



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI LAW COURTS, NAIROBI**  
**ELCLMISC E265 OF 2024**

**ONDABU & CO ADVOCATES.....**  
**APPLICANT/RESPONDENT**  
**-VERSUS-**  
**SAMMY NYARANGI..... 1<sup>ST</sup> RESPONDENT**  
**/APPLICANT**  
**BECKIE BOYANI NYARANGI.....2<sup>ND</sup>**  
**RESPONDENT/APPLICANT**

**RULING**

1. In the Notice of Motion application dated 10<sup>th</sup> February 2026 the Applicant sought the following orders:
  1. THAT the honourable court do direct that the applicant do furnish the respondents with the sale agreement in respect of LR 13874/4 and 13874/5
  2. That this honourable court do grant the applicant leave to defend the bill of costs dated 8<sup>th</sup> July 2024
  3. Costs of the application
2. The Application is supported by the affidavit sworn by the 2<sup>nd</sup> respondent/applicant Becky Nyarangi where she deponed that Applicant had initiated an advocate client taxation matter seeking costs inn the sum of Ksh 853,003.00/= which matter proceeded ex parte without the applicant's participation.

3. She further deponed that the applicant has never given the respondent instruction to act for her in respect of the sale transaction involving land LR 13874/4 and 13874/5 evidenced by the fact that the applicant had failed to produce a sale agreement to that effect hence this application.
4. The respondent did not put in any response but filed submissions dated 17<sup>th</sup> March 2026 and the only issue for determination was; Whether the applicant had issued instructions to the respondent to act for them in the conveyancing transaction that led to transfer of the suit properties.
5. The respondent indicate that they were retained by the applicant to act for them in the sale which resulted in the payment of Ksh 30,000,000/= as the purchase price to the applicant a fact they said the applicant had not disputed. That the reason brought forth that there was no retainer in writing neither a sale agreement to prove the transaction does not mean that there was no retainer as a retainer need not be in writing and further lack of a sale agreement does not mean there was no retainer. This argument was backed up by the case of **Njeru Nyaga & Company Advocates Vs George Ngure Kariuki High court of Kenya at Nairobi (commercial and admiralty division) Case No 723 of 2012** where the court decided that a retainer can arise from conduct of the parties and need not be in writing. Counsel submitted that the applicant appeared physically and gave instructions to prepare transfer documents evidenced by the passport photos that they left in their office a fact he indicates has also not been controverted. He further

deponed that practice points to the vendor's advocates being the one to prepare transfer documents countering the allegations that the respondents acted on behalf of the purchaser

### **Analysis and Determination**

6. Having looked at the application, submissions and evidence tendered the only issue for determination is

Whether the applicant instructed the Respondent to act for them in the transaction necessitating the award of costs.

Section 45 of *Advocates Act* prescribes as follows, with regard to Agreements with respect to remuneration;

(1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

(a) **before, after or in the course of any contentious business (Civil or Criminal Court) make an agreement fixing the amount of the advocate's remuneration in respect thereof;**

(b) .....

(c) .....

and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

Rule 69 of the *LSK Code of Standards of Professional Practice and Ethical Conduct* (June 2016) provide that, " *it is good professional practice for Advocates to always encourage clients to issue written instructions before the Advocate's engagement commences. The written instructions may take the form of either a letter of instructions issued by the client to the Advocate or a memorandum*

*of agreement between the Advocate and the client. In the case of the memorandum of agreement the memorandum should be signed by both the client and the Advocate. The letter or agreement should clearly define the nature and scope of the engagement and the understanding between the parties as regards fees, either clearly stating the amount of fees to be charged or the basis on which fees will be charged”.*

Rule 77 of the LSK Code of Standards of Professional Practice and Ethical Conduct (June 2016) provide that;“ *In dealing with a complaint regarding overcharging or the rendering of inadequate services*

*the regulatory bodies will give due consideration to the contents of the engagement letter or memorandum of agreement. It is the Advocate’s responsibility to ensure that such written instructions or memorandum of agreement is in place. The failure to ensure that a letter of instructions is issued by the client or a memorandum of agreement executed will be considered as prima facie evidence of professional misconduct”.*

7. The respondent has not responded to the application and thus the averments in the application and the supporting affidavit thereto are uncontroverted. The have only filed submissions where it was submitted that the conduct of the applicant implied a retainer having gone to their offices and instructed them to prepare transfer documents which have not been produced as evidence in this court. This court is of the view that whereas circumstances may arise where a retainer relationship may be inferred in the absence of a

formal instruction, retainer-note or a memorandum of agreement however the Advocates must demonstrate cogent reason as to why no formalisation of the same was ever undertaken as a basis of inviting the court to infer existence of the said retainer. The onus of proof of 'retainer' must be on the Advocate where the same is disputed, as was held in **Oruko & Associates Vs Brollo (K) Ltd HCCC No. 1465 of 2002** (unreported), *County Council of Bureti v Kennedy Nyamokeri T/A Nyamokeri & Co Advocates Kericho HC Misc No. 102 of 2005* (unreported) and in **Ragot and Company Advocates v West Kenya Sugar Wholesalers Ltd Kisumu HC. Misc 244 of 2002**. In this particular instance the Applicant-Advocate never formally came on record and that the Advocates on records have not been invited in evidentiary aid of this Application

8. Having considered the application and respondent's written submissions this court is not persuaded on the existence of a retainer relationship based on documentary evidenced availed and as such would need to be persuaded further.

#### **Final disposition**

In view of the above I make the following order

- i. The applicant is entitled to the orders sought in the notice of motion application dated 10<sup>th</sup> February 2026 and application is allowed.
- ii. Each party to bear their own costs

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **25<sup>th</sup>** day  
of  
**March, 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Ruling delivered in the presence of: -**

**N/A**..... for the Applicant

**N/A**..... for the Respondents

**Philomena W.**..... Court Assistant