



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**  
**MISC. CIVIL SUIT (O.S.) NO. 148 OF 2012**

**SIMPSON SENDA KWAYERA T/A TELENEWS AFRICA**  
**AND ATALANTIC REGIONS:::::::::::::::::::::::::::::PLAINTIFF/APPLICANT**  
**VERSUS**  
**THE HON. ATTORNEY GENERAL:::::::::::::::::::::1<sup>ST</sup> RESPONDENT**  
**THE PERMANENT SECRETARY,**  
**MINISTRY OF TRADE:::::::::::::::::::::2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. There are three **Notice of Motion** applications before the court to be determined together. The first application is dated **6<sup>th</sup> December 2013** by the Plaintiff/Applicant through Masoa & Co. Advocates seeking orders to set aside the consent dated 13<sup>th</sup> February 2014 and filed on 14<sup>th</sup> February 2014 to the effect that the Plaintiff/Applicant be paid by the Respondents Kshs.65,000,000/= in full and final settlement of the claim.
2. The 2<sup>nd</sup> application dated **2<sup>nd</sup> May 2014** is also by the Plaintiff/Applicant through Masoa & Co. Advocates seeking orders for the release of and disbursement of Kshs.40,000,000/= already deposited in court by the Ministry of East African Affairs, Commercial and Tourism (formerly Ministry of Trade). This application appears to have been overtaken by events and thus will not form part of this Ruling.
3. The third application dated **5<sup>th</sup> May 2014** is by E. Wafula Associates Advocates seeking to set aside a consent entered before the Hon. Mr. Justice Kimondo on 23<sup>rd</sup> August 2013 to the effect that E. Wafula Associates Advocates be paid Kshs.8,000,000/= in full and final settlement on their professional fees and that they cease to act for the Plaintiff/Applicant; and in their place the firm of Maosa & Co. Advocates to come on record for the Plaintiff/Applicant. Upon the setting aside of the consent order dated 23<sup>rd</sup> August 2013, the firm of E. Wafula Associates Advocates seeks that it be paid Kshs.12,000,000/= being the balance of Kshs.20,000,000/= agreed fees with the Plaintiff/Applicant vide agreement dated 4<sup>th</sup> February 2013 less Kshs.8,000,000/= already paid pursuant to the consent order dated 23<sup>rd</sup> August 2013. This

application is not directed upon the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents and as such nothing much turns on it as far as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents are concerned.

4. The 1<sup>st</sup> application is supported by the affidavit of **Simpson Senda Kwayera** sworn on **6th December 2013** and a **supplementary affidavit** filed in court on **17<sup>th</sup> July 2014** and relies on annexures thereto including correspondences between the parties leading to the current dispute.

5. The application is opposed by affidavit of **E. Wafula Advocate** dated **21<sup>st</sup> March 2014**. It is also opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents vide **Grounds of Opposition** dated and filed in court on **23<sup>rd</sup> December 2013; Replying Affidavit of Muthoni Kimani**, Senior Deputy Solicitor General sworn on **24<sup>th</sup> March 2014** and filed on **25th March 2014; Supplementary Affidavit of Dr. Ibrahim M. Mohamed**, Principal Secretary Ministry of East African Affairs, Commerce and Tourism sworn on **8<sup>th</sup> July 2014** and filed on **9<sup>th</sup> July 2014**.

6. The brief background to the applications is that the Plaintiff/Applicant filed suit by way of an Originating Summons against the Defendants/Respondents claiming Kshs.12,000,000/= and interest at prevailing commercial rates, general damages and costs of the suit. The claim was on the basis of a Local Purchase Order, which was stated to be the contract. After full hearing, this court vide Judgement given on 24<sup>th</sup> July 2012 decreed that the Plaintiff be paid by the Defendants Kshs.12,000,000/= together with interest computed and compounded at 26% per annum from April 2004 until Judgement. The plaintiff then proceeded to extract and served upon the A.G. on 3<sup>rd</sup> August 2012 with a Certificate of Order Against the Government for payment of Kshs.110,061,691/=. There arose a dispute on the said 26% compounded interest. The Defendants objected to this interest, which was not supported by the contract, and, according to the Respondents, was actually illegal. The Plaintiff through his then advocate on record, M/s E. Wafula & Associates Advocates and the A.G., through the Senior Deputy Solicitor General negotiated the issue of the interest and final decretal amount to Kshs.65,000,000/= and a consent to that effect was signed on 13<sup>th</sup> February 2013 and filed in court on 14<sup>th</sup> February 2013. It is this Consent that the Plaintiff, now through the firm of Maosa & Co. Advocates seeks to have set aside, with the consequence that the decretal amount payable will revert to Kshs.110,061,691/= together with the accrued interest.

7. The Plaintiff's/Applicant's case is that after the aforesaid judgement the Plaintiff was entitled to Kshs.110,967,061/= and that in terms of the letter of E. Wafula & Co. Advocates addressed to the Permanent Secretary Ministry of Trade dated 27<sup>th</sup> March 2013, the Applicant was entitled to Kshs.146,627,016/39 as at August 2013. This sum, according to the Applicant, was negotiated to Kshs.65,000,000/= without either the Applicant's authority or his knowledge. The effect was to deny him a colossal sum of Kshs.51,000,000/= when a consent was filed in court on 14<sup>th</sup> February 2013 reducing the said sum to Kshs.65,000,000/=. The Applicant now questions the validity of the said consent dated 13<sup>th</sup> February 2013 and filed in court on 14<sup>th</sup> February 2013. Among the grounds upon which the Applicant contests the validity of the said consent are that the Plaintiff did not participate in the discussion leading to the said reduction and the filing of the said consent and that indeed the Applicant did not give his advocate Mr. Wafula any such instruction to reduce the decretal sum or to enter into the consent, and that the said consent was shrouded in secrecy, is tainted with gross misrepresentation, is fraudulent and unjust and has caused the Applicant huge loss, and the same should be set aside.

8. In response to the Applicant's submissions, Mr. Wafula in his affidavit sworn on 21<sup>st</sup> March 2014 avers at paragraph 9 and 10 that

**Paragraph 9**

***“That on 14<sup>th</sup> February 2013 a meeting was held at the offices of the Senior Deputy Solicitor General in the presence of the Applicant, Ms Muthoni Kimani representative of the Ministry of Trade Head of Administration Amb. Ngaithje, Mrs. Byama the Chief Finance Officer and myself (Mr. Wafula) where***

*we agreed to reduce the award and re-negotiate the interest awarded in the Judgement with the 2<sup>nd</sup> Respondent (Ministry of Trade) proposing Kshs.39,000,000/= all inclusive.”*

**Paragraph 10**

*“That 2<sup>nd</sup> Respondent had instructed the A.G. to appeal and the meeting resolved that the Hon. A.G withdraws the appeal and we explore further negotiations. That I had advised the Applicant on the intended appeal by the A.G., which would further delay the matter as the A.G.’s ground that the interest awarded was based on retrospective application of Public Procurement Act had a high chance of success.”*

9. On their part the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the negotiations towards the consent being challenged was necessitated by a realisation that the award of interest at commercial rates of 26% was erroneous. The Consent entered by the Plaintiff’s advocate, M/s E. Wafula Associates Advocates is in law a binding contract which has been enforced and cannot be set aside. The Consent was entered by M/s E. Wafula Associates Advocates on record for the Plaintiff; and with the Plaintiff’s knowledge and participation and that the Plaintiff wrote a letter dated 14<sup>th</sup> February 2013 thanking Muthoni Kimani, Senior Deputy Solicitor General for the assistance and guidance in this matter (*see exhibit MK2 in the replying affidavit of Muthoni Kimani*). The Ministry of East African Affairs, Commerce and Tourism has since paid out the total amount of Kshs.65,000,000/= through the court. That this payment has been effected and disbursements made to the Plaintiffs/Applicants and M/s E. Wafula & Associates Advocates is clear from the application dated 2<sup>nd</sup> May 2014, 5<sup>th</sup> May 2014 and the consent entered before the Hon. Justice Kimondo on 23<sup>rd</sup> August 2013.

10. In support of its application the Plaintiff/Applicant on 14<sup>th</sup> May 2014 filed a comprehensive list of authorities. The Applicant relied on the case of **Gateway Insurance Co. Ltd. – Vs - Aries Sprays Court of Appeal NRB; Civil Appl. No. 317 of 2004**, Hon. Justice Githinji JA stated that *the appeal raised an important point of law relating to a Consent Order or Consent Judgement which has been entered by a court*. There is a clear finding at page 6 paragraph 4 that a Consent can be varied if it is shown, among other things that it was obtained by misrepresentation, fraud or undue influence. The jurisdiction of the court to revisit the said Consent has not be questioned/contested by the Respondents.

11. The Plaintiff/Applicant identified the following issues for determination by this court:-

*(i) What are the circumstances under which a Consent Judgement or Consent Order may be interfered with by court.*

*(ii) Were these circumstances present in this matter so as to entitle this court to set aside the consent of 13<sup>th</sup> February 2013.*

The Plaintiff submitted that a Consent operates like a Contract, and if there is lack of mutual consent, such a contract/agreement can be vitiated and/or set aside. Relying on the case of **Ismail Sunderji Hirani – Vs – Noorali Esmail Kassam (EACA) Civil Appeal No. 11 of 1952**, the Applicant submitted that a profound finding was made as follows: at page 134; Windham J. *“Prima facie, any order made in the presence and with the Consent of Counsel is binding on all parties to proceedings or action, and on those claiming under them . . . and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the Policy of Court . . .”* *“or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement.”*

12. It was submitted by the the Applicant that the issue before this court involves a colossal sum of money amounting to Kshs.51,000,000/= which the Applicant stands to loose. He ought to have been consulted by his previous counsel. This is a valid reason to warrant the court’s intervention in the matter. The act of Mr. Wafula in negating the consent in their letter dated 27<sup>th</sup> March 2013, 14 days after executing the same in the absence of the Applicant confirms the element of misapprehension and/or

ignorance of material facts. This is a prima reason for this court intervention to set aside the said Consent. The Applicant further submitted that in the consent of 23<sup>rd</sup> August 2013, the Applicant was actively involved and he actually appended his signature, for purposes of transparency and actual participation and for avoidance of doubt on either party. The Consent of 13<sup>th</sup> February 2013 was shrouded in secrecy, and was executed before the meeting which was scheduled to discuss the same. The court has jurisdiction to analyse the circumstances leading to the execution of the said Consent with a view to setting it aside. The Applicant pleaded with the court that the matter involving the reduction of the award was weighty and his participation was paramount. The office of A.G. in its Grounds of Opposition states that the Consent was entered by Applicant's previous advocates who were by then or record, without the Applicant's knowledge and participation. The Applicant submitted that indeed he had no knowledge and he never participated in the execution of the said consent as it is being argued by the A.G. The Applicant's previous advocates similarly denounced the said consent 14 days after its execution with no rejoinder from the Office of the A.G.

13. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Applicant's application had not met the conditions for setting aside the consent order filed in court on 14<sup>th</sup> February 2013. Firstly, the Consent order dated 13<sup>th</sup> February 2013 and filed on 14<sup>th</sup> February 2013 was entered into on behalf of the Plaintiff by M/s E. Wafula & Associates Advocates being the firm of advocates on record for the Plaintiff at the time. Accordingly and in terms of the holding of the **KCB – VS – Benjoh Amalgamated Ltd. & Another** case at page 4 on Authority of Solicitor, the advocate had the general authority to compromise on behalf of the Plaintiff if he acted bonafide and not contrary to express negative direction. That M/s E. Wafula & Associates Advocates were acting bonafides and with express directions of the Plaintiff is clear from the letter by the Plaintiff/Applicant dated 14<sup>th</sup> February 2013 thanking Muthoni Kimani, Senior Deputy Solicitor General for the assistance and guidance in this matter. The Plaintiff/Applicant has not denied writing the letter dated 14<sup>th</sup> February 2013. This therefor means that the consent was not procured through collusion, fraud or any misrepresentation.

14. Secondly the consent dated 13<sup>th</sup> February and filed on 14<sup>th</sup> February 2013 has since been complied with in full by the 1<sup>st</sup> and Defendant/Respondents by depositing the sum of Kshs.65,000,000/= in court (see supplementary affidavit of Dr. Ibrahim M. Mohamed, Principal Secretary Ministry of East African Affairs, Commerce and Tourism sworn on 8<sup>th</sup> July 2014 and filed on 9<sup>th</sup> July 2014). As per the holding of **Flora Wasike – Vs Destimo Wamboko [1988] 1KAR 625**, no condition under the consent remains to be carried out by the Defendants/Respondents.

15. Thirdly, the Plaintiff has pursuant to the consent dated 13<sup>th</sup> February 2013 and filed on 14<sup>th</sup> February 2013 been paid the decretal sums already deposited in court save for sum of Kshs.10,000,000/= , which this court ordered to be retained in court. M/s E. Wafula & Associates Advocates have also been paid Kshs.8,000,000/= out of the decretal sums deposited in court by the Defendants/Respondents. The Plaintiff cannot therefore, after pocketing the proceeds of the consent dated 13<sup>th</sup> February 2013 and filed on 14<sup>th</sup> February 2013, turn around and start alleging the consent be set aside. It is submitted that this is so because the consent dated 13<sup>th</sup> February 2013 and filed on 14<sup>th</sup> February 2013 is binding on the parties and in this regard, the Defendants/Respondents have performed their part and the Plaintiff together with M/s E. Wafula & Associates Advocates have been paid out of the proceeds of the consent. This court should resist the Plaintiff's attempt at undoing the consent.

16. Fourthly, it was submitted that the consent dated 13<sup>th</sup> February 2013 and filed on 14<sup>th</sup> February 2013 was aimed at correcting an error in the Judgement in that the court awarded interests at commercial rates while there was no contract to support the award of interest at commercial rates. The court also relied on a provision of the Public Procurement Act 2005 while the claim was founded on a Local Service Order issued on 2004 before the enactment of the said Act. Since, it is a settled principle of the law that interest on commercial rates has to be on the basis of a contract the court could only lawfully grant interest at court rates i.e. 12%. As such, setting aside the Consent would mean this court is propagating an error of law in the Judgement leading to the increased expenditure by the Defendants/Respondents and thus against public interest. From the foregoing, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents pray that the

application dated 6<sup>th</sup> December 2013 be dismissed with costs. Similarly, the applications dated 2<sup>nd</sup> May 2014 and 5<sup>th</sup> May 2014 ought also to be dismissed with costs for lacking in merit and having been overtaken by events.

17. I have considered the application and the submission of the parties. The issues for determination is the validity of the said Consent filed in court on 14<sup>th</sup> February 2014, and whether this court can set it aside. The law and principles of setting aside consent orders was restated by the Court of Appeal of Kenya in the case of **KCB – VS Benjoh Amalgamated Ltd. & Another Nairobi Civil Appeal No. 276 of 1997 [1998] eKLR**. In this case, the Court of Appeal referred to holdings in the case of **Brooke Bond Liebit (T) Ltd. – Vs E.A. 266, Hirani – Vs – Kassam [1952] 19 EACA 131** and **Setonon Judgements and Orders, 7<sup>th</sup> Edition Vol. 1 page 124**. The principle is basically that *an order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusions, or by an agreement contrary to the policy of the court, or if consent was given without sufficient material facts or in misrepresentation or in misapprehension or ignorance of material facts or in general for a reason which would enable the court to set aside an agreement.*

18. In the **KCB – VS Benjoh Amalgamated Ltd. & Another** case, the court also referred to the case of **Flora Wasike – Vs Destimo Wamboko [1988] 1KAR 625**, where Hancox JA held *“it is now settled law that a consent judgement or order has a contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.”*

19. The issue that now arises is whether the said consent was arrived at by way of fraud or misrepresentation. A court is entitled to believe, and to act upon such belief, that counsel appearing for a party when he enters into a consent has the authority to do the same, and to bind such a party. When the court is in doubt, pursuant to an application such as the one before the court to set aside the consent, the court will scrutinize the immediate circumstances surrounding the filing of the consent. The court will critically consider the correspondences and the conduct of the party and his advocate months or days before and after filing the said consent. In situations where the party alleges that there was no instruction to record a consent, what the party says or does before or soon after the consent is recorded is crucial. In the matter at hand the Applicant states that he never gave his authority to the advocate to enter into the consent, and that he never attended a crucial meeting on 31<sup>st</sup> October 2012 at 9.00 a.m. when the negotiation leading to the reduction of the decretal sum was made. This meeting was however, attended by the Applicant’s advocate on record Mr. Wafula. The Applicant was not obligated to attend the meeting in person since his advocate was already in attendance as the Applicant’s counsel. However, this court must still determine the conduct of the Applicant before and soon after the consent was recorded. To do that the following correspondences are relevant:-

i. Vide his letter dated February 14 2013 the Applicant writes directly to M/s Muthoni Kimani, Counsel for the Respondents, and states as follows:

***“First I thank you for meeting me and my advocate, Ezekiel Wafula in your office and setting in motion arrangements aimed at settling this longstanding issue to finality . . .***

***. . . And in view of the fact that the amount was scaled down from Kshs.110,000,000/= to Kshs.65,000,000/=, Mr. Wafula’s advocates fees now becomes Kshs.5,000,000/=(five million) while mine is Kshs.60,000,000/= (60 million).***

***. . . Once more thank you for your guidance and assistance in this matter.”***

It is to be noted that this letter, which is attached to the Applicant’s own submissions at page 10, is dated 14<sup>th</sup> February 2013, the same day the said Consent was recorded in court. It is therefore logical to state without any fear of contradiction that on the very day the said consent was filed in court, the Applicant was aware of it, was happy and did not object to it. There is no indication that

the Applicant did not give these instructions to his advocate, and in that letter the Applicant appeared to have very favourable view or opinion of his advocate.

ii. Vide an e-mail sent on 16<sup>th</sup> February 2013 at 1.46 a.m. the Applicant confirmed the contents of the said consent to his advocate Mr. Wafula. He also informed Mr. Wafula that his fees of Kshs.5,000,000/= would go directly to Mr. Wafula's account while the Applicant's part of Kshs.60,000,000/= would go directly to the Applicant's account. This letter is found at page 57 of the Applicant's own submissions.

iii. At page 58 of the Applicant's submissions is also another e-mail by the Applicant sent on November 15 2012 at 12.56 a.m. The e-mail discusses the negotiations and proposes a sum between Kshs.85,000,000/= and Kshs.95,000,000/=. This shows that months prior to the filing of the said consent, there were negotiations taking place which the Applicant was aware of, and participated in.

iv. At page 59 and 69 of the Applicant's submissions are e-mail correspondences by the Applicant showing the Applicant was aware of the said negotiations and participated in them.

Vide a letter dated 9<sup>th</sup> September 2014 found at page 124 of the Applicant's submissions is a letter by M/s Maosa & Co. Advocates addressed to the A.G. The last paragraph reads as follows:-

***“Our client reluctantly accepted this arrangement purely as a sign of good will based on the trust he has in the office of the A.G. and as a guarantee that your good office will expedite the remittances of the decretal sum without further delay so as to forestall interest payables calculated at the rate of 26% per annum.”***

The decretal sum being referred to was the Kshs.65,000,000/= procured through a consent dated 23<sup>rd</sup> August 2013. There is no indication at this stage that the Applicant was not happy with the negotiations leading to the said decretal sum.

v. Vide Mr. Maosa's letter dated 31<sup>st</sup> July 2013 found at page 126 of the Plaintiff's submissions, there is indication of the ongoing negotiations. The Applicant herein, and his present advocate, M/s Maosa Co. Advocates, were well aware of the negotiations.

20. However, if there is still any doubt that the Applicant was at all times involved in the said negotiations, and gave instructions on the filing of the consent on 14<sup>th</sup> February 2013, then the said doubt should be erased by what transpired on 23<sup>rd</sup> August 2013. On that day, the Applicant herein subsequently entered into another consent order with his former advocates apportioning the decretal amount between the Applicant and his former advocate Mr. Wafula. On that day, the Applicant was represented by his current advocate on record Mr. Maosa and cannot claim ignorance or lack of knowledge of consent order pre-existing and which he did not object to.

21. There is no evidence before the court that Mr. Wafula Advocate acted fraudulently or in collusion or contrary to public policy or that the said consent was given without sufficient facts or was a product of misrepresentation or was given in ignorance. The decision by the Applicant to challenge the said consent is clearly an afterthought probably premised on the fact that since the Respondents cannot now appeal the original award due to lapse of time, and if this court were to set aside the said consent, then there would be no forum for the Respondents to challenge the original award. If that is the case, then this is a clear case of practice by deceit. A party cannot purport to engage another party into negotiations leading that party to forego his right of appeal, only for the scheming party to disown the negotiated settlement and to purport to revert to the original settlements but without the benefit of the right of appeal to the opposing party. It is also noteworthy that the Applicant has already benefited from the said consent. The consent has been executed. It cannot be rescinded now in circumstances which reveal a depth of lack of good faith on the part of the Applicant.

22. It is clear to me from the foregoing paragraphs of this Ruling that the Applicant herein fully participated in the negotiations leading to the recording of the said consent on 14<sup>th</sup> February 2013. Soon after the said consent was filed, the Applicant still engaged the Respondents through correspondences urging them to pay the decretal sum then due, without appearing to question the said consent. Further, on 23<sup>rd</sup> August 2013, when the Applicant appointed his current advocates, there was no indication that he was not satisfied with the consent record on 14<sup>th</sup> February 2013. Indeed on that date, the Applicant merely asked the Respondent to deposit the entire decretal sum then due in court. Clearly, the application herein to challenge the said consent is an afterthought, acted out in bad faith and in the anticipating that all other parties involved would be deceived or would not recognise the drama for what it was.

23. For the foregoing reasons, the application by the Plaintiff dated 6<sup>th</sup> December 2013 can only be dismissed. It is so dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

24. The second application dated 2<sup>nd</sup> May 2014 by the Applicant is already overtaken by the events.

25. This leads me to the third application by E. Wafula & Associates Advocates dated 5<sup>th</sup> May 2014 seeking that the consent dated 23<sup>rd</sup> August 2013 be set aside on the ground that the firm of Maosa & Co. Advocates failed to disclose that the 2<sup>nd</sup> Defendant had paid Kshs.25,000,000/= on 22<sup>nd</sup> August 2013 a day before the consent was recorded, and that being a material non-disclosure. He also seeks that an order be made for release of Kshs.12,000,000/= to the firm of E. Wafula & Associates Advocates being the balance of Kshs.20,000,000/= being the agreed amount of fees payable to the firm vide agreement dated 4<sup>th</sup> February 2013 already paid to the firm.

26. Parties adopted the same submissions and responses for all the applications herein under determination. I have already considered the circumstances under which a consent will be set aside, and I will not repeat the same, except to add that I am not satisfied with the reasons given by the 3<sup>rd</sup> Applicant for the settling aside of the Consent. This is so because by the time the said consent was recorded, all the parties knew that the Judgement sum had been reduced to Kshs.65,000,000/=. The fact that the Applicant was not aware that the Kshs.25,000,000/= had already been deposited with the Plaintiff's new advocates was indeed quite irregular but the same did not in anyway affect the amount of the decretal sum. The consent on the fees was based on the work already done by the advocate. The professional services rendered were not affected by the alleged non-disclosure. It is also on record that the Applicant E. Wafula & Associates Advocates have since been paid a further sum of Kshs.5,000,000/= bringing his total payment to Kshs.13,000,000/=. He appears to be the biggest beneficiary in the entire transaction or dispute. He still wants more. I have no problem, with that but he has not put forth convincing reasons to rescind and set aside the Consent dated 23<sup>rd</sup> April 2013. The third application is dismissed with costs to the Plaintiff/Respondent.

Orders accordingly.

**DATED, READ AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Maosa for Plaintiff/Applicant

Washika for Defendants/Respondents

Teresia – Court Clerk