



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lusaka v Lachlan Kenya Limited; Ombogo & Company Advocates (Advocate) (Miscellaneous Application E265 of 2023) [2026] KEELRC 56 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 56 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E265 OF 2023**

**S RADIDO, J**

**JANUARY 23, 2026**

**BETWEEN**

**KIM JACKSON DANIEL LUSAKA ..... APPLICANT**

**AND**

**LACHLAN KENYA LIMITED ..... RESPONDENT**

**AND**

**OMBOGO & COMPANY ADVOCATES ..... ADVOCATE**

**RULING**

1. Through a Motion dated 14 August 2025, Ombogo & Co. Advocates (the advocate) seeks orders:
  - i. ...
  - ii. ...
  - iii. That pending hearing and determination of our application and their application dated 12<sup>th</sup> August 2025, payment of the decretal sum be stayed.
  - iv. That the decree holder herein do, within 7 days give security for the costs of this application in the sum of Kshs 7,136,380/- pending the hearing and determination of their application dated 12<sup>th</sup> August 2025.
  - v. That alternatively this Honourable Court be pleased to issue an order directing the judgment debtor herein to deposit the pending decretal sum being Kshs 7,502,175.40 together with accruing interest and any costs to the law firm of Ombogo & Co. Advocates.
  - vi. That the costs of this application be borne by the decree holder.



2. The main grounds in support of the Motion were that the advocate had acted for the applicant in the Cause herein and secured a judgment for him in the sum of Kshs 13,500,000/-; the advocate and applicant had a retainer on legal fees for payment of 35% of any award; the advocate caused her Bill of Costs to be taxed at Kshs 610,067/- and the applicant secured a 30-day stay of execution; that before the stay was granted, the Respondent made part payment of the decretal sum directly to the applicant, by-passing the advocate; that efforts by the advocate to meet with the applicant to discuss settlement had not occurred because of the applicant's failure to turn up; the applicant instructed another law firm to take over from the advocate and that it was fair that the Respondent deposits the balance of the decretal sum into Court to secure the advocate's right to legal fees.
3. When the Motion was placed before the Duty Judge on 15 August 2025, the Court stayed the release of any further decretal sums by the Respondent to the Claimant.
4. This Court gave further directions on 30 September 2025, and the applicant filed a replying affidavit on 5 September 2025.
5. The applicant deponed in the affidavit that the Motion was defective because he had not instructed the advocate to file it or refer to him as the applicant; that he executed a retainer agreement; the advocate breached the retainer agreement by demanding payment of legal fees before the conclusion of the Cause; that he had paid the advocate Kshs 633,000/- legal fees so far; the advocate had declined to accompany him to the Police to record a statement; the advocate's recourse to enforce the retainer was under section 45 of the Advocates Act; the advocate had not established a legal basis to deny him the decretal sum and that the retainer was unconscionable.
6. The Court took brief oral submissions on 12 November 2025.
7. The Court has considered the Motion, affidavits and submissions and makes the following determinations.
8. One, the advocate and applicant had a retainer agreement. Whether the retainer agreement was unconscionable or not cannot be determined in these proceedings.
9. Two, it is up to the applicant to move the Court under appropriate proceedings to challenge the conscionability of the retainer agreement.
10. Three, an advocate who opts to enforce a retainer agreement is required by section 45 of the Advocates Act to initiate an enforcement suit. The instant Motion is not such an enforcement suit.
11. Four, any party represented by an advocate is under an obligation to pay the advocate's legal fees for professional services rendered. The advocate here is entitled to her legal fees.
12. Five, to secure the payment of the advocate's legal fees, the interests of justice demand that any monies due to the applicant from the Respondent be secured.
13. The Respondent has not denied having balances of the decretal sum to the credit of the applicant.
14. The balances can only be secured either by being deposited in Court or an interest-earning account in the name of the advocates.
15. Because of the apparent acrimony between the applicant and advocate, the option of depositing the balances in Court will save the Court's time and parties' legal tussles of to and fro.



16. Before concluding, the Court observes that it would be in the interest of the advocate and the applicant to find a mutually beneficial resolution to the dispute over legal fees, otherwise, they may find themselves battling in the Court for the foreseeable future.
17. The Court also notes that the delivery of this Ruling has been brought forward with notice to all parties.

### **Orders**

18. In light of the above, the Court orders:
  - i. The stay order issued on 15 August 2025 is confirmed.
  - ii. The Respondent is directed to deposit the balance of the decretal sum into Court within 21 days from today.
19. The advocate to have costs of the Motion.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 23<sup>RD</sup> DAY OF JANUARY 2026.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For applicant Chabi Otieno Chiteri & Co. Advocates

For Respondent Anne Babu & Co. Advocates

For Advocate Ombogo & Co. Advocates

Court Assistant Wangu

