



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**MISC. APPLICATION NO. 445 OF 2013**

**M/S MECKO ENTERPRISES.....APPLICANT**

**VERSUS**

**THE PRINCIPAL SECRETARY,**

**MINISTRY OF EDUCATION.....1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN, BOARD OF GOVERNORS,**

**NG'IYA GIRLS HIGH SCHOOL.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**SECRETARY/CO-ORDINATOR,**

**ECONOMIC STIMULUS PROGRAMME .....4<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY, NATIONAL TREASURY.....5<sup>TH</sup> RESPONDENT**

**RULING**

[1] The Applicant, **Mecko Enterprises**, is back before this Court with a Notice of Motion dated **9 November 2017**. The application is expressed to have been filed pursuant to **Articles 47(2) 158(1), 159(2)(b) and (c), 164, and 227(1)** of the **Constitution of Kenya**, **Section 48 of the Public Procurement and Disposal Act, 2005**, **Sections 10, 34, 35 and 39 of the Arbitration Act, No. 4 of 1995**, **Section 3(4) of the Evidence Act**, **Chapter 80 of the Laws of Kenya** and **Sections 3, 3A and 3B of the Appellate Jurisdiction Act**, **Chapter 9 of the Laws of Kenya**, **Section 26(1) of the Civil Procedure Act**, **Chapter 21 of the Laws of Kenya**; and **Orders 51 and 53 of the Civil Procedure Rules, 2010** for orders, inter alia, that:

[a] The Court be pleased to reconsider Prayer 5 in the Decree dated 19 March 2014; and to retain Prayer (3) and (4) thereof:

[b] That the Court be pleased to dismiss and/or strike out paragraph 61 of the High Court Ruling dated 26 February 2014 in terms of *res judicata*;

[c] That the Court be pleased to decree late payment of Kshs. 32,616,629.80, and order that the same be payable by the Respondents within 30 days with interest at the rate of 20.5% till full payment.

[2] Again, the only issue between the parties herein, is the question whether the Applicant is entitled to interest for late payment, which has been worked out to be in the sum of **Kshs. 32,616,629.80** as at the time of the filing of the instant application. The Order of **19 March 2014** arose from the decision of **Kamau, J.** dated **26 February 2014**. Much time and effort has been expended on a reconsideration of that decision and decisions rendered by this Court thereon. The pertinent Rulings are dated **30 June 2017** and **3 November 2017**. Quite apart from the fact that this Court is in no position to "**...dismiss and/or strike out...**" **any portion of the Ruling** of a Court of concurrent jurisdiction, as has been sought by the Plaintiff herein, the question of interest has been repeatedly ruled to be *res judicata*. Unless and until that conclusion is overturned on appeal, it is pointless for the Plaintiff to keep harping on about it. As matters stand, I would reiterate the previous decisions made herein and find that nothing has changed since those decisions were arrived at.

[3] In the result, I have no hesitation in holding that the Plaintiff's Notice of Motion dated **9 November 2017** is misconceived and the same is accordingly dismissed with costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF DECEMBER 2017**

**OLGA SEWE**

**JUDGE**