



REPUBLIC OF KENYA



KENYA LAW
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Hall Equatorial Limited v Titus Makhanu & Associates Advocates (Civil Case E115 of 2024) [2025] KEHC 4747 (KLR) (Civ) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E115 OF 2024

TW CHERERE, J

MARCH 27, 2025

BETWEEN

HALL EQUATORIAL LIMITED PLAINTIFF

AND

TITUS MAKHANU & ASSOCIATES ADVOCATES DEFENDANT

RULING

1. The Plaintiff brought this suit by way of an Originating Summons dated 04th June 2024 under Order 52 Rule 4(1) and (2) of the Civil Procedure Rules, seeking the following orders:
 - a) That the Defendant do pay to the Plaintiff the sum of Kenya Shillings 2,300,000 together with interest;
 - b) That the Defendant do release to the Plaintiff the original title to land parcel L.R. No. 15400/119;
 - c) That the Defendant do bear the costs of this summons.
2. The application is premised on the grounds that in 2018, the Plaintiff instructed the Defendant to file a recovery suit against Amboseli Court Limited for KES. 3,325,731.25. Defendant proceeded to file Nairobi Civil Suit Number 8548 of 2018, where judgment was entered in favor of Plaintiff for KES. 3,480,992.78 plus costs of KES. 152,818.13 on 13th February 2019.
3. On 25th July 2019, the parties recorded a consent wherein Amboseli Court Limited agreed to pay the decretal sum in installments and provided the original title deed to L.R. No. 15400/119 as security. The consent was adopted as an order of the court.



4. The Plaintiff asserts that Amboseli Court Limited transferred KES. 2,300,000 to the Defendant, along with the original title deed to L.R. No. 15400/119, as security. Despite acknowledging receipt, the Defendant did not remit the funds or return the title deed to Plaintiff. Moreover, despite multiple demands and a notice of intention to sue, the Defendant has refused to release either the funds or the title document
5. The Defendant opposed the application through an affidavit sworn on 24th January 2025 by Titus Makhanu, advocate. He admitted that Plaintiff received KES. 2,300,000 and the original title deed but asserted that they are being held under a lien due to unpaid legal fees amounting to KES. 1,178,250.84 taxed in various cases, namely:
 - a) Nairobi ELRC Misc App No. 280 of 2023 - KES. 61,042.80;
 - b) Nairobi ELRC Misc App No. E281 of 2023 - KES. 69,959.40;
 - c) Naivasha Misc Civil Case No. E185 of 2023 - KES. 882,865.64;
 - d) Nairobi HCCOMM Misc E075 of 2024 - KES. 164,383.00.
6. Additionally, Defendant claims it was holding onto the funds and the title deed due to obligations owed to it by Southern Shield Holdings Ltd and Alicate Holdings Ltd, companies associated with the Plaintiff.
7. The Defendant contended that since there exists a rival claim, this matter should be adjudicated through a fully-fledged suit commenced by way of a plaint or originating summons.
8. Defendant also argues that the money in its possession became the possession of Southern Shield Holdings Ltd after the Plaintiff registered a debenture over all its assets in favour of the said company to secure a loan facility.
9. In response, Plaintiff filed a further affidavit sworn on 25th February 2025, contending that Defendant's claim against Southern Shield Holdings Ltd and Alicate Holdings Ltd is unrelated to this matter. The Plaintiff also asserted that the Defendant has no legal lien over the KES. 2,300,000 and the title deed.
10. In support of its case, the Plaintiff submitted that it has not been demonstrated why these proceedings should be stayed and relied on Order 52 rule 4 of the Civil Procedure Rules which is intended to secure a quick resolution to a dispute between the Plaintiff and its advocates.
11. Reliance was also placed on *Malindi Holdings & Estate Agents Limited v Morris Mwambui Kupalia* [2011] KECA 363 (KLR) cited with approval in *Peter Furmetz v James G. Mouko T/A Mouko & Company Advocates* [2015] KEHC 1317 (KLR) and *Henry Kipkorir Kimutai v Weda Ambrose Otieno & another* [2018] KEHC 6276 (KLR) where the court of Appeal held that:

“In our view, the intendment of the rule was to secure quick resolutions to disputes between advocates and their clients without undue regard to technicalities. It is a noble procedure which has since been augmented by the enactment of sections 1A and 1B of the Civil Procedure Act and the corresponding sections 3A and 3B of the Appellate Jurisdiction Act, as well as the provisions of Article 159 (2) (b) and (d) of the new Constitution.....”.
12. Concerning Defendant's argument that it is holding Plaintiff's money and title deed as lien, Plaintiff submitted that the lien is ousted where the client-advocate is severed as in this case. Reliance thereof



was placed on Booth Extrusions (Formerly) Booth Manufacturing Africa Limited v Dumbeya Nelson Muturi Harun t/a Nelson Harun & Company Advocates [2014] KEHC 8597 (KLR).

13. The Plaintiff faults the Defendant for not acting in its best interest by withholding the money and title documents without disclosing the reason for such retention and relied on Kim Jong Kyu v Housing Finance Company Ltd & 2 others [2015] KECA 274 (KLR) where the Court of Appeal stated that:

“..... Section 80 of the Advocates Act stresses the advocate’s duty to a client;

“ 80. Betrayal of trust

Any person who, being an advocate, is entrusted in his professional capacity with any money, valuable security or other property to retain it in safe custody with instructions to pay or apply it for any purpose in connection with his duty as an advocate fails to pay, apply or account for the same after due completion of the purpose for which it was given, shall be guilty of an offence.....”

14. Concerning Defendant’s bills of costs, the Plaintiff submitted that the same are at various stages of determination and cannot form a basis for Defendant to retain what it ought to have released to the Plaintiff. The Plaintiff additionally states that the bills of costs unrelated to the Plaintiff have no bearing to this case.
15. Regarding the debenture given by the Plaintiff in favour of Southern Shield Holdings Ltd, Plaintiff contends that it only shows that Plaintiff was advanced money by Southern Shield Holdings Ltd but is unrelated to this matter.

Issues for Determination

16. From the evidence on record, I have determined the issues for determination as follows:
1. Whether the Defendant has a valid legal right to withhold the sum of KES. 2,300,000.
 2. Whether the Defendant has a legal right to retain the original title deed to land parcel L.R. No. 15400/119.
 3. Whether the Defendant’s rival claims necessitate a separate suit for adjudication.
 4. Whether the Defendant’s actions constitute a breach of fiduciary duty.
 5. Whether the Plaintiff is entitled to the reliefs sought.

Analysis and Determination

(1) Whether the Defendant has a valid legal right to withhold the sum of KES. 2,300,000.

17. The Defendant asserts a lien over the sum of KES. 2,300,000 as security for unpaid legal fees. However, the Plaintiff contends that there was no agreement permitting the Defendant to withhold these funds for such purposes.
18. The record reveals that the Defendant has in his favor three Certificates of Costs against the Plaintiff for the total sum of KES. 1,013,867.84, being Nairobi ELRC Misc App No. 280 of 2023 for KES. 61,042.80; Nairobi ELRC Misc App No. E281 of 2023 for KES. 69,959.40 and Naivasha Misc Civil Case No. E185 of 2023 for KES. 882,865.64.



19. In *Booth Extrusions v Dumbeya Nelson Muturi Harun* (supra), the court emphasized that the fundamental principle underlying an advocate's lien is to prevent a party from benefiting from legal services without paying for them. The lien allows the advocate to retain client documents or property until legal fees are settled.
20. However, while an advocate can claim a lien over taxed unpaid costs, such a lien is passive and does not grant the advocate an automatic right to deduct the fees from funds received on behalf of the client. As established in *Barrat v Gough Thomas* [1950] 2 All ER 1048, a retaining lien entitles an advocate to withhold possession of documents or property until costs are paid, but it does not authorize unilateral deduction of taxed costs from client funds unless expressly agreed or sanctioned by the court.
21. Furthermore, whereas an advocate has a right to retain documents or property in their possession for unpaid fees, this right does not extend to funds received for a specific purpose unless an explicit agreement exists.
22. In the present case, the Defendant received the KES. 2,300,000 as part of a court-ordered settlement, meaning these funds were held in trust for the Plaintiff. As such, the Defendant had a fiduciary duty to remit the funds rather than apply them toward its own fees.

(2) Whether the Defendant has a legal right to retain the original title deed to land parcel L.R. No. 15400/119.

23. The title deed was deposited as security for payment by Amboseli Court Limited, not for the Defendant's legal fees. The lien over the documents was extinguished when Defendant ceased being Plaintiff's advocate.
24. Consequently, Defendant has no legal claim to the title deed and is obligated to return it to the Plaintiff.

(3) Whether the Defendant's rival claims necessitate a separate suit for adjudication.

25. Defendant argues that the rival claims by Plaintiff and Defendant should be resolved through a separate suit. However, Order 52 Rule 4 of the Civil Procedure Rules provides a summary procedure for resolving disputes between advocates and their clients, ensuring quick resolution without unnecessary technicalities (See *Malindi Holdings & Estate Agents Limited v Morris Mwambui Kupalia* (supra)).
26. Additionally, the Defendant, as he is already doing, is entitled to seek recovery of his fees under the Advocates Remuneration Act and its corresponding rules.
27. Given that appropriate legal avenues exist for both parties to address their respective claims; a separate suit is unnecessary.

(4) Whether the Defendant's actions constitute a breach of fiduciary duty.

28. An advocate has a fiduciary duty to act in the best interests of the client as was held in *Kim Jong Kyu v Housing Finance Company Ltd & 2 others* (supra).
29. By retaining and failing to account for the Plaintiff's funds and withholding the title deed unjustly, the Defendant breached its fiduciary duty.

(5) Whether the Plaintiff is entitled to the reliefs sought.

30. Given the unjustified withholding of funds and the unlawful retention of the title deed, the Plaintiff is entitled to both monetary relief and possession of the title deed.



(6) Who bears the costs

31. Section 27(1) of the *Civil Procedure Act* gives courts unfettered discretion to determine by whom costs are to be paid. It is trite that costs follow the event and a successful litigant ought not to be denied costs unless for good cause to be shown. (See *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR). The Defendant shall bear the costs as the wrongful retention necessitated these proceedings.
32. In the end, the Originating Summons dated 04th June 2024 is allowed in the following terms:
1. The Defendant shall pay the Plaintiff the sum of KES. 2,300,000 together with interest at court rates from the date of receipt by the Defendant
 2. The Defendant shall release to the Plaintiff the original title to land parcel L.R. No. 15400/119;
 3. The Defendant shall bear the costs of this summons.

DELIVERED AT NAIROBI THIS 27TH DAY OF MARCH 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant -Mr. Wandere

For Applicant - Mr. Wainaina for Kinyua Mwaniki & Wainaina Advocates

For Respondent - Mr. Makhanu for Titus Makhanu & Associates Advocates

