CM Advocates LLP v Cole (Sued as the Administrator of the Estate of Josephine Eleanor Moikobu) (Miscellaneous Application E170 of 2021) [2024] KEELC 376 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEELC 376 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MISCELLANEOUS APPLICATION E170 OF 2021

JO MBOYA, J

FEBRUARY 1, 2024

IN THE MATTER OF ADVOCATES ACT, CHAPTER 16- LAWS OF KENYA

AND

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE & CLIENT

BETWEEN

CM ADVOCATES LLP ..... APPLICANT

AND

ANDREW OMANDI COLE ..... RESPONDENT

SUED AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPHINE ELEANOR MOIKOBU

RULING

Introduction and Background

1. The Applicant/Client has approached the Honorable court vide the Notice of Motion Application dated the 9th November 2023; brought pursuant to the provisions of Sections 1A, 7B, 3A and 63(e) of the *Civil Procedure Act* as well as Order 45 of the Civil Procedure Rules 2010; and in respect of which same has sought for the following reliefs;

    i. .....Spent

    ii. That the Honorable Court be pleased to Review and/or set aside its previous Ruling/order of 31st July 2023.

    iii. .....Spent.

    iv. That the costs of this application be provided for.

2. The instant Application is premised and predicated on a plethora of grounds which have been enumerated at the foot thereof. Furthermore, the Application is supported by the affidavit of the Applicant sworn on even date and in respect of which the Deponent has exhibited various documents, inter-alia, assorted Email Correspondence.

3. Upon being served with the instant Application, the Advocate/Respondent proceeded to and filed a Replying affidavit sworn on the 24th November 2023; and in respect of which same has highlighted various issues, inter-alia, that the Honorable court is divested of the requisite Jurisdiction to entertain and adjudicate upon the subject Application on the face of an existing Notice of Appeal hitherto filed by the Applicant.

4. Other than the foregoing, the Respondent has also averred that the issues raised at the foot of the current Application amounts to and/or constitutes an invitation by this court to sit on an appeal as pertains to its own decision, which is contended to be a legal anathema.

5. Be that as it may, the Application herein came up for hearing on the 14th December 2023; whereupon the Advocates for the Parties covenanted to canvass and ventilate the Application by way of written submissions. Consequently and in this regard, the court proceeded to and issued directions pertaining to the filing and exchange of the written submissions, albeit within a set timeline.

6. Suffice it to point out that thereafter the Parties duly complied and filed their respective written submissions. For coherence, the Applicant filed written submissions dated the 4th December 2023, whereas the Respondent filed written submissions dated the 19th January 2024.

7. Both sets of written submissions are on record.

Parties' Submissions:

a. Applicant's submissions:

8. The Applicant herein filed written submissions dated the 4th December 2023; and in respect of which same has adopted and reiterated the grounds contained at the foot of the Application. Furthermore, the Applicant herein has also reiterated the averments enumerated in the body of the supporting affidavit.

9. On the other hand, Learned counsel for the Applicant has ventured forward and highlighted two [2] issues for consideration by the Honorable court. Firstly, Learned counsel for the Applicant has submitted that the Applicant herein has placed before the court sufficient and credible evidence to demonstrate that the orders of the court issued on the 31st July 2023, ought to be reviewed, rescinded and/or set aside.

10. Additionally, Learned counsel for the Applicant has submitted that the Applicant herein instructed, engaged and retained the Respondent to act for same in a designated suit and that arising from the instructions, the Respondent proceeded to and generated a Retainer agreement, which guided the engagement between the Applicant and the Respondent.

11. In any event, Learned counsel for the Applicant has contended that despite the existence of a retainer agreement, the Respondent herein misled the Honourable court on the basis of half-truths, into believing that there was no retainer agreement.

12. Arising from the foregoing, Learned counsel for the Applicant has therefore contended that on the basis of the existence of a retainer agreement, the ruling by the court which was rendered on the 31st July 2023; therefore ought to be reviewed, rescinded and/or set aside.

13. In support of the foregoing submissions, Learned counsel for the Applicant has cited and relied on, inter-alia, the case of Republic vs Public Procurement Administrative Review Board & 2 Others (2018)eKLR and Suleiman Murunga vs Nilester Holdings Ltd & Another (2015)eKLR.

14. Secondly, Learned counsel for the Applicant has submitted that the Applicant herein has since bumped onto/ procured additional documents, namely, Email correspondence between the Applicant and the Respondent, whose import demonstrates that there existed a retainer agreement between the Applicant and the Respondent.

15. Premises on the basis that the Applicant has bumped onto/ procured additional documents, Learned counsel for the Applicant has thereafter contended that the said documents constitutes and/or fall within the cluster of what constitute new and important evidence, which ought to be considered by the court, with a view to reviewing the impugned ruling.

16. At any rate, Learned counsel for the Applicant has submitted that the Applicant has been able to demonstrate that the documents under reference fall within the purview of the provisions of Order 45 Rule 1 of the Civil Procedure Rules 2010.

17. In a nutshell, Learned counsel for the Applicant has thereafter implored the Honourable court to find and hold that the instant Application is meritorious and thus ought to be allowed with costs.

b. Respondent's Submissions:

18. The Respondent herein filed written submissions dated the 19th January 2024; and in respect of which same has isolated, raised, highlighted and canvassed four [4] salient issues for due consideration and determination by the Honourable court.

19. First and foremost, Learned counsel for the Respondent has submitted that following the delivery of the ruling dated the 31st July 2023, the Applicant herein proceeded to and filed a Notice of Appeal, wherein same expressed his intention to appeal against the impugned decision to the Honorable Court of Appeal.

20. It is the further submissions by Learned counsel for the Respondent that having filed and/or lodged a Notice of Appeal, which has neither been withdrawn nor struck out, the Applicant herein cannot simultaneously revert back to this Honourable court and pursue review either in the manner sought or at all.

21. Consequently and in the premises, Learned counsel for the Respondent has submitted that the filing of the current Application for Review on the face of an existing Notice of Appeal, amounts to and/ or constitutes gambling with the law and judicial process, which conduct is contended to constitute an abuse of the due process of the court.

22. In support of the foregoing submissions, Learned counsel for the Respondent has cited and relied on, inter-alia, the case of Kamalakshi Amma vs A. karthayany (2001)AIHC 2264 and Otieno Ragot & Company Advocate vs National Bank of Kenya Ltd (2020)eKLR, respectively.

23. Secondly, Learned counsel for the Respondent has further submitted that the proceedings before the court were commenced under the provisions of the Advocates Remuneration Order, which is a complete code, governing and guiding taxation proceedings, as well as the manner of challenging the Certificate of taxation.

24. Furthermore, Learned counsel for the Respondent has submitted that to the extent that the Advocates Remuneration Order expressly provide for the manner of challenging a certificate of taxation and any

resultant decision arising therefrom, the current Application is therefore erroneous and contrary to law.

25. Arising from the foregoing, Learned counsel for the Respondent has invited the Honourable court to find and hold that the honorable court is devoid and divested of the requisite Jurisdiction to entertain and adjudicate upon the current application, which is otherwise unknown under the law.

26. In support of the foregoing submissions, Learned counsel for the Respondent has cited inter-alia the decision in Machira & Company Advocates vs Arthur K Magugu (2012)eKLR and Caroline K Mumbo & Co Advocates vs Mulu Mbuvi (2019)eKLR, respectively.

27. Thirdly, Learned counsel for the Respondent has further submitted that the issue pertaining to the existence of a retainer agreement or otherwise, was addressed and adjudicated upon by this Honorable court and thereafter the court proceeded to and made an explicit finding and holding, whereby the court held that there was no retainer agreement.

28. To the extent that the court had interrogated the contention that there existed a retainer agreement between the Parties, which contention was duly resolved by the court, it has been contended that the said issue cannot be re-visited before the same court, either in the manner articulated by the Applicant or at all.

29. Further and in any event, Learned counsel for the Responded has contended that the current Application, though disguised as an application for review, same is technically and invitation to the court to sit on appeal on its own decision, which is a legal anathema and inimical to the rule of law.

30. In support of the contention that the court cannot be invited to sit on an appeal on its own decision, albeit under the disguise of an Application for review, Learned counsel has cited and relied on, inter-alia , the case of National Bank of Kenya Ltd vs Ndungu Njau (1997)eKLR; and Republic vs Medical Practitioners & Dentist Board & Another; MIOI on behalf of MIO2 (minor) & Another (Misc. Application No. 59 and 63 of 2019) (2021)KEHC 298 (KLR), respectively.

31. Finally, Learned counsel for the Respondent has submitted that even if the court were to venture forward and determine the current Application on merits, same would still be found to be wanting, insofar as the Applicant has not demonstrated that the email correspondence, which are sought to be relied upon could not have been discovered and availed to court at the onset, with the exercise of due diligence.

32. Furthermore, Learned counsel has contended that the Email correspondence which are being espoused by and on behalf of the Applicant, were duly under the custody and possession of the Applicant and hence the Applicant ought to have tendered and produce same at the onset.

33. Other than the foregoing, Learned counsel for the Respondent has also contended that the intended introduction of and reliance on the assorted Email correspondence before this court is irregular and illegal, insofar as the impugned documents were never tendered before the Taxing officer.

34. Owing to the fact that the impugned documents were neither tendered nor availed before the taxing officer, Learned counsel has contended that such documents cannot therefore be adduced and utilized before this court in the manner proposed. In any event, Learned counsel has added that the introduction of such documents before this court, which exercises an Appellate Jurisdiction will unduly prejudice the Respondent.

35. In support of the foregoing submissions, namely, that the intended documents cannot be introduced before this court, Learned counsel has cited and relied on the decision in the case of Otieno Ragot &

Company Advocates vs National Bank Ltd (2020)eKLR, where the Court of Appeal addressed the import and tenor of Rule 13(A) of the Advocates Remuneration Order.

36. Arising from the foregoing, Learned counsel for the Respondent has therefore invited the court to find and hold that the Application beforehand is not only premature and misconceived, but same amounts to an abuse of the due process of the court and hence ought to be dismissed with costs.

Issues for Determination:

37. Having reviewed the Application beforehand as well as the response thereto, and having taken into account the submissions by the advocates for the respective Parties the following issues do emerge and are thus worthy of consideration;

    i. Whether this Honourable is seized of the requisite Jurisdiction to entertain an Application for review albeit on the face of an existing Notice of appeal in respect of the same decision.

    ii. Whether the Application for review is in any event envisaged by and/or under the Advocates Remuneration Order or otherwise.

    iii. Whether the instant Application though disguised as review; is an invitation to the court to sit on appeal on own Decision.

Analysis and Determination:

Issue Number 1 : Whether this Honourable Court is seized of the requisite Jurisdiction to entertain an Application for Review albeit on the face of an existing Notice of Appeal in respect of the same decision.

38. It is common ground that the Applicant herein proceeded to and filed an Application dated the 17th March 2023; in respect of which same sought for a plethora of reliefs, inter-alia, leave to file a response to the Advocates Client Bill of Costs and by extension to challenge the Notice of Motion Application dated the 1st February 2023, the latter which had been filed by the Respondent herein.

39. Suffice it to point out that at the foot of the Application dated the 17th March 2023, the Applicant herein had contended that there was in existence a retainer agreement between the Applicant and the Respondent and hence the taxing officer erred in law in entertaining and taxing an Advocates Client Bill of Costs.

40. Instructively, the Application under reference was thereafter canvassed before the court culminating into the ruling rendered on the 31st July 2023, wherein the court made various observations, inter-alia, that there was no retainer agreement executed between the Applicant and the Respondent in accordance with the provisions of Section 45 of the *Advocates Act*, Chapter 16 Laws of Kenya.

41. Notably, upon the delivery of the said Ruling, the Applicant herein felt aggrieved and dissatisfied and thereafter proceeded to and lodged a Notice of Appeal thus expressing his intention to challenge the ruling before the Honorable Court of Appeal.

42. Furthermore, there is no denial that the Notice of Appeal, which was duly filed and/or lodged by the Applicant, has neither been withdrawn nor struck out in accordance with the provisions of the Court of Appeal Rules, 2022.

43. At any rate, though the issue of the existence of the Notice of Appeal has been raised and canvassed by the Respondent, the Applicant herein has remained quiet and failed to contest the fact that the Notice of Appeal remains in existence.

44. Premised on the foregoing, there is therefore no gainsaying that the current Application for review has been mounted and lodged on the face of an existing Notice of Appeal and hence the question that does arise is whether one, [the Applicant not excepted], can file an Application for review during the existence of a Notice of appeal.

45. In my humble view, a Notice of appeal constitutes an appeal for all intents and purposes and hence the existence of such a Notice constitutes an appeal. In this regard, once there is in existence a Notice of Appeal, the Applicant cannot simultaneously file and/or lodge an application for review, pertaining to the same ruling/decision sought to be appealed against.

46. Invariably, the filing of an Application for review during the existence of an appeal or better still, a Notice of appeal amounts to gambling with the law and the judicial process; and hence such conduct ought to be frowned upon by all and sundry.

47. To buttress the position that no Application for Review can be filed during the lifetime of a Notice of Appeal, it suffices to take cognizance of the Court of Appeal decision in the case of Otieno Ragot & Co Advocates versus National Bank Ltd (2020)eKLR, where the Court held and observed as hereunder;

> " Even though the substantive appeal had not been filed, the respondent had filed a notice of appeal. At the time when the application for review was made, the notice of appeal was in place. In effect, it was pursuing the relief of review while keeping open its option to appeal against the same ruling. It probably hoped that if the application for review failed it would then pursue the appeal. It was gambling with the law and judicial process. It is precisely to avoid this kind of scenario that the option either to appeal or review was put in place. There can be no place for review once an intention to appeal has been intimated by filing of a notice of appeal. (See: Kamalakshi Amma v A. Karthayani [2001] AIHC 2264). The respondent's application for review was therefore incompetent hence the court did not have jurisdiction to grant the orders sought under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.

48. Arising from the holding in the decision [supra], it is common ground that the Applicant herein cannot pursue the appeal to the Court of Appeal, whilst simultaneously also seeking to have the impugned decision reviewed.

49. Consequently and in the premises, my answer to issue number one [1], is to the effect that the Application by and on behalf of the Applicant herein is not only incompetent but same is stillborn.

Issue Number 2

Whether the Application for Review is in any event envisaged by and/or under the Advocates Remuneration Order or otherwise.

50. Other than the fact that an application for review cannot be lodged and/or mounted on the face of an existing appeal, there is also the question as to whether proceedings commenced under the Advocates Remuneration Order, namely, Taxation proceedings, admit of the filing of an application for review.

51. Put differently, the question that does arise is whether the Applicant herein can seek to invoke the Jurisdiction of this court in any other manner contrary to and in contravention of the prescribed/ circumscribed mechanism envisaged and stipulated vide the Advocates Remuneration Order.

52. To my mind, the Advocates Remuneration Order is a complete legal regime and/or code, which exhaustively provides the mechanism to be deployed towards and for purposes of challenging a certificate of taxation, or such other decisions that do arise in the course of taxation proceedings.

53. For coherence, the provisions of Rule 11 of the Advocates Remuneration Order clearly delineates the rights of a Party who is aggrieved and/or dissatisfied with a certificate of taxation or any consequential orders arising therefrom. Instructively, such a person, the Applicant not excepted, is obliged to file a Reference to the Judge; and in the event of dissatisfaction with the decision arising from the Reference, there is a window to appeal to the Court of Appeal, albeit with leave.

54. Other than the foregoing, the Advocates Remuneration Order does not envisaged the invocation and application of the *Civil Procedure Act* and the Civil Procedure Rules, 2010 or at all. For good measure, anyone, the Applicant not excepted is obliged to comply with and/or abide by the established procedure and not otherwise.

55. To the extent that the Advocate Remuneration Order does not fathom and/or provide for the filing for an application for review, it therefore means that the current application, which has been mounted by and on behalf of the Applicant, is not only misconceived, but legally untenable.

56. In respect of whether an application for review can be mounted in matters arising out of taxation proceedings, which are clearly governed by the Advocate Remuneration Order, it is worthy to take cognizance of the holding of the Court of Appeal in the case of Machira & Company Advocate vs Arthur K. Magugu (2012) eKLR , where the court stated and held thus;

> " 10. The appellate jurisdiction of any court is a creature of the statute and has to be exercised in accordance with the provisions of the statute creating it. With regard to the advocates bills of costs, we agree with the decision of Ringera J (as he then was) in Machira Vs Magugu (1) that the Advocates Remuneration Order is a complete code which does not provide for appeals from the taxing master's decisions. Rule 11 thereof provides for ventilation of grievances from such decisions through references to a judge in chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used...."

57. Similarly, the exposition of the law which underscores that the Advocates Remuneration Order is a complete legal regime and does not admit of the invocation and application of the Civil Procedure Rules, was also highlighted in the case of Carolyn K. Mumbo & Co Advocates v Mulu Mbuvi [2019] eKLR, where the Court stated and held as hereunder;

> 22. Although both provisions of the Civil Procedure Rules and the Advocates Remuneration Order Rules are subsidiary legislations, on a closer look at the Advocates Remuneration Order Rules, it is notable that they are specifically tailored to address issues that arise from and during taxation of bills of costs.
>
> 31. Guided by the above this Court is therefore inclined to reach a finding that indeed there is a specific procedure under the Advocates Remuneration Order, which provides for the specific mechanism in the form of a reference to this Court for purposes of review and or challenging of the taxing master decision, therefore in my view paragraph 11 of the Advocates Remuneration Order cannot be short circuited by filing for review under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules as undertaken by the Respondent herein.

58. Consequently and in view of the foregoing, there is no gainsaying that the Application for review, which has been filed by and on behalf of the Applicant herein, is invalid and thus legally untenable.

Issue Number 3:

Whether the instant Application though disguised as review is an invitation to the court to sit on appeal on own decision.

59. The Applicant herein has contended that there was in existence a retainer agreement between the Applicant and the Respondent and thus the learned taxing officer ought not to have proceeded to and taxed the Advocates Client Bill of Costs or at all.

60. Nevertheless, the Applicant has averred that the Respondent herein proffered and misled the court into believing that there was no such retainer agreement and hence the ruling by the court rendered on the 31st July 2023; ought to be reviewed and/or set aside.

61. Be that as it may, it is not lost on this court that whilst dealing with the application that culminated into the ruling rendered on the 31st July 2023, the court had occasion to consider and interrogate assorted documents which were tendered in evidence and thereafter the court made a conscious and deliberate finding that there was no retainer agreement between the Applicant and the Respondent.

62. For coherence, the said decision was articulated with clarity and precision, so much so that it cannot be contended that there exists any error on the face of the said decision. Nevertheless, the Applicant herein now contends that same has since procured and obtained additional email correspondence and which according to the Applicant demonstrates that there existed a retainer agreement. In this regard, the Applicant thus invites the court to find and hold that (sic) the email correspondence alluded to, indeed constitutes new and important evidence, which ought to be considered by the court.

63. Be that as it may, two things do arise and merit due consideration and short analysis. Firstly, there is no gainsaying that the email correspondence, which are now being proffered by and on behalf of the Applicant herein, were under the custody and possession of the Applicant and hence same ought to have been tendered before the court, if at all, at the onset.

64. To the extent that the impugned email correspondence were within the possession and custody of the Applicant, it cannot be said and/or contended that with the exercise of due diligence, the Applicant would not have procured and tendered before the court.

65. Secondly, it is important to underscore that it is not enough for an Applicant to merely state or aver that same has discovered new and important evidence and stop at that. For clarity, the Applicant carries a further obligation to demonstrate that [sic] the purported new evidence could not have been discovered despite exercise of due diligence.

66. Be that as it may, the Applicant herein seems to be satisfied with the contention that same has discovered new and important evidence, but thereafter same goes quiet/silent on why the said (sic) new and important evidence, was not tendered to the Court at the onset.

67. In my humble, albeit considered view, any Applicant desirous to partake of any favorable order for review, must not only implead the ground for review, but same must venture forward and avail evidence towards strictly proving the ground cited and relied upon for purposes of attracting review.

68. Unfortunately, in respect of the instant matter, the Applicant seems content with throwing omnibus allegations on the face of the court and thereafter sitting back with folded- hands and imagining, that the discretion of the court would nonetheless, issue in vacuum.

69. To my mind, the Applicant herein has failed to discharge the burden of proof which squarely fell on his shoulders and consequently, even on the basis of merits, the current Application herein would still fail.

70. Before departing from the issue herein, it is appropriate to underscore that the parameters under which an application for review ought to be considered and evaluated were expounded, highlighted and elaborated upon in the case of Republic versus Advocates Disciplinary Tribunal Exparte Apollo Mboya [2019] eKLR, where the court held thus;

> 30. The principles which can be culled out from the above noted authorities are:-
>
> i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
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> ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
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> iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
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> iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
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> v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
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> vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
>
> vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
>
> viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
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> ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
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> x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.

71. Furthermore, the threshold to be met and established before an Applicant can partake of an order of review premised and anchored on discovery of new and important evidence, was also elucidated by the Court of Appeal in the case of Stephen Gathua Kimani versus Nancy Wanjira Waruingi t/a Providence Auctioneers [2019] eKLR, where the court stated and observed as hereunder;

> " In the end, the Learned Judge stated:
>
> > "In the present case, guided by the facts of this case, the authorities cited herein and the relevant provisions of the law, I humbly find that the applicant has not demonstrated that there has been discovery of new and important matter or evidence which after due diligence was not within his knowledge or could not be produced at that time nor has he shown that there is some mistake or error apparent on the face of the record nor has he proved that there as already stated the application for review was not made without unreasonable delay. The upshot is that my answers to number one is in the negative."
>
> We too are of a similar view and it is in view of this that we find, albeit with sympathy, that this appeal has no merit. It is hereby dismissed with costs to the respondent.

72. Suffice it to underscore that it is not enough to merely mention and/or cite the discovery of new and important evidence, without venturing forward to demonstrate efforts, if any, that were undertaken towards availing the impugned documents to the court at the onset.

73. In short, it is my finding and holding that the Applicant herein has fallen short of the statutory threshold underpinned by the provisions of Order 45 Rule 1 of the Civil Procedure Rules 2010; and hence the Application, is similarly devoid of merits.

Final Disposition:

74. Arising from the foregoing analysis, it is evident and apparent that the Application beforehand is not only misconceived and premature, but same also constitutes an invitation to the court to sit on an appeal on its own decision, which is a legal anathema and otherwise inimical to the Rule of Law.

75. In a nutshell, the Application dated the 9th November 2023; is misconceived, legally untenable and otherwise devoid of merits. Consequently, same be and is hereby Dismissed with costs.

76. In any event and to avert the filing of Further/Supplementary bill of costs, the costs attendant to the Application herein be and are hereby certified in the sum of Kes.30, 000/- only to be borne by the Applicant.

77. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF FEBRUARY, 2024.

OGUTTU MBOYA

JUDGE.

In the presence of:

Benson – court Aassistant

Ms Kashumba h/b for Mr. Arnold Oriwa for the Applicant/Client.

Ms. Khendi for the Advocate/Respondent.