



**Muli v Wamugi & another (Environment & Land Case E026 of 2020)  
[2024] KEELC 7483 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7483 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E026 OF 2020  
CA OCHIENG, J  
NOVEMBER 7, 2024**

**BETWEEN**

**BENSON MUIA MULI ..... PLAINTIFF**

**AND**

**DAVID MATHERI WAMUGI ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, NAIROBI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Chamber Summons Application dated the 2<sup>nd</sup> September, 2024 where he seeks the following Orders:-
  - a. Spent
  - b. That an order do issue directing Nyangayo Vincent O, t/a Swan Advocates to honour his irrevocable professional undertaking to Kalwa & Co. Advocates by paying Kshs. 6,000,000 within 30 days and at such time as this Honourable Court shall deem fit and expedient.
  - c. That in default of Order 2 above an order of execution do issue against the said Nyangayo Vincent O, t/a Swan Advocates.
  - d. That the costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Francis M. Kalwa who provides a background of the dispute herein and claims that Nyangayo Vincent O, Advocate gave a professional undertaking on 16<sup>th</sup> March, 2023 wherein he agreed to pay him Kshs. 6,000,000 in settlement of the dispute herein. He contends that todate the Advocate has failed to honour the professional undertaking to pay the Kshs. 6,000,000.



3. The Respondent despite being duly served as evident in the Affidavit of Service failed to file a response to controvert the Applicant's averment.
4. The Applicant filed written submissions to canvass the Application.

### **Analysis and Determination**

5. Upon consideration of the instant Chamber Summons Application including the Supporting Affidavit and submissions, the only issue for determination is whether an order should issue directing Nyangayo Vincent O, t/a Swan Advocates to honour his irrevocable professional undertaking to messrs Kalwa & Co. Advocates by paying Kshs. 6,000,000 within 30 days.
6. The applicant seeks to enforce a professional undertaking against Nyangayo Vincent O, Advocate t/a Swan Advocates, which he issued on 16<sup>th</sup> March, 2023 that to date he has failed to honour. The Applicant has explained that the said Advocate issued him with a cheque for Kshs. 6,000,000 which the bank declined to honour. Further, he has become elusive to honour the said professional undertaking.
7. On undertakings, "Black Law dictionary" gives the following definition:

"A promise, pledge or engagement". The US Legal Definitions.com states that "Undertaking in general means, an agreement to be responsible for something. In Legal context, it typically refers to a party agreeing to surety arrangements, under which they will pay a debt or perform, a duty if the other person who is bound to pay the debt or perform the duty fails to do so."

8. In the case of Diamond Star General Trading LLC vs Ambrose D.O Rachier carrying on business as Rachier & Amollo Advocates [2017] eKLR it was held that:-

The Encyclopedia of Forms and Precedents, 5th Edition by Hon. Sir Peter Millet, M.A. Vol. 39 pages 859, 860 describes a professional undertaking as follows:

"An unequivocal declaration of intention addressed to someone who reasonably places reliance on it and made by a solicitor in the course of his practice, either personally or by a member of his staff, or a solicitor as 'solicitor' (or in case of a member of his staff, his employer) becomes personally bound.

It's a promise to do or to refrain from doing something. In practice undertakings are frequently given by solicitors in order to smooth the path of transaction or to hasten its progress, and are convenient method by which some otherwise problematic areas of practice can be circumvented".

The Halsbury's Laws of England, 4<sup>th</sup> Edition by Lord Hailsham of St. Marylebone, Vol. 44(1), pages 222, 223, 224, states as follows:

Where a solicitor who is acting professionally for a client gives his personal undertaking in that character to the client or to a third person, or gives an undertaking to the Court in the course of proceedings, that undertaking may be enforced summarily upon application to the Court. It must be shown that the undertaking was given by the solicitor personally, and not merely as agent on behalf of his client. It must also be given by the solicitor, not as an individual, but in his professional capacity as a solicitor. The undertaking must be clear in its terms. The whole of the agreement to which it relates must be before the Court, and the undertaking must be one which is not impossible ab initio for the solicitor to perform. If



the undertaking is conditional, the condition must be fulfilled before the undertaking will be enforced.”

9. I note Clause 9 of the Code of Standards of Professional Practice and Ethical Conduct published vide Kenya Gazette Notice No. 5212 of 26<sup>th</sup> May 2017, stipulates that an Advocate has a duty to honour a professional undertaking granted in the course of their practice. In this instance, Nyangayo Vincent O, Advocate issued a professional undertaking, to messrs Kalwa & Company Advocates, on 16<sup>th</sup> March, 2023 to pay Kshs. 6,000,000, in settlement of the dispute herein, but he has failed to honour it todate.
10. The Court of Appeal in the case of Waruhiu K’owade & Ng’ang’a Advocates v Mutune Investment Limited [2016] eKLR held that:

“The professional undertaking is a smooth and binding contract between the donor and the donee who are the advocates. It should be adhered to with a standard of ethics higher than that of the market place. Professional undertakings to lawyers by colleagues are like a religion and are the underpinning of the relationship that governs the activities, transactions and actions between them. A professional undertaking embodies and manifests the practice of the legal profession in a characteristically methodical, courteous and ethical manner. That is why the immediate offer and acceptance of a professional undertaking triggers a monumental transaction and huge financial relationship which must be observed by both sides. In our view, that is the basis of professional undertakings in the legal profession. In fact, the conditions, terms and implications must be strictly adhered to for the legal profession to thrive, and for advocates to deal with each other freely and openly.”

11. Based on the facts before me including the background of the matter, noting that the instant Application is unopposed, I find that the professional undertaking issued by Nyangayo Vincent O, Advocate to messrs Kalwa & Company Advocates is legal and binding.
12. In the circumstances, I find the Chamber Summons Application dated 2<sup>nd</sup> September, 2024 merited and will allow it. I proceed to make the following final Orders:
  - a. That an order be and is hereby issued directing Nyangayo Vincent O. t/a Swan Advocates to honour his irrevocable professional undertaking to Kalwa & Co. Advocates by paying Kshs. 6,000,000 within 30 days from the date hereof, failure of which execution is to issue.
  - b. Costs of this Application is awarded to the Applicant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Kalwa for Plaintiff

No appearance for Defendant

Court Assistant – Simon/Ashley

