - vii. Fiduciary duty to the client
 - viii. Professionalism
 - ix. Remuneration
 - x. The lawyer in society
72. The principles underscore the need for lawyers to handle clients funds are in a manner that is not adverse to the client.
73. It follows therefore where a lawyer receives funds meant for his only entitlement in respect of those funds is the sum due as per their agreement on fees and if none exists the proper and legal way is to have the fees assessed and taxed accordingly.



75. The advocate must not engage in channeling the funds received for and on behalf of his client to other uses without the express authority of his client.
76. In this matter Mr. Maosa advocate admits to have received the funds but his defense is that he received funds that were proceeds of fraudulent activity at the ministry.
77. That line of defense I must say is one of the most striking defenses I have ever come across.
78. The respondents seeks to defeat the claim by stating that “the money was illegally obtained, I received it and utilized it as advised by your partner!”
79. Two things emerge from this defense if indeed the instructions to act in Commercial and Admiralty Division Misc. Civil Suit No. 148 of 2012 Simpson Senda Kwayera T/A Tele News Africa and Atlantic Region Vs. The Honorable Attorney General and Ministry of Trade came from the Plaintiff in the suit was that person not the present applicant?
80. If the applicant is the person who instructed the respondent doesn't it follow naturally that he would have been the person to give instructions on how the funds would be disbursed.
81. The claim by the respondent in paragraph 43 of his affidavit that he paid the money to the associate Michael F. Rotich and several other facilitators does not absolve the respondent from legal responsibility and liability to pay the money to the applicant.
82. This court has anxiously scrutinized the documents annexed to the affidavit of Mr. Maosa. There is not a single document authorizing Mr. Maosa to disburse the sum of Kshs.85,000,000 in the manner he claims.
83. The respondent having admitted receipt of the sum in issue the burden lay on him to prove to the satisfaction of this court that he paid the money to the applicant or any other person as per instructions.
84. Section 107 of the *Evidence Act* is clear that the person asserting to the existence of facts necessary for the court to give judgment in his favor bears the burden of proving the existence of those facts. See *Kengere Vs Aisha Motor Dealers Ltd & 2 Others (Civil Appeal E007 of 2023)[2025] KEHC 4798 (KLR) (10th April 2025) (Judgment)*.
85. The respondent should have placed on record to show that he was indeed instructed by the applicant to pay monies to Michael Rotich and the so called facilitators whom he has elected not to name.
86. As an advocate aware of the fiduciary duty owed to his client the respondent should have handled the funds in a manner that did not in any way prejudice his client.
87. If for a moment the court was to entertain the defense by the respondent that the money he received was fraudulently paid to him, then is the respondent asking the court to find that he could irregularly receive payment in the name of his client and spent it? I do not think so.
88. The duty of counsel to uphold the rule of law would have dictated that he returns the money to the Ministry or report the matter to the Ethics and Anti-Corruption Commission besides surrendering the money to the Assets recovery Agency as provided for under Section 5 of the Proceeds of crime and Anti Money Laundering Act No. 9 of 2009.
89. The failure to report is an offence under Section 5 of the Act and I am certain the respondent knows the consequence of the blatant admission if the court was to treat it as being true.



90. Black's Law Dictionary 11th Edition defines fiduciary duty as:-

“A duty of utmost good faith, trust, confidence and candor owed by a fiduciary (such as an agent or a trustee) to the beneficiary (such as the agent's principal or the beneficiaries of the trust; a duty to act with the highest degree of honesty and loyalty towards another person and in the best interest of the other person...Also termed as duty of loyalty, duty of fidelity; duty of faithful service; duty to avoid conflict of interest.”

91. In the instant case this court finds that the respondent received the funds meant for the client and breached his fiduciary duty to the client as advocate and therefore he is liable to pay to the applicant the sum claimed being Kshs. 62,915,950.00.

92. In arriving at this decision I have considered the case of Mukuha v Waweru Munyi Jackson t/a Waweru Munyi & Co Advocates (Civil Case E951 of 2021) [2022] KEHC 16682 (KLR) (Commercial & Admiralty) (7 December 2022) (Ruling) in which Lady Justice Chepkwony D. held:-

“it is my view that a fiduciary duty is as in the instant case where the defendant was entrusted with the plaintiffs money and transactions as instructed and that such instructions should be executed to the latter without breaching any of them”

93. As stated earlier in this judgment there was no instructions issued to the respondent to deal with the money as he alleges. The upshot of the analysis is that he breached his advocate fiduciary duty to the client and his attempt to criminalize the funds is a belated attempt to avoid liability knowing too well if he had been honest in his claim in the defense the proper thing to do would have been to return the funds to the Ministry, the Attorney General or the Assets Recovery Agency as is his duty to uphold the rule of law.

94. The final order that this Court grants is that the Originating Summons dated 21st March 2024 is hereby allowed with costs.

95. Judgment is accordingly entered against the respondent for the sum of Kshs. 62,915,950.00. plus costs and interests until payment in full.

96. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Maosa for the Plaintiff

Otieno for the Respondent

Plaintiff

Nairobi High Civil Case. No. E 063 of 2024 (O.S) – Simpson Senda Kwayera T/A Tele News Africa And Atlantic Region –VS- Maosa Thomas Gichana Nyakambi P/A Maosa And Co. Advocates

10

