

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CIVIL SUIT NO. E616 OF 2024**

**BENEDETTE MUTUKU**

**T/A AS BEE MUTUKU**  
**ADVOCATES.....APPLICANT**

**VERSUS**

**PATRICK NGUNJIRI MAINA**

**T/A PATRICK LAW ASSOCIATES.....1<sup>ST</sup>**  
**RESPONDENT**

**JOSEPH MWICIGI.....2<sup>ND</sup>**  
**RESPONDENT**

**JUDGMENT**

1. This is a Judgement in respect to the Originating Summons dated 13<sup>th</sup> October, 2024. It is a suit filed by the Applicant who is an Advocate to enforce a professional undertaking issued by the Respondents who are fellow Advocates. The Applicant filed the Originating Summons dated 13<sup>th</sup> October 2024 seeking the following orders;

*a) The Respondents be ordered to honour their professional undertaking dated 13<sup>th</sup> May 2024 and do forthwith pay to the Applicant Kshs. 2,800,000/- being the full purchase price as per their professional undertaking in respect of*

*the Sale of Land Reference Number Kakuzi/Kirimiri Blk.7/1393 together with interest at court rates until payment in full.*

*b) The Respondents bear the costs of this suit.*

### **Background Facts**

2. The Application was supported by the Affidavit of **Benedete Mutuku** who stated the Applicant, an Advocate of the High Court of Kenya, represented the Vendor (John Gathekia) and a third party, Harmony Adams Investments, in the sale of land parcel Kakuzi/Kirimiri Blk.7 valued at Kshs. 2,800,000. The Vendor owed Harmony Adams Investments Kshs. 2,765,000, which was secured by the title deed to the property.
3. The 2<sup>nd</sup> Respondent, also an Advocate, acted for the Purchaser under instructions from Equity Bank and was an employee or servant of the 1<sup>st</sup> Respondent. To facilitate the transaction, the parties negotiated and issued a professional undertaking to secure the release of the completion documents.

4. Subsequently, the Applicant released the documents based on the undertaking, but the Respondents failed to honour their payment obligation of Kshs. 2,800,000. Despite reminders and a notice of intention to sue, the Respondents remain in default. The Applicant now seeks the Court's intervention to compel the Respondents to comply with the professional undertaking dated 13<sup>th</sup> May 2024.
5. It is noteworthy that the Respondent did not file any response thus this suit remains undefended.

### **Issues for determination**

6. The Court has carefully considered the Application and the submissions filed therewith and the issue for determination is;

*a) Whether the Respondents should be ordered to honour their professional undertaking.*

### **Analysis**

7. The Court's jurisdiction to enforce a professional undertaking is derived from the provisions of Order 52 Rule 7 of the Civil Procedure Rules which states that -

**1. An application for an order for the enforcement of an undertaking given by an Advocate shall be made-**

**a. if the undertaking was given in a suit in the High Court, by summons in chambers in that suit; or**

**b. in any other case, by originating summons in the High Court.**

**2. Save for special reasons to be recorded by the judge, the order shall in the first instance be that the Advocate shall honour his undertaking within a time fixed by the order, and only thereafter may an order in enforcement be made.**

8. It was the Applicant's case that the Respondents have failed, refused, and/or neglected to release the purchase funds amounting to Kshs. 2,800,000/- to her for onward transmission to the 3<sup>rd</sup> Party as undertaken despite having received the completion documents. This amounts to a clear and deliberate breach of a professional undertaking. Thus, the Respondents' failure to honour the undertaking has prejudiced the Applicant and caused undue financial hardship.

9. The Court of Appeal, in the case of **Harit Sheth T/A Harit Sheth Advocate v K.H. Osmond T/A K.H. Osmond Advocate [2001] KECA 343 (KLR)** set out the nature of an Advocate's Professional Undertaking and its consequences by stating as hereunder -

***A Professional Undertaking is a bond by an Advocate to conduct himself as expected of him by the court to which he is an officer. No matter how painful it might be to honour it, the Advocate is obliged to honour it if only to protect his own reputation as an officer of the court. The law gives him the right to sue his client to recover whatever sums of money he has incurred in honouring a Professional Undertaking. He cannot however, sue to recover that amount unless he has first honoured his Professional Undertaking.***

10. The Court has carefully perused the attached documents, part of which is the professional undertaking dated 13<sup>th</sup> May 2024, and it is clear that the Respondents gave an irrevocable professional undertaking as stated under the following term;

***“Kindly release the aforesaid documents to us, on our irrevocable professional undertaking on the following terms:-***

***That Equity Bank (Kenya) Limited shall pay you, maximum sum of Kshs. 2,800,000/= to the following bank account strictly as the title is held on stakeholder basis in favour of our client as collateral for monies advanced;***

***Name: BEE MUTUKU ADVOCATES-CLIENT ACCOUNT***

***Bank: EQUITY***

***Branch: KENYATTA AVENUE***

***Number: 1290278834227***

***within Fourteen (14) days upon the successful registration of the transfer in favour of ELIJAH GITAU NJOROGE, the Purchaser and the Charge in favour of Equity Bank (Kenya) Limited over all that parcel of Title No. KAKUZI/KIRIMIRI BLK.7/1393”***

11. In light of the above, it is the Court’s considered view that the Respondents are required to honour the undertaking. A professional undertaking is an unequivocal declaration of intention addressed by the Respondents to the Applicant in their letters. It is this professional undertaking that is relied on by the Applicant in the course of their

practice. The professional undertaking is clear and unambiguous and confirms that the Respondents undertook to pay in the event of default a payment of Kshs.2,800,000.

12. Further, the Court notes that the Applicant pointed out that the Respondents remitted Kshs. 526,800/- to the Applicant on 24<sup>th</sup> October 2024 after filing and serving the present suit, thereby partly fulfilling their obligation.

13. Thus, the Respondents are hereby ordered to remit the balance of purchase funds in the sum of Kshs. 2,273,200/- to the Applicant's account within 14 days.

14. In light of the above, the Application is hereby allowed with costs to the Applicant.

### **Determination**

15. The Applicant's **Originating Summons** is allowed and Judgement entered in favour of the Applicant as against the Respondents in the following terms;

a) *The Respondents be and are **HEREBY** ordered to honour their professional undertaking dated 13th May 2024 **within the next Thirty (30) days from the date of this Judgement** and do forthwith pay to the Applicant Kshs.*

*2,273,200/- being the balance of the purchase price (after deducting a sum of Kshs. 526,800/- acknowledged as duly paid to the Applicant on 24<sup>th</sup> October, 2024) as per their professional undertaking in respect of the Sale of Land Reference Number Kakuzi/Kirimiri Blk.7/1393 together with interest at court rates until payment in full.*

*b) The Respondents bear the costs of this suit.*

16. It is so ordered

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS  
04<sup>TH</sup> DAY OF DECEMBER, 2025.**

**NJOROGE BENJAMIN K.**

**JUDGE.**

In the presence of;

Miss Mutuku for the Applicant.

Mr. Muchigi for the Respondents.

Mr. Peter Wabwire - Court Assistant.