



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT GARISSA**

**MISC.APPLICATION NO. 3 OF 2017**

**IN THE MATTER OF ADVOCATES ACT**

**AND**

**IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT**

**BETWEEN**

**MULU MBUVI a.k.a JOHN MULU MBUVI.....APPLICANT/ADVOCATE**

**VERSUS**

**CAROLYN K. MUMBO & CO ADVOCATES.....RESPONDENT/CLIENT**

**RULING**

**Introduction:**

1. Coming up for determination are two Applications and a Preliminary Objection. The 1<sup>st</sup> Application in time is the Respondent Application dated 12<sup>th</sup> March, 2019, and the second one is the Applicant Application dated 2<sup>nd</sup> August, 2019, which is the main Application. The Preliminary Objection was filed by the Respondent and it is dated 28<sup>th</sup> August, 2019.

2. The genesis of the instant ruling is the Applicant Application dated 2<sup>nd</sup> August, 2019 which is mainly brought under Paragraph 11(2) and (4) of the Advocates (Remuneration) Order 2014 seeking the following Orders: -

- 1) **THAT** on the grounds more specifically set out in the certificate of urgency, this matter be certified as urgent and be heard ex-parte in the first instance.
- 2) **THAT** Court grants leave to the Applicant/Client to file the Application/Reference out of time.
- 3) **THAT** if Prayer (2) above is granted, the draft Application/Reference herein and the supporting Affidavit be deemed to have been duly filed, upon payment of the requisite court fees.
- 4) **THAT** pending the hearing and determination of the Reference herein, this Honorable Court be pleased to issue an Order of stay of execution of the Ruling delivered on **30<sup>th</sup> May, 2018** and the extracted Certificate of costs dated **28<sup>th</sup> January, 2019** issued by the Taxing Officer in relation to **GARISSA CIVIL SUIT NO. 2 OF 2012**.
- 5) **THAT** this Honorable Court be pleased to review, vary and/or set aside the Taxing Officer's final sum payable in the ruling delivered on **30<sup>th</sup> May, 2018** and the extracted certificate of costs dated **28<sup>th</sup> January, 2019** issued by the Taxing Officer in relation to **GARISSA CIVIL SUIT NO. 2 OF 2012**.
- 6) **THAT** this Court be pleased to make such orders as it deems mete and just.
- 7) **THAT** the costs of this Application be Provided for.

3. In response to the above Application the Respondent in their Notice of Preliminary Objection raises the following grounds;

- 1) **THAT**, The Chamber Summons Application dated 2<sup>nd</sup> August, 2019, is an affront to the mandatory provisions of paragraph

/section 11 of the Advocates (Remuneration) Order.

2) **THAT**, a similar Application dated the 21<sup>st</sup> day of September, 2018, was STRUCK OUT by this Honourable Court, on the 10<sup>th</sup> day of December, 2018, for being an abuse of the court process.

3) **THAT**, it therefore follows that this Chamber Summons application must suffer the same fate.

4) **THAT**, the Application is therefore incurably defective, an abuse of the court process, a nullity in law and should be struck out with punitive costs to the applicant/Advocates (now Respondent).

4. The Respondent Notice of Motion dated 12<sup>th</sup> March, 2019 on the other hand sought the following orders: -

1) **THAT**, Judgment be entered against the Respondent on the certificate of taxation dated the 14<sup>th</sup> day of January, 2019, and issued on the 28<sup>th</sup> day of January, 2019, for the sum of Kshs. 810,010.00/= as taxed, together with interest at the court rate from the date of taxation (30<sup>th</sup> May, 2018) and the same be confirmed as a decree of the court.

2) **THAT**, a decree do issue for the sum of Kshs. 810,010/= plus interest thereon from the date of taxation (30<sup>th</sup> May, 2018) in favour of the Applicant.

5. In response to the Respondent's Preliminary Objection dated 28<sup>th</sup> August, 2019 the Applicant filed grounds of opposition dated 16<sup>th</sup> September, 2019. Additionally, they filed a response to the Respondent application dated 12<sup>th</sup> March, 2019 vide a Replying Affidavit dated 16<sup>th</sup> September, 2019.

6. Further, the Applicant filed a further Affidavit dated 16<sup>th</sup> September, 2019 in response to the Respondent response dated 28<sup>th</sup> August, 2019 filed in response to his Application dated 2<sup>nd</sup> August, 2019.

7. The Respondent in response to the Applicant Application dated 2<sup>nd</sup> August, 2019 filed a Replying Affidavit sworn by Carolyn. K. Muumbo on 28<sup>th</sup> August, 2019 and filed on 2<sup>nd</sup> September, 2019. In addition, they filed a Supplementary Affidavit dated 27<sup>th</sup> September, 2019 in response to the Applicant response to their Application dated 12<sup>th</sup> March, 2019.

## **Background**

### **Applicants Case**

8. The Applicant Application dated 2<sup>nd</sup> August, 2019 is brought under Paragraph 11(2) and (4) of the Advocates (Remuneration) Order 2014. It is basically seeking the court to enlarge time for them to file an objection against the taxing master decision delivered on 30<sup>th</sup> May, 2018, where upon taxing the Respondent bill, found that the sum of Kshs. 810,010/= was payable. They have objected to the above sum arguing that there is an error apparent in regard to the taxing master calculation in his ruling.

9. The applicant grievance is that the conclusive sum taxed off and total sum payable has errors which arose out of tabulation or clerical mistake. It is their case that the error in calculation based on the taxing master ruling has an error of Kshs. 366,104.95/=, which amount they argue is erroneously and inordinately higher than the actual sum arrived at if proper calculations were undertaken as per the Taxing Master Ruling.

10. It is therefore their case that the sum of Kshs. 810,010/= found payable by the taxing master in his ruling dated 30<sup>th</sup> March, 2018 is beyond the total sum payable if tabulation was rightly done sequentially as per the ruling.

11. According to the applicant interpretation of the Taxing Master Ruling dated 30<sup>th</sup> March, 2018, it is their position that the total sum taxed off is Kshs. 714,412/=. Subtracted from the initial sum presented in the Bill of costs, that is Kshs. 1,461, 658.50/= giving a sum of Kshs. 747,246.50/= as the amount payable by the applicant/client. Add V.A.T at 16% (Kshs. 119,559.44/=) gives a total sum of Kshs. 866,805.94/= as the total sum payable by the applicant/client and not Kshs. 1,232,910/=. This amount they allege is further reduced by the already paid by the Respondent, that is Kshs. 422,900/=, hence the final sum payable is Kshs. 443,905.05/= and not Kshs. 810,010/= as entered in the ruling. The difference being the above sum of Kshs. 366,104.95/=.

12. In respect to the Respondent application dated 12<sup>th</sup> March, 2019, the applicant states that the same was basically the Respondent process of adopting and confirming the taxing master ruling and finding as a decree of the court with a view of executing the same to recover the sum of Kshs. 810,010/= found payable and therefore he sought the court intervention vide stay pending the determination of his Reference.

13. In addition, he states that they had filed a Reference pursuant to Paragraph 11 of the Advocates Remuneration Order, which was dated 21<sup>st</sup> September, 2018, however the same was dismissed, without a determination on merit, and argued that this court has the jurisdiction to enlarge time and determine the instant reference.

14. Further, they stated that upon the dismissal of their above reference they filed an application on 6<sup>th</sup> February, 2019 under section 80 of the Civil Procedure Act and Order 45, Rule 1 of the Civil Procedure Rules, seeking this court to review the taxing master decision, however the Respondent filed a Preliminary Objection dated 14<sup>th</sup> March, 2019 citing that the application offends the mandatory procedure for

challenging a taxing masters decision provided for under Paragraph 11 of the Advocates Remuneration Order. The court upheld the Objection vide its ruling delivered on 24<sup>th</sup> July, 2019, thus necessitating the filing of the instant application.

15. Vide their grounds of opposition dated 16<sup>th</sup> September, 2019 filed in response to the Respondent Preliminary Objection dated 28<sup>th</sup> August, 2019, the applicant alleges that the Preliminary Objection is incompetent and bad in law as it requires facts for proof and does not fit into the objection envisaged in **Mukisa Biscuits case**.

16. Additionally, they argued that the instant application is brought under paragraph 11 of the Advocates (Remuneration)Act, which at sub-paragraph 4 gives the court the authority to enlarge time for filing of a reference. Further, they argued that the application cited by the Respondent dated 21<sup>st</sup> September, 2018 which was struck out by Hon. Justice Dulu vide a ruling on 10<sup>th</sup> December, 2018 was not heard on merit, but was struck out on technicality and therefore the instant application dated 2<sup>nd</sup> August, 2019 ought to be heard on merit.

### **Respondent's case**

17. The respondent vide their replying affidavit sworn on 28<sup>th</sup> August, 2019 in response to the application dated 2<sup>nd</sup> August, 2019 opposed the same raising various grounds. They argued that the reference before the court is not proper in law, and that the application has been brought after lapse of a year and 2 months thus the same is meant to forestall execution pursuant to the Taxing Officer Ruling delivered on 30<sup>th</sup> May, 2018.

18. Additionally, the Respondent denied the applicant allegation that there is an error in the tabulation in respect to the amount payable as per the taxing master ruling. It is their case that the amount that was charged in the Advocate Client Bill of cost dated 20<sup>th</sup> December, 2017 was Kshs. 1,695,523.86/= and out of that amount, deductions were made by the Taxing Officer in accordance with the amounts that had been taxed off (being Kshs. 426,613/=) as well as the amount paid by the Respondent/client (now applicant) being Kshs. 422,900/= leaving a balance of Kshs. 810,010/= as sum payable.

19. It is their position that the figure of Kshs. 810,010/= is the true figure that is payable and the Applicants assertions to the contrary is misleading to the Court.

20. Further, they argued that the Applicant does not deserve this court order for extension of time to proceed with the instant reference stating that the 14 month period delay has not been explained or reasons thereof given, and that the same has been filed as an afterthought meant to delay the Respondent recovery of costs. And that the instant application has been filed after the applicant ignorance as per the history of the matter and that Article 159(1)(d) cannot aid the applicant.

### **Submissions**

21. Both parties filed their respective list authorities, and the matter came up for hearing on 13<sup>th</sup> November, 2019 when parties made their respective submissions.

22. Counsel Mumbo for the Respondent submitted in opposition to the applicant application dated 2<sup>nd</sup> August, 2019 and in support of their Application dated 12<sup>th</sup> March, 2019 and their Preliminary Objection dated 28<sup>th</sup> August, 2019.

23. Counsel submitted that the instant application dated 2<sup>nd</sup> August, 2019 is similar to an earlier application filed by the applicant dated 21<sup>st</sup> November, 2018, which application they submit sought the same prayers and was dismissed by Hon. Justice Dulu vide a ruling delivered on 10<sup>th</sup> December, 2018 on the ground that it was incompetent for being filed when there was an existing similar application. It is their submissions that if this court hears the instant Application, it would be tantamount to sitting on an appeal of Hon. Justice Dulu ruling herein, which action they submit will be in breach of Article 165(6) of the Constitution.

24. Additionally, they submitted that the applicant right to be heard protected under Article 50 of the Constitution has not been infringed as he did not rightly move the court leading to the dismissal of his application for being an abuse of the court process and therefore the instant application does not exhibit a reasonable cause of action.

25. Further, the Respondent submitted that the applicant application herein does not meet the provisions of the law to wit the Advocate (Remuneration)Act, for the reason that no leave was sought before the application for enlargement of time was made and for filing the instant reference. They submitted that the applicant ought to have filed his reference within 14 days of the taxing master's decisions, and In this case the reference has been filed after more than a year, and that no explanation has been tendered, submitting that the filing of numerous incompetent application cannot explain the delay.

26. Moreover, they submitted that it was the threat of imminent execution that made the applicant to file the instant Application and therefore there is no sufficient reason to allow the instant application and urged the court to dismiss the application with cost and the application dated 12<sup>th</sup> March, 2019 be allowed and that Interest of the costs be paid.

27. The Applicant Mr. Ouma submitted in support of the Applicant case. They submitted that the Respondent did not comply with the court orders on filing of documents and urged the court to struck out the respondent's documents that were filed after the lapse of time.

28. In regard to the Respondent Preliminary Objection, the applicant submitted that the same does not meet the description of a Preliminary Objection established in the Mukhisa Biscuits case, as it does not raise a pure point of law as envisaged.

29. Additionally, they submitted that their Application dated 2<sup>nd</sup> August, 2019 was filed in accordance with the law, that is pursuant to the requirements of Paragraph 11 of the Advocates Remuneration Order. They gave the background of the application being that they filed an Application dated 21/8/2018 to challenge the taxing master ruling delivered on 30/5/2018, however the same was struck out for being incompetent. And that on 28/1/2019 the Deputy Registrar issued a certificate of taxation based on his ruling where he found that the sum of Kshs. 810,100/= was payable.

30. It is their contention that the above figure of Kshs. 810,010/= has computational error, which they are seeking this court to correct, submitting that they do not have a problem with taxation of the items presented and taxed by the taxing master, but the amount has some arithmetic errors which they seek this court to correct.

31. They submitted that their main issue is on unjust enrichment caused by the error in tabulation and computation of the amount payable as per the Taxing Master ruling delivered on 30/5/2018.

32. Further, they submitted that this Court pursuant to paragraph 11(4) of the Advocates Remuneration Order has the power to enlarge time for filing of a Reference. In this regard they argued that the instant application is deserving as the previous alluded application were not heard and determined on merit and therefore the same cannot be said to be *res judicata*.

33. Furthermore, they submitted that they complied with this court condition for stay as they deposited Kshs. 443,905/= being the amount that is not disputed herein, and urged the court to consider their application on merit. They relied in their filed list of authorities and urged the court to allow their application.

### **Issues and Analysis**

34. I have considered the parties respective applications, submissions and authorities and the following are the main issues that arise for determination. The first is whether the Respondent Preliminary Objection is merited, secondly, whether there is sufficient reason for this court to enlarge time as sought by the applicant and finally whether the Applicant Reference vide application dated 2<sup>nd</sup> August, 2019 is merited.

35. On the first issue, which is the merit of the Respondent Preliminary Objection, it is apparent to this court that the Respondent is basically arguing that the Applicant Application dated 2<sup>nd</sup> August, 2019 is *res judicata*. It is their claim that the application is similar to another application filed by the Applicant dated 21<sup>st</sup> September, 2018, which was dismissed by this court vide a ruling dated 10<sup>th</sup> December, 2018 by Hon Justice Dulu, and that if this court sits to consider the same, it would amount to sitting on an appeal of the said decision of Ho. Justice Dulu. In answer to the Respondent claim that the application is *res judicata*, the applicant has submitted that the application dated 21<sup>st</sup> September, 2018 was not determined on merit and therefore the same cannot be *res judicata*.

36. The doctrine of *res judicata* is set out in the **Civil Procedure Act** at **Section 7** as follows:

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them can claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”***

37. The **Civil Procedure Act** also provides explanations with respect to the application of the *res judicata* rule. Explanations 1-3 are in the following terms:

***“Explanation. (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.***

***Explanation. (2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.***

***Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.”***

38. It is apparent that the doctrine implies that for a matter to be *res judicata*, the matters in issue must be similar to those which were previously in dispute between the same parties and that the same were determined on merit by a Court of competent jurisdiction.

39. I have perused the application dated 21<sup>st</sup> September, 2018 and the Ruling of Hon. Justice Dulu delivered on 10<sup>th</sup> December, 2018 and it is clear that the reason given for the dismissal of the application was because the same had been filed in the existence of another similar application filed by the Respondent and that the same was incompetent. The court was of the view that the applicant application was an abuse of the Court process. It is therefore clear that the application dated 2<sup>nd</sup> August, 2019 cannot be said to be *res judicata* as the earlier similar application alluded to was not determined on merit.

40. The applicant has also challenged the Instant Preliminary Objection as not fitting the ideal Preliminary Objection espoused in **Mukisa Biscuits case**, where it was held that a party raising a preliminary objection on a point of law must proceed on the basis (only for the preliminary point) that all facts pleaded by the other side are correct. In this case, the Preliminary Objection is on a point of law, being *res judicata*, which decision on *res judicata* claim has the ability to dismiss the suit and therefore it is my finding that the instant Preliminary

Objection is within the parameters envisaged in **Mukisa Biscuits case**.

41. In view of the above, this court is inclined to overrule the Respondent Preliminary Objection dated 28<sup>th</sup> August, 2019, and go ahead and determine the application dated 2<sup>nd</sup> August, 2019 on merit.

42. On the second issue, which is on whether this court ought to enlarge time for the filing of the instant Reference, Paragraph 11 of the Advocates (Remuneration) Order 2014 in this regard provides: -

**“11. Objection to decision on taxation and appeal to Court of Appeal.**

**1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.**

**2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.**

**4. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.**

**5. The High court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”**

43. It is clear from the above Paragraph 11(5) that this court has the authority to enlarge time for filing a reference, and the next issue is whether sufficient grounds exist for this court to allow the applicant application for enlargement of time. I have looked at the history of this matter carefully. The Respondent herein filed an Application before this court dated 8<sup>th</sup> June, 2018 seeking to set aside the Taxing Master decision dated 30<sup>th</sup> May, 2018. Subsequently, the Applicant also filed an Application dated 21<sup>st</sup> September, 2018 to also challenge the taxing master ruling delivered on 31<sup>st</sup> May, 2018. This court vide a ruling delivered by Hon. Justice Dulu dismissed both applications for being incompetent.

44. Subsequently, the applicant filed an application dated 8<sup>th</sup> February, 2019 seeking the court to review the taxing masters ruling herein dated 30<sup>th</sup> March, 2018. The application was brought under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules, 2010. This court upon considering the application found that the applicant had wrongly moved the court and dismissed the same on 24<sup>th</sup> July, 2019.

45. Pursuant to the above dismissal, the applicant filed the application dated 2<sup>nd</sup> August, 2019 seeking this court to enlarge time for filing of the instant reference, on the ground that the applicant would be condemned unheard contrary to Article 50 of the Constitution and the rules of natural justice. The overriding objective of civil litigation imposes a duty on this Court to be just, expeditious, proportionate and apply mechanisms ensuring affordable resolution of disputes before the court. It has been established that when an application for extension of time is before a court, the court ought to take into account several factors as observed by Odek, **JJ.A in Edith Gichugu Koine vs. Stephen Njagi Thoithi [2014] eKLR**, thus:

**“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”**

46. In **Kamlesh Mansukhalal Damji Pattni vs. Director Of Public Prosecutions & 3 others [2015] eKLR** the Court articulated that-

**“It must be realized that courts exist for the purpose of dispensing justice. Judicial Officers derive their judicial power from the people or, as we are wont to say in Kenya, from Wanjiku, by dint of Article 159 (1) of the Constitution which succinctly states that “judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under this Constitution.” Judicial Officers are also State officers, and consequently are enjoined by Article 10 of the Constitution to adhere to national values and principles of governance which require them whenever applying or interpreting the Constitution or interpreting the law to ensure, inter alia, that the rule of law, human dignity and human rights and equity are upheld. For these reasons, decisions of the Courts must be redolent of fairness and reflect the best interest of the people whom the law is intended to serve. Such decisions may involve only the rights and obligations of the parties to the litigation inter se (and hence only the parties' interests) and while others may transcend the interest of the litigants and encompass public interest. In all these decisions, it is incumbent upon the Court in exercising its judicial authority to ensure dispensation of justice as this is what lives up to the constitutional expectation and enhances public confidence in the system of justice.” (emphasis added).**

47. Therefore, the primary duty of the court is to ensure that Justice is served. In this case the applicant has made all possible attempts to ensure that this court hears his dispute, where he argues that the Taxing Master ruling dated 30<sup>th</sup> May, 2018 has an error in terms of computation of the actual amount he ought to pay as costs. It is his case that the amount is inflated to the tune of Kshs. 366,104.05/=, whose payment would amount to unjust enrichment of the Respondent. The respondent on the other hand has argued that the applicant action is meant to delay the recovery of the costs.

48. It is clear to me that the delay in filing the reference was majorly as a result the applicant counsel wrongly moving the court, that vide filing an incompetent application dated 21<sup>st</sup> September, 2018 and subsequent application dated 8th February, 2018, which application were dismissed by this court for incompetence. Both applications bear the traces of incompetence from the applicant's counsel. The Respondent vide their authorities have urged the court to dismiss the application as the Applicant can recover or sue his Counsel for negligence.

49. It is trite that mistakes of counsel should not be visited upon the client, and in my view this is clear case where the mistake of counsel should not be visited upon his client, and in the interest of justice and in view of the circumstance of this case, this court exercises its discretion and allows the enlargement of time for consideration of the instant reference. In any event the Respondent can be compensated by costs.

50. The third issue is on whether the applicant Reference is merited. The gist of the applicant reference is that there was a computation error pursuant to the Taxing Master ruling, which error would result in an unjust enrichment of the Respondent to the tune of Kshs. 366,104.95/=.

51. The applicant interpretation of the Taxing Master Ruling dated 30<sup>th</sup> March, 2018 is that the total sum taxed off is Kshs. 714,412/=. Subtracted from the initial sum presented in the Bill of costs of Kshs. 1,461, 658.50/= giving a sum of Kshs. 747,246.50/= as the amount payable by the applicant/client. Add V.A.T at 16% (Kshs. 119,559.44/=) gives a total sum of Kshs. 866,805.94/= as the total sum payable by the applicant/client and not Kshs. 1,232,910/=. This amount they allege is further reduced by the already paid by the Respondent, that is Kshs. 422,900/=, hence the final sum payable is Kshs. 443,905.05/= and not Kshs. 810,010/=

52. The Respondent on the other hand is contesting the applicant assertions alleging that the Taxing Master ruling does not have an error. It is their case that the amount that was charged in the Advocate Client Bill of cost dated 20th December, 2017 was Kshs. 1,695,523.86/= and out of that amount, deductions were made by the Taxing Officer in accordance with the amounts that had been taxed off (being Kshs. 426,613/=) as well as the amount paid by the Respondent/client (now applicant) being Kshs. 422,900/= leaving a balance of Kshs. 810,010/= as sum payable.

53. I have considered the taxing master ruling dated 30<sup>th</sup> May, 2018, and from the calculation thereof in view of the taxation, it is my finding that the amount taxed off is Kshs. 465,000/=. The Total amount claimed is Kshs 992,264/=. Subtract the sum taxed off of Kshs. 465,000/= and you get a total of Kshs. 527,264/=, raise the fees by Half you get Kshs. 790,896/= then add 16% VAT and the total comes to Kshs. 917,439.36/=. Subtract Kshs. 422, 900/= fees already paid and you get a total of Kshs. 494,539.36/=. The applicant has since paid another sum of Kshs. 443,905.95/= vide the amount deposited in court and later paid to the Respondent. The outstanding sum in view of the above is Kshs. 50,633.41/=.

### **Conclusion**

54. The applicant application dated 2<sup>nd</sup> August, 2019 succeeds to the above extent. The Respondent Preliminary Objection dated 28<sup>th</sup> August, 2019 is dismissed, and in respect to the Respondent Application dated 13<sup>th</sup> March, 2019, the Applicant is therefore ordered to pay the sum of Kshs. 50, 633.41/= to the Respondent.

55. Thus, the court makes the following orders;

- i) The preliminary objection dated 28/8/019 is dismissed.**
- ii) The balance amount payable is Ksh 50,634 which should be paid within a period of 14 days and in default execution to issue.**
- iii) The interest payable for the amount to accrue from the date taxing master taxed the bill.**
- iv) No orders as to costs in the instant application and preliminary objection.**

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 12<sup>TH</sup> DAY OF MARCH, 2020.**

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**C. KARIUKI**

**JUDGE**