

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

MISC. APPLICATION NO. E367 OF 2024

(Before Hon. Lady Justice Agnes Kitiku Nzei)

NZAKU & NZAKU ADVOCATESAPPLICANT

VERSUS

JOHN NYAKUNDI GETONTORESPONDENT

ARISING FROM

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
PETITION NO. E168 OF 2021

JOHN NYAKUNDI GETONTO.....PETITIONER

VERSUS

NATIONAL POLICE SERVICE COMMISSION1ST
RESPONDENT

INSPECTOR GENERAL OF POLICE2ND RESPONDENT

RULING

1. The application before me is the Advocate/Applicant's Notice of Motion dated 20th December, 2024. The Applicant seeks the following Orders against the Respondent/Client:-

(a) *That the Court be pleased to adopt the Legal Fees Agreement herein dated 4th April, 2023 to the extend of **Kshs.500,000/=** and Judgment be entered in favour of the Applicant, and consequently a decree be issued against the Client/Respondent as follows:-*

(i) **Kshs.500,000/=** being part of Kshs.900,000/= as agreed.

(ii) Costs be assessed.

(b) *That costs of the application be provided for.*

2. The application sets out on its face the grounds upon which it is anchored, and is based on the supporting affidavit of **Steve Nzaku Advocate** sworn on 20th December, 2024. It is deponed in the said supporting affidavit:-

(a) *that on 15th September, 2021, the Respondent appointed the Applicant as his Advocate to represent him in **Nairobi ELRC Petition No.***

***E168 of 2021 (John Nyakundi Getonto - vs -
The National Police Service Commission &
Inspector General, National Police Service).***

- (b) *that the Applicant represented the Respondent in the said case, to its conclusion in the Client's favour.*
- (c) *that on 4th April, 2023, the Respondent and the Applicant entered into a Legal Fee Agreement for the sum of **Kshs.900,000/=** for legal services rendered.*
- (d) *that it was a term of the agreement that the Respondent would pay the legal fee of **Kshs.900,000/=** on or before 28th April, 2023.*
- (e) *that the Respondent paid only **Kshs.400,000/=** on 4th May, 2023, leaving a balance of **Kshs.500,000/=**; and has not adhered to the Legal Fee Agreement, despite numerous promises.*

3. A copy of the Legal Fees Agreement dated 4th April, 2023 is annexed to the supporting affidavit.

4. The Respondent did not respond to the application, though shown to have been served. The application is, therefore, unopposed.
5. The Advocate/Applicant filed written submissions on the application pursuant to the Court's directions in that regard.
6. Section 45 of the Advocates Act (Cap 16 Laws of Kenya) allows an Advocate and a Client to enter into an agreement fixing the Advocate's remuneration. Where such an agreement exists, and is valid, it binds the parties thereto; and the Advocate need not file an Advocate/Client Bill of Costs for taxation in order to recover his fees. Indeed, Section 45(6) of the Act provides as follows:-

“(6) Subject to this Section, the costs of an advocate in any case where an agreement has been made by virtue of this Section shall not be subject to taxation nor to Section 48”.

7. The Court of Appeal stated as follows in **National Bank Limited - vs - Otieno Ragot & Company Advocates [2020] eKLR:-**

“It is common ground that parties herein had a valid retainer agreement. The question then was whether the said agreement was enforceable. As with any other agreement, the onus of proving the existence of the retainer agreement lies with the party that wishes to enforce it as is indeed the case of contract and the evidence in support thereof. (See *Kenya National Corporation Limited - vs - Albert Mario Cordeiro & Another* [2014] eKLR and Section 107 of the Evidence Act). The proviso to Section 45(5) allows an advocate who is a party to a retainer agreement and who has acted diligently for the client to sue and recover the whole retainer Fee should his client default in payment thereof. In fact, as long as an advocate has been diligent, his entitlement to the fixed sum is so outright that he need not tax nor give statutory notice to the client prior to his pursuit of the said fees.”

8. Having stated the foregoing, and having considered written submissions filed by the Advocate/Applicant, the Notice of

Motion dated 20th December, 2024 is hereby allowed in the following terms:-

- (a) The Retainer/Legal Fees Agreement between the Advocate/Applicant and the Client/Respondent dated 4th April, 2023 is hereby adopted by this Court, and Judgment is hereby entered for the Advocate/Applicant against the Client/Respondent in the sum of Kshs.500,000/=, being part of the Kshs.900,000/= agreed.**
- (b) Costs of the application shall be paid by the Client/Respondent, to be agreed or taxed.**

9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
16TH DAY OF JANUARY 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Muriithi for the Advocate/Applicant

No appearance for the Client/Respondent