

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
Civil Case 1765 of 2001 (OS)**

Mutuku.....APPLICANT

Versus

Njiru Mbogo & Co Advocates.....RESPONDENT

JUDGMENT

The Originating summons when it came for hearing on 27th September, 2006 the Respondent had been served but failed to attend the hearing. The relationship between the Plaintiff/ Applicant and the Defendant/respondent is one of Advocate / client. The Plaintiff / Applicant swore an affidavit in support of originating summons dated 16th November 2001. He stated that in 1992 while he was employed by Kenya Commercial Bank Limited he applied for a loan to purchase a plot of land known as NAIROBI/BLOCK 111/1855 under the chargee's loan scheme for its employees. That in early 1996 he wished to dispose off the plot and in that regard sought the consent of the chargee which consent was given. The purchase price was Kshs 950,000/- and the same was to be paid to the Defendant / respondent who were the advocates for both the vendor and the purchaser. That subsequently the Respondent was instructed by the Applicant to apply the sale proceed towards the liquidation of a loan which was standing at Kshs 44,387/86. That the Respondent pursuant to the said instructions by a letter dated 18th March, 1996 gave the chargee's advocate a professional undertaking to release a sum of Kshs 441,387.86. That amount was the balance of the loan outstanding plus interest. The deponent stated that the Respondent failed to honour his undertaking to the detriment of the Applicant. That as consequence of failure to honour the undertaking the applicant suffered hostile working conditions because he was suspected to have been a party to the dishonesty of the respondent. And further to the failure to forward the sum of Kshs 441,387.86 the applicant lost the benefit of the chargee loan scheme for its employees. That due to the hostile working conditions as aforesaid the applicant was forced to resign from the chargee's employment and his retirement benefits was utilized to pay the loan and other penalty charges. The applicant stated that several demands have been forwarded to the Respondent who has failed to make payment to the applicant of the aforesaid sum.

The court has considered the evidence submitted by the Applicant. That evidence is uncontroverted since the respondent did not attend to the hearing of the Originating Summons. The Applicant has on a balance of probability proved his case. The orders that he seeks are merited and the court will grant him the same.

The judgment of the court is therefore, as follows:-

- (1) That judgement is hereby entered in favour of the Plaintiff for Kshs 441,387.86 plus interest at court rate from the date of the suit until payment of full.
- (2) That the Respondent shall pay the costs of the suit to the applicant.
- (3) That the court hereby grants leave to the Applicant to execute the judgement of this court before taxation.

October 11, 2006

