REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO 560 OF 2010

NEPTUNE CREDIT MANAGEMENT LIMITED.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....DEFENDANT

JUDGMENT

INTRODUCTION

1. The Plaintiff's Plaint was dated and filed on 17th August 2010. It sought judgment against the Defendant as follows:-

a. Kshs 13,500,000/=.

b. Interest at court rates.

c. Costs and interest thereon.

d. Any other relief that this Honourable Court deems just and expedient to grant.

2. The Plaintiff's List Documents and Witness Statement of Bryan Yongo were dated and filed on 17th April 2012. It also filed a List of Documents that was dated and filed on 5th December 2012. Its Statement of Agreed Issues were dated and filed 21st March 2013 while its Supplementary Bundle of Documents was dated 21st October 2014 and filed on 22nd October 2014. Its written submissions were dated and filed on 12th August 2014 and Supplementary List of Authorities was dated 21st October 2014 and filed on 22nd October 2014.

3. The Defendant filed its Defence dated 14th September 2010 on the same date. The Witness Statement of David Muiruri was dated 20th March 2012 and filed on 7th March 2013. It also filed another Witness Statement by John Njenga. The same was dated 8th July 2014 and filed on 9th July 2014. Its List of Documents was dated and filed on 7th March 2013. Its Statement of Agreed Issues was dated 15th April 2013 and filed on 24th April 2013 while its Written Submissions were dated 3rd September 2014 and filed on 22nd September 2014.

4. The matter proceeded for hearing on 5th March 2014, 28th May 2014 and 28th July 2014. However, when the matter came up on 30th July 2014, counsel who was holding brief for Mr Ondieki, for the Plaintiff, indicated that Mr Ondieki did not wish to cross-examine John Njenga, the Defendant's witness. Mr Ondieki had, however, partly cross-examined the said witness on 28th July 2014.

5. Parties informed the court that they did not wish to highlight their submissions whereupon the court reserved its judgment. This judgment was therefore based on the parties' Written Submissions.

THE PLAINTIFF'S CASE

6. Bryan Yongo (hereinafter referred to as "PW 1") was the Plaintiff's Chief Executive Officer. It was the Plaintiff's contention that by a written Agreement dated 27th April 2009 (hereinafter referred to as "the Agreement") the Defendant instructed it to collect a debt in the sum of Kshs 213,144,680/= from one Karim Jamal (hereinafter referred to as "the Debtor"). The said Agreement was to be in existence for thirty (30) days. The Plaintiff was to be paid a commission of fifteen (15%) per cent of any amount collected.

7. It said that there were express and implied terms that it owed the Defendant a duty of care to the effect that it would instruct a firm of advocates to file suit to facilitate such recovery, it was to negotiate with the said Debtor and that it would render a true and full account of all such debts collected.

8. It contended that in a letter dated 29th June 2009, which was a novation of the earlier Agreement, the Defendant gave the Plaintiff full instructions to pursue and recover the outstanding debt. Pursuant to those instructions, the Plaintiff sent the said Debtor a demand notice whereupon the said Debtor paid the Defendant a sum of Kshs 2,000,000/= on 1st and 31st July 2009.

9. Upon instructions from the Defendant, M/S Watta & Associates filed **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal** on behalf of the Defendant. The Plaintiff forwarded to the Defendant, copies of the Plaint, Summons and receipt of filing fees as well as its fee note of Kshs 300,000/= being fifteen (15%) per cent of Kshs 2,000,000/= that the Debtor had paid to the Defendant. The Defendant paid it the said sum of Kshs 300,000/=.

10. Summary judgment was entered in favour of the Defendant in the sum of Kshs 194,702,385.68. Through M/S Wandabwa & Co Advocates, the Debtor proposed to pay a sum of Kshs 90,000,000/= in equal monthly instalments of Kshs 500,000/= but a consent was recorded for the Debtor to pay Kshs 80,000,000/= in the same equal monthly instalments but that in default, the sum of Kshs 194.702,385.68 and costs of Kshs 10,000,000/= would become payable forthwith.

11. It contended that the Defendant had obstructed the Debtor from liquidating the said sum of Kshs 90,000,000/= when it filed an application in **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal** to strike out the pleadings and setting aside of the ruling for summary judgment that had been granted therein.

12. The Plaintiff therefore contended that it was entitled to a sum of Kshs 13,500,000/= being fifteen (15%) commission of the sum of Kshs 90,000,000/= and interest as it had performed its obligations under the said Agreement and sought entry of judgment as it had sought in its Plaint.

THE DEFENDANT'S CASE

13. The Defendant admitted having instructed the Plaintiff to collect the sum of Kshs 213,144,680.03 from the said Debtor vide its letter of 27th April 2009. It was to pay the Plaintiff a commission of fifteen (15%) per cent commission for the amount actually collected. It said that it reiterated its instructions to the Plaintiff in its letter dated 29th June 2009, a letter that was in response to the Plaintiff's letter of 26th June 2009.

14. It denied ever having instructed the Plaintiff to file suit on its behalf in any of its letters to the Plaintiff. It also stated that the order for summary judgment was based on pleadings it had never authorised the Plaintiff to file on its behalf and that the person who filed the said suit was an unqualified advocate. It pointed out that the consent letter the Plaintiff had alluded to was undated and was never filed and that in any event, it never authorised the Plaintiff to negotiate payment proposals with M/S Wandabwa & Co Advocates as the Plaintiff had contended.

15. It stated that the Plaintiff managed to recover a sum of Kshs 2,000,000/= for which it paid it the commission in the sum of Kshs 300,000/= as per the terms of the Agreement dated 27th April 2009. It was categorical that it had had never recovered the sum of Kshs 90,000,000/= for which the Plaintiff was claiming a commission of Kshs 13,500,000/= and that the Plaintiff breached the terms of the said Agreement by acting outside its instructions. It therefore urged the court to dismiss the Plaintiff's suit with costs to it.

LEGAL ANALYSIS

16. The Plaintiff and the Defendant listed forty four (44) and twenty one (21) issues respectively for determination by the court. This was an unrealistic number of issues for the court to determine. From the facts of the pleadings by the parties, the court found the following to have encompassed the issues to be determined by the court:-

1. Did the letter of 29th June 2009 novate the Agreement of 27th April 2009?

2. Did the Plaintiff have the Defendant's authority to file suit and to enter into negotiations with the Debtor's advocates on the Defendant's behalf?

3. Did the Plaintiff actually collect the sum of Kshs 90,000,000/= on behalf of the Defendant?

4. If so, was the Plaintiff entitled to the sum of Kshs 13,500,000/= being fifteen (15%) per cent commission of the sum actually collected?

5. Who was to bear the costs of this suit?

17. PW 1 reiterated the facts of his case as shown in Paragraphs 6-12 hereinabove and pointed out that the terms and scope of the contract between the Plaintiff and the Defendant were contained in the letter of 27th April 2009.

18. A perusal of the said Agreement revealed that the express terms of the were set out in the letter of 27th April 2009, which was stated in part:-

"…We hereby instruct you to proceed and collect on our behalf the said amount of Kshs 213,144,680.63 on the following terms:-

a. That the information given herein and such further information that comes to your knowledge herefrom shall be held in strict confidence and shall not be shared with third parties without express authority of the bank.

b. That you shall be paid a commission of 15% of the amount actually collected. The bank shall not bear any costs incurred by yourselves whatsoever other than the commission herein stated.

c. That these instructions shall expire within the next THIRTY DAYS from the date hereof after which you shall be discharged from your responsibilities hereof.

d. That your commission shall fall due and as such become payable upon payment and receipt

by the bank of the monies to be recovered under these instructions.

e. That any payments must be made payable directly to the Equity Bank Limited…"

19. During cross-examination, PW 1 admitted that although the thirty (30) days period within which the Agreement of 27th April 2009 was to subsist had expired, the same continued to be in existence as the Plaintiff and Defendant continued having meetings. He stated that it was the Plaintiff's demand of 22nd May 2009 that elicited some response from the Debtor. He said that Dr James Mwangi had called him and told him to withhold further action against the Debtor as they were communicating. He furnished the court with a letter dated 31st July 2009 from the Debtor to the Defendant in which the Debtor had sought to meet the Defendant's Managing Director, Dr James Mwangi to discuss his matters.

20. The Plaintiff argued that the letter of 29th June 2009 novated the Agreement of 27th April 2009 and thus created a new contract. In the said letter of 29th June 2009, it was stated as follows:-

"We refer to the above matter and your letter of 26th June 2009.

Please note that you have our full instructions to pursue and recover the outstanding debt without further reference to us. We shall communicate any instructions to the contrary whenever it shall become necessary. In the meantime, kindly ignore the allegations and proceed."

21. The Defendant's General Manager, Legal Services namely John Njenga, (hereinafter referred to as "DW 1") told the court that the Defendant reiterated its previous instructions to the Plaintiff to pursue the debt from the Debtor and that there was never a novation of the contract of 27th April 2009. It placed reliance on the definition of **"novation"** in Halsbury's Laws of England 4th Ed Vol 9 (1) pg 778 which was that:-

"Novation has been judicially defined as being where there is a contract in existence and some new contract is substituted for it, either between the same parties or different parties, the consideration being the discharge of the old contract. However, where the new contract modifies the old contract between the same parties, this has come to be termed a variation; and the expression "novation" has more recently tended to be used rather for the situation where the acts to be performed under the old contract remain the same, but are performed by different parties. Hence, novation requires a subsequent binding contract and the consent of all parties."

22. On page 11 of his ruling dated 1st December 2011, Odunga J held as follows:-

"In the circumstances, I agree with the plaintiff that there was a novation of the earlier agreement both in respect of the term of the agreement and the authority given."

23. It did therefore appear to this court that the question of whether or not there was a novation of the Agreement of 27th April 2009 had already been decided by the said learned judge. The said learned judge's holding remained firmly in place as it had not been set aside and/or vacated by the Court of Appeal.

24. This issue was for all purposes and intent *res judicata* and ought not to have been raised as an issue for determination by this court as a decision had already been made by a court of equal, competent and concurrent jurisdiction, a holding this court cannot depart from.

25. Section 7 of the Civil Procedure Act Cap 21(Laws of Kenya) provides as follows:-

"No court shall try any suit or issue in which the matter directly ad substantially in issue has

been directly and substantially in issue in a former suit between the same parties, or between parties under whom any they or any of them claim, litigating under the same titled, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and which has been heard and finally decided by such court."

26. However, what was evident was the Defendant's letter of 29th June 2009 was a response to the Plaintiff's letter dated 26th June 2009. Neither the Plaintiff nor the Defendant produced this letter of 26th June 2009 making it difficult for the court to establish what was written therein. What was, however, clear was that the Defendant instructed the Plaintiff to pursue and recover the outstanding sum without further reference to it Defendant and to ignore **"the allegations"** which allegations were not disclosed to the court.

27. Turning to the question of whether the Plaintiff had authority to do take certain actions on behalf of the Defendant, PW 1 testified that he met with Dr James Mwangi who requested him to liaise with one Joseph Kamau with a view to instituting civil proceedings against the Debtor as the instalments the Debtor had proposed to pay, compared to the debt that was actually outstanding from the Debtor, were too derisory.

28. He referred to the said letter of 29th June 2009 as the basis of the institution of the **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal** by M/S Watta & Associates Advocates on behalf of the Defendant herein. The Plaintiff and Defendant in **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal** were the Defendant and the Debtor herein respectively.

29. PW 1 placed reliance on the ruling of 3rd December 2009 by Muga Apondi J (as he then was) in which he entered summary judgment against the Debtor in the sum of Kshs 194,702,385.68 as the Plaintiff therein had fully complied with the explicit position of the law. During his cross-examination, he did, however, admit that there was no letter of instructions to the said advocates instructing them to file suit on behalf of the Defendant.

30. He further testified that pursuant to the said entry of judgment, the Debtor's Advocates and the Defendant herein entered into a consent but that instead of pursuing the said monies, the Defendant opted to file an application to strike out the said suit **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal**.

31. The Plaintiff argued that it was for all purposes and intent, the Defendant's agent. It referred the court to **"F.M. B. Reynolds" in Bowstead on Agency (15th Edition)** in which it was stated as follows:-

"Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf and the other of whom similarly consents so to act or so acts."

32. On his part, DW 1 testified that the letter of 29th June 2009 never instructed or authorised the Plaintiff or the firm of M/S Watta & Associates Advocate to file suit on behalf of the Defendant. He said the Defendant did not even pay the court filing fees. He averred that the Defendant became aware of the institution of the suit when the Plaintiff forwarded to it an undated letter and copies of the Plaint, Summons and Receipt of the filing fees. This letter was acknowledged by J. M. Kamau on 7th August 2009. He was, however, emphatic that the said J.M. Kamau was not authorised to sign the Verification Affidavit on behalf of the Defendant.

33. It was DW 1's evidence that Musinga J (as he then was) had found **HCCC No 645 of 2009 Equity Bank Limited vs Capital Construction Limited & 3 Others** that had also been filed by M/S Watta & Associates Advocates that Kenneth Watta t/a Watta & Associates Advocates was not qualified to act as an advocate under Section 32 of the Advocates Act Cap 16 (Laws of Kenya).

34. The Defendant relied on the ruling of Musinga J (as he then was) in the case of **HCCC No 645 of**

2009 Equity Bank Limited vs Capital Construction Limited & 3 Others where the said learned judge struck out the suit on the ground that Kenneth Watta t/a Watta & Associates Advocates had not complied with the provisions of Section 32 of the Advocates Act.

35. The Defendant placed reliance to the cases of **Florence Ngaira t/a Garyl Agencies vs NSSF Board of Trustees & Another [2012] eKLR** and **Mohammed Ashraf Sadique & Another vs Matthew Oseko t/a Oseko & Co Advocates** to buttress its argument that no action could flow from an action that had been filed by an unqualified advocate.

36. It is correct as the Defendant submitted that under Section 34 (1) (f) of the Advocates Act that no unqualified person could **"directly or indirectly take instructions or draw or prepare any document or instrument relating to any other legal proceedings."** However, there had to be proof that such a person who was not qualified to act as an advocate had taken instructions, drawn or prepared documents or instruments relating to legal proceedings.

37. However, there was no indication that the suit herein was struck out for having been filed by a person who was not qualified to act as an advocate. The court was thus very hesitant to find that just because the pleadings in **HCCC No 645 of 2009 Equity Bank Limited vs Capital Construction Limited & 3 Others** were struck out on account that Kenneth Watta was found to have been unqualified, then the pleadings in this case faced a similar fate without any evidence being placed before the court. Nothing would have been easier than for the Defendant to have furnished the court with such evidence irrespective of the fact that the said Kenneth Watta was said to be deceased.

38. Indeed, Odunga J declined to strike out the pleadings in this suit on the ground that he could not base his decision on a decision that was yet to be made in **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal**. As far as this court was concerned therefore, the summary judgment that was entered herein remained in place until such time that it was set aside and/or vacated. It was irrespective that the summary judgment had been entered on pleadings the Defendant contended had been filed by an unqualified person as this issue does not appear to have been ventilated.

39. Having said so, on page 2 of the Ruling of Muga Apondi J (as he then was) in respect of the application for striking out in **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal**, it was evident that the application was supported by an Affidavit of Joseph Kamau dated 2nd October 2009. This was the same person PW 1 seemed to have referred to in his evidence.

40. The court was therefore less than impressed by DW 1's evidence that the management was not aware of Joseph Kamau's signature because that would not have been tenable in view of the fact that he was the Defendant's Fraud and Investigation Manager.

41. While the court noted his testimony regarding the Defendant's structure of management and that the said Joseph Kamau had only been authorised to sign the Agreement of 27th April 2009 but not to execute the Verification Affidavit in **HCCC No 559 of 2009 Equity Bank Limited vs Karim Badrudin Jamal**, the fact still remained that it was Joseph Kamau who executed the said Verification Affidavit that gave life to the said suit.

42. It would have been onerous for the Plaintiff to have been expected to have had knowledge of the Defendant's management structure and in particular, the person who was authorised to swear the said Affidavit. Appreciably, as has been stated above, there was no evidence that was placed before the court to demonstrate that the suit was struck out on the ground that it was supported by an Affidavit that had been sworn by an unauthorised person.

43. The court noted the Defendant's reliance on several cases whose common thread that if an act was void, then it was a nullity and that the Plaintiff could not rely on the Doctrine of Estoppel to confer on itself an illegal benefit-**See Civil Application No 22 of 2001 AMECEA vs Alfred Romani t/a Romani Architects & 4 Others** (unreported), **Kenya Airways Limited vs Satwant Singh Flora [2013] eKLR**, **Scott vs Brown Doering, McNab & Co, (3), [1892] 2QB 724**.

44. Unfortunately, the same would not have assisted the Defendant, the court having found that the question of legality of the pleadings herein did not appear to have been resolved and the entry of summary judgment had remained in place. Indeed, the said Joseph Kamau was never called to testify and he did not also deny that the signature in the Verification Affidavit was his.

45. On the other hand, the court was more persuaded by the Plaintiff's evidence that, together with the firm of M/S Watta & Associates Advocates, it had had ostensible authority to act on behalf of the Defendant herein. In this regard, the court found the case of **Sagoo vs Dowado [1983] KLR 365** that was relied upon by the Plaintiff to have been relevant in the circumstances of this case. In that case, it was held as follows:-

> **"A party who seeks to set up an estoppel must show that he in fact relied upon the representation that he alleged, be it a representation by innuendo and representation by conduct."**

46. The question of whether or not that it would be unjust enrichment for the Defendant to retain the benefit at the Plaintiff's expense once it obtained summary judgment herein was a different issue all together.

47. As seen, hereinabove, DW 1 pointed out that the aforesaid consent that had been entered into was not dated and had not been filed in court. Although Odunga J appeared to have seen the said consents, it was not clear whether or not the said consent in a letter dated 21st January 2010 had been filed in court as it did not bear a court stamp. Indeed, during his cross-examination, PW 1 said that he was not sure whether the said consent was filed in court and that all that he knew was that the said consent was entered.

48. Suffice it to state that on page 7 of his Ruling dated 1st December 2011, Odunga J had the following to say:-

> **"…However, in a consent subsequently entered into, I suppose on the instructions of the plaintiff, the said sum was scaled downwards to Kshs. 80,000,000/-, although in paragraph 9 of the supporting affidavit, it is indicated the consents were secured were in respect of a sum of Kshs. 90,000,000.00 which is the sum which the claim of Kshs. 13,500,000/-is pegged. I have seen a further consent with respect to costs wherein it is indicated the plaintiff's costs was Kshs. 10,000,000/- I suppose to take care of the shortfall."**

49. Be that as it may, the bone of contention appeared to have been whether or not the Plaintiff had instructions to record a consent on the Defendant's behalf or for the Plaintiff to have entered into the Agreement 23rd December 2009 between itself and the Debtor's Advocates. DW 1was emphatic that the Defendant had never approved the same.

50. In his said Ruling of 1st December 2011, Odunga J also stated thus:-

> **"The question, however, that begs answer is where the authority to scale down the decretal sum came from. The defendant denies giving the said authority while there is no allegation by the plaintiff that there was an express authorisation. At this stage I cannot say with certainty that the letter dated 29th June 2009 was so wide in its terms as to include a renegotiation of a decretal sum. That issue, however, must await the result of the trial."**

51. In view of the fact that the Defendant was emphatic that it never instructed the Plaintiff to enter into any consent with the Plaintiff's Advocate, it was incumbent upon the Plaintiff to have provided evidence of such instructions, which it did not. In his cross-examination, PW 1 only stated that the Plaintiff was relying on the contents of Paragraph 21 of his Witness Statement in which he had stated as follows:-

> **"The Plaintiff has successfully completed its task of debt collection and due to the indolence of the Defendant, the Plaintiff has been deprived of its fees in the sum of Kshs.13,500,000/-**

being 15% of its fees of Kshs. 90,000,000/- as per the agreement and/or agreement between the Plaintiff and the debtor's lawyer."

52. In the absence of any evidence to the contrary, the court found that the Plaintiff had no express or implied authority to enter into negotiations with the Debtor's advocates that would eventually bind the Defendant herein.

53. The Plaintiff would therefore encounter difficulties in convincing the court to find that it was the Defendant's indolence and procrastination in its management in recovering the said sum of Kshs 90,000,000/= that had the effect of denying it its commission in the sum of Kshs 13,500,000/=.

54. The court observed that the material non-disclosure by both the Plaintiff and the Defendant of the contents of the said letter of 26th June 2009 made it difficult for it to say for a fact whether the said letter of 29th June 2009 created a new contract that replaced and/or substituted the initial contract that was entered into by the parties on 27th April 2009.

55. However, as was pointed hereinabove, Odunga J had already found that the Agreement of 27th April 2009 was novated by the letter of 29th June 2009. Infact the Plaintiff was categorical that Clause (b) of the letter of 27th April 2009 did not subsist as it was novated by the Agreement of 29th June 2007. The question that then arose in the mind of this court was, on what basis then was the Plaintiff basing his commission of fifteen (15%) per cent of monies recovered?

56. The terms and conditions in the Agreement of 27th April 2009 were expressly stated. However, the new purported Agreement was vague and ambiguous as it did not expressly state what the terms of payment of the Plaintiff's commissions were, what was deemed to be actually collected or where monies were to be banked.

57. Notably, the contract of 27th April 2009 was only in existence for thirty (30) days. It was to expire on 27th May 2009. Payments from the Debtor were remitted to the Defendant on 1st and 31st July 2009 which was way after the said expiry period. The fifteen (15%) per cent commission was, however, paid to the Plaintiff. The terms of the Agreement in the letter of 27th April 2009 either subsisted beyond the thirty (30) days' period that had been stipulated therein or they did not.

58. If the terms of payment of commission of fifteen (15%) per cent by the Defendant subsisted in the Agreement of 29th June 2009 as what contended by the Plaintiff, the court could not make an assumption that the clauses in the Agreement of 27th April 2009 did not subsist. If one term of the Agreement was novated, then the entire Agreement of 27th April 2009 was substituted by the Agreement of 29th June 2009.

59. The Plaintiff could not approbate and reprobate by relying on certain terms and conditions in the Agreement of 27th April 2009, in particular payment of its commission, and at the same time purport that the said Agreement was novated by the Agreement of 29th June 2009.

60. The situation would, however, have been different if the court were to have gone with the position that had been taken by the Defendant that the Agreement of 27th April 2009 was a reiteration of the Defendant's instructions to the Plaintiff as had contended by the Defendantand that it was only the limitation period of thirty (30) days that had been removed leaving all the other terms and conditions therein intact or unaffected.

61. Whereas the court noted the Plaintiff's submission that it was immaterial that the Defendant had not received the actual funds from the debtor which was attributable to the Defendant and its reliance on the case of **Kahn vs Aircraft Industries Corporation Limited [1937] All ER 757** in this regard, the court came to the conclusion that in view of the finding that the Agreement of 27th April 2009 was novated by

that of 29th June 2009, the question of when and if commission would become payable became difficult to determine.

62. Accordingly, having considered the pleadings, the written submissions and case law in support of the respective parties' case, the court found and held that if there had been a finding by Odunga J that there was variation of the period of existence of the Agreement only, and not novation, of the Agreement of 27th April 2009 by the letter of 29th June 2009, it would have resulted in a totally different conclusion by this court.

63. The court would then have had to determine the question of whether or not the Defendant had willfully refused, neglected and/or ignored to recover the amount that was entered as summary judgment. This would have had a bearing on the question of whether the Plaintiff's was entitled to its commission irrespective of whether or not the Defendant had actually recovered (emphasis court) the said amount.

64. However, bearing in mind the contents of the letter of 29th June 2009 which Odunga J found to have novated the Agreement of 27th April 2009, the court found that the Plaintiff's case fell by the way side. The court found that the Plaintiff did not, prove to the required standard, that it was entitled to the sum of Kshs 13,500,000/= together with interest and costs as it had sought in its Plaint. The said letter of 29th June 2009 contained no basis of the Plaintiff claiming the said commission.

DISPOSITION

65. For the foregoing reasons, the court found that Plaintiff's suit failed in its entirety and on that basis, the Plaintiff's Plaint dated and filed on 17th August 2010 is hereby dismissed with costs to the Defendant.

66. It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 26th day of February, 2015

J. KAMAU

JUDGE