



**Machira t/a Machira & Company Advocates v Kariuki t/a JM Kariuki & Company
Advocates (Civil Suit E199 of 2020) [2024] KEHC 5406 (KLR) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT E199 OF 2020**

CW MEOLI, J

MAY 6, 2024

BETWEEN

**JOHN PATRICK MACHIRA T/A MACHIRA & COMPANY
ADVOCATES APPLICANT**

AND

**JOSEPHAT MUNYUA KARIUKI T/A JM KARIUKI & COMPANY
ADVOCATES RESPONDENT**

RULING

1. Before the court for determination are two (2) applications. The application first filed is the Notice of Motion dated 24th January, 2023 (the first Motion) brought by John Patrick Machira T/A Machira & Company Advocates (hereafter the Applicant) and supported by the grounds set out on its body and the depositions in the affidavit of the Applicant. The first Motion is seeking the following orders:
 1. Spent.
 2. That the ruling/order made by the Honourable Lady Justice Mulwa on 8th December, 2022 be corrected and/or varied to include all the interest earlier awarded by this Honourable Court on 14th April, 2022.
 3. That the ruling/order made by the Honourable Lady Justice Mulwa on 8th December, 2022 be corrected and/or varied to be in harmony with the earlier order made by this Honourable Court on 14th April, 2022 as regards accrued interest, which interest continues to accrue until payment in full.
 4. That the costs of the application be paid by Josephat Munyua Kariuki T/A J.M. Kariuki & Company Advocates (hereafter the Respondent).



5. That such other and/or further reliefs be granted as this Honourable Court may deem fit and just to grant in the circumstances of this matter.
2. In his supporting affidavit, the Applicant stated that he instituted the present suit by way of an Originating Summons dated 27th November, 2020 (the Summons) seeking a sum of Kshs. 1,743,315/- from the Respondent, together with interest at the rate of 14% p.a. from 15th August, 2020 until payment in full. The Applicant further stated that the claim was premised on a professional undertaking given to him by the Respondent. That upon hearing the suit on 14th December 2021 this court allowed the Summons as prayed, resulting in issuance of an order on 14th April, 2022 requiring the Respondent to honour his professional undertaking by paying the aforesaid sum together with the interest as set out in the Summons.
3. That subsequently, the Respondent filed an application dated 29th June, 2022 (the application) seeking an order in effect allowing him to pay the ordered sum within a period of 120 days and which application was opposed by the Applicant. That upon hearing the parties on the application, Mulwa J by a ruling delivered on 8th December, 2022 allowed it. That the said ruling is not in tandem with the order previously issued by this court on 14th April, 2022 since it pegged the interest payable at a fixed rate unlike the earlier order which placed the interest at 14% p.a., this constituting an error apparent on the face of the record , and in the circumstances, there is need for the error to be corrected by this court, accordingly.
4. The Respondent put in the Grounds of Opposition dated 28th April, 2023 to resist the first Motion, featuring the grounds hereunder:
 1. The award by Court issued in the hand of Lord Justice C. Meoli on the 14th December 2021 is founded on an illegality occasioned by the Respondent/Applicant all un-beknown by Court at the time of delivery of the Order.
 2. That this Honourable Court cannot review an Order of judgment that is shrouded and tainted by an illegality.
 3. That this Honourable Court cannot enforce an illegality nor review orders issued unlawfully for further “better” enforcement.
 4. That therefore the Application for review dated 24th January, 2023 is moot and a nullity ab initio.
 5. The application be dismissed with costs to the Applicant/Respondent. sic
5. Subsequently, the Respondent herein filed the Notice of Motion dated 6th March, 2023 (the second Motion) supported by the grounds set out on its body and the facts stated in his affidavit. Therein, he sought the following orders:
 1. Spent.
 2. Spent.
 3. Spent.
 4. That this Honourable Court be pleased to review the ex-parte Order/Judgment delivered on 14th December, 2021.
 5. That this Honourable Court set aside the Ruling delivered on the 8th December 2022 by the Honourable Lady Justice Mulwa.



6. That the professional undertaking issued by J.M Kariuki & Co Advocates to Machira & Co. Advocates dated 13th May 2020 for a sum of Kshs. 17,743,315/- be set aside.
 7. That the professional undertaking issued by J.M Kariuki & Co Advocates to Machira & Co. Advocates dated 13th May 2020 for a sum of Kshs. 17,743,315/- is void ab initio.
 8. That the Applicant (the Respondent herein) has fully settled the decretal sums with interest in High Court Commercial & Tax Division Misc App. 150 of 2001 Machira & Co Advocates-vs-Arthur K. Magugu & High Court Commercial & Tax Division Misc App. 151 of 2001 Machira & Co Advocates-vs-Arthur K. Magugu & Margaret Magugu under enforcement in High Court Civil Case No. E199 of 2020 John Patrick Machira T/A Machira & Company Advocates vs Josephat Munyua Kariuki T/A J.M. Kariuki & Company Advocates.
 9. That the Applicant (the Respondent herein) has settled the decretal sums with interest due in High Court Commercial & Tax Division Misc App. 150 of 2001 Machira & Co Advocates-vs-Arthur K. Magugu & High Court Commercial & Tax Division Misc App. 151 of 2001 Machira & Co Advocates-vs-Arthur K. Magugu & Margaret Magugu in excess of Ksh. 8,039,150.58 all under enforcement in High Court Civil Case No. E199 of 2020 John Patrick Machira T/A Machira & Company Advocates vs Josephat Munyua Kariuki T/A J.M. Kariuki & Company Advocates.
 10. The cost of the Application be provided for.
6. In his affidavit, the Respondent stated inter alia, that he acted for Arthur K. Magugu & Margaret Magugu (the defendants) in High Court Commercial & Tax Division Misc App. 150 of 2001 [Machira & Co Advocates v Arthur K. Magugu] and High Court Commercial & Tax Division Misc App. 151 of 2001 [Machira & Co Advocates v Arthur K. Magugu & Margaret Magugu] (the first and second primary suits) which resulted in taxation of the Applicant's Bill of Costs at the respective sums of Kshs. 1,500,000/- and Kshs. 4,500,000/- on 5th May, 2001 and 30th July, 2001 respectively. The Respondent stated that he challenged the respective Bills of Costs by way of a reference filed in the High Court, resulting in the setting aside of the Bills of Costs. That subsequently, the Applicant lodged an appeal with the Court of Appeal, upon which the said Court by the decision rendered on 2nd March, 2012 restored the Bill of Costs arising out of the first primary suit; which decision was to similarly apply to the second primary suit.
 7. That subsequently, the Applicant proceeded to tabulate the sums due from the respective Bills at a total of Kshs. 17,743,315/- which figure constituted a gross misrepresentation of the sums due from the primary suits. That in fact, the sums payable from the said primary suits comes to a total figure of Kshs. 8,832,849.32. That consequently, the professional undertaking made on 13th May, 2020 in respect of the sum of Kshs. 17,743,315/- is founded on malice and misrepresentation on the part of the Applicant. It was the Respondent's averment that he paid a sum of Kshs. 16,872,000/- to the Applicant; that as well, his client previously paid the Applicant a sum of Kshs. 4,000,000/- which brings the total to a sum of Kshs. 20,872,000/-. It was also the Respondent's averment that the payment of Kshs. 16,872,000/- therefore constitutes an overpayment on the earlier owed sum of Kshs. 8,832,849.32 by Kshs. 8,039,150.58.
 8. That pursuant to the court order issued on 8th December, 2022 the Respondent paid to the Applicant a sum of Kshs. 872,000/- and was ready and willing to pay the remaining balance together with interest by way of a second instalment when he discovered that the Applicant had filed the first Motion. That the figure now being sought by the Applicant which is the sum of Kshs. 1,743,315/- plus interest, is inflated. The Respondent stated that in view of the foregoing, the professional undertaking upon



which the first Motion is premised, is unenforceable by virtue of being founded on an illegality. The Respondent concluded by stating that he ought to be discharged, on the basis that he has since settled all outstanding sums owing to the Applicant. Consequently, he urged the court to allow the second Motion as prayed.

9. The Applicant opposed the second Motion by filing Grounds of Opposition dated 4th April, 2023 arguing inter alia, that there is no legal or factual basis for interfering with the orders issued on 14th December, 2021 and/or 8th December, 2022. The Applicant likewise argued that the order of 14th December, 2021 was made interparties and not ex parte, as is being purported by the Respondent, and hence no grounds exist for a review thereof. The Applicant equally argued that the claimed sum of Kshs. 1,743,315/- has substantially been settled by the Respondent, save for an outstanding sum of Kshs. 1,309,293.04 which remains unpaid to date, with interest. That no grounds have been set forth before the court, to warrant a setting aside the professional undertaking offered by the Respondent. In the Applicant's view therefore, the Respondent is disentitled from a grant of the orders sought in the second Motion.
10. Similarly, the Applicant swore a replying affidavit on like date, where he essentially reiterated the contents of his Grounds of Opposition save to add that the second Motion contains a myriad of falsehoods.
11. The direction issued on the first and second Motions was that both be canvassed through written submissions. Nevertheless, the court noted that at the time of writing this decision, there is nothing to indicate compliance on the part of the Applicant, whose submissions are not on record. That being the case, the court will proceed to set out the content of the submissions filed on behalf of the Respondent.
12. Submitting simultaneously on both the first and second Motions, the Respondent's counsel anchored his submissions on the decision in B.O.G Tambach Teachers Training College v Mary Kipchumba [2018] eKLR and the Section 26 of the *Civil Procedure Act* (CPA) on the principle of interest. In that regard, counsel argued that in the absence of any specific interest to be levied on the sums sought in the Summons, the court ought to order that the interest accrues at the statutory rate of 6% p.a.
13. On the question of enforceability of the professional undertaking, counsel cited the decision in Nderi & Kiingati Advocates v Kiruti & Company Advocates [2021] eKLR to the effect that a professional undertaking is contractual in nature. And submitted that in the present case, the undertaking offered by the Respondent to the Applicant cannot be enforced since it was founded on an illegal interest rate. Counsel therefore urged the court to declare it void on that premise, and to consequently discharge the Respondent from the terms thereof.
14. On the subject of review, it was counsel's contention that flowing from the stated illegality, the court cannot be called upon to review the orders earlier made on 14th December, 2021 or 8th December, 2022, and on that basis, the first Motion ought to be dismissed with costs. Regarding the question of refund of the sums purportedly paid in excess, counsel reiterated earlier averments stating that the Respondent made excess payments in the sum of Kshs. 8,039,150.58 is therefore entitled to a refund. In closing, counsel for the Respondent urged the court to exercise its discretion by granting the orders sought in the second Motion.
15. The court has considered the grounds laid out on the body of the first and second Motions, the rival affidavit material in respect of supporting the respective Motions, the Grounds of Opposition on record and the submissions.
16. The court will begin by addressing the second Motion. As earlier mentioned, the said Motion is seeking to review the order issued by this court on 14th December, 2021; an order setting aside the order



later issued by the Honourable Lady Justice J. Mulwa on 8th December, 2022; an order declaring the professional undertaking void for allegedly being founded on an illegality; and a final order to the effect that the Respondent has fully settled the decretal sums arising from the primary suits, with an excess payment of Kshs. 8,039,150.58.

17. From the court's reading of the prayers, it is apparent that review and/or setting aside are sought on the premise of the alleged illegality of the professional undertaking coupled with the issue of interest and alleged settlement of the entire decretal sum. In that regard, the court will first address the orders pertaining to the professional undertaking and the settlement of the decretal sum, before addressing the orders seeking to review and/or set aside the orders made on 14th December, 2021 and 8th December, 2022 respectively.
18. Regarding the subject of enforceability of the professional undertaking, the Applicant's argument in summary, is that the undertaking dated 13th May, 2020 is unlawful and unenforceable since it was founded on an illegal interest rate of 14%p.a. as opposed to the rate of 6%p.a. stipulated under Section 26 of the CPA. That consequently, the Respondent ought to be discharged from the performance of his obligations under the said professional undertaking. In contrast, the Applicant maintained that the court lacks jurisdiction to set aside the professional undertaking, adding that in any event, the terms therein have substantially been complied with by the Respondent.
19. From a perusal of the record, the court observed that the professional undertaking preceded the filing of the Summons. The terms thereof are that the Respondent gave an irrevocable undertaking to the Applicant, that he would settle the sum of Kshs. 17,743,315/- on or before 15th August, 2020 as full settlement of the decrees arising from the primary suits. It is upon the said undertaking that the Applicant instituted the Summons, seeking a declaration that the Respondent was obligated to honour the professional undertaking, and further seeking an order directing the Respondent to pay the outstanding sum of Kshs. 1,743,315/- and interest at the rate of 14% p.a. from 15th August, 2020 until payment in full.
20. Going by the record, the court upon hearing the parties on the Summons, granted the prayers therein by the ruling delivered on 14th December, 2021, and which was followed by the issuance of an order to that effect on 14th April, 2022. Subsequently, by the application dated 29th June, 2022 the Respondent sought an order allowing him to pay the adjudged sum of Kshs. 1,743,315/- together with interest in the sum of Kshs. 2,181,293.04 within a period of 120 days. Mulwa J by a ruling on 8th December, 2022 ordered the Respondent to settle the aforesaid sums in two (2) equal instalments, namely, on or before 30th January, 2023; and on or before 28th February, 2023 respectively.
21. It is not in dispute that a professional undertaking constitutes a contract entered into between parties. That being the case, the law on contract becomes applicable, including the general legal principle that a court cannot re-write the terms of a legally binding contract. This position was declared in the decision of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR where the Court of Appeal held:-

“A court of law cannot re-write a contract between the parties whereas its role is limited to interpretation of the same. This is because contracting parties are free to specify the terms and conditions of their agreement, and that when parties do contract, the court does not have the right or ability to substitute its judgment for that of the parties.”
22. From a reading of the professional undertaking, it is apparent that the rate of interest was not specified therein. Suffice it to say that, annexed to the second Motion is previous correspondence between the parties indicating that the interest was tabulated at 14% p.a. by way of two (2) tabulations forwarded



by the Applicant and dated 11th May, 2020 (JMK-04 and JMK-05 respectively) indicating that the accrued interest on the decretal sum of Kshs. 1,500,000/- awarded in the first primary suit was Kshs. 4,023,369.90. Whereas the accrued interest on the decretal sum of Kshs. 4,500,000/- awarded in the second primary suit came to Kshs. 11,919,945.20 bringing the total sum owing from the two primary suits (plus interest) to Kshs. 17,743,315/-.

23. From the foregoing circumstances, it is apparent on the one hand, that the interest rate of 14% p.a upon which the decretal sum of Kshs. 17,743,315/- was arrived at, was agreed upon between themselves, by their conduct. It is also apparent that subsequent to the professional undertaking and upon determination of the present Summons, the Respondent sought and was granted an extension of timelines to enable him comply with the order made on payment of the outstanding sums owed. Similarly, it is apparent from the record that the Respondent made payments towards complying with the professional undertaking.
24. Section 26 of the CPA which the Respondent now asserts to constitute the proper interest rate, stipulates that:
 1. Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
 2. Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.
25. From a reading of the above provision, the interest rate of 6% p.a. becomes applicable where no interest has been specified in the decree. As earlier mentioned, the decision rendered on 14th December, 2021, in granting the prayers in the Summons ordered that the decretal sum payable would accrue interest at the sought rate of 14% p.a. which percentage it would appear, was previously settled between the parties as noted above, by their conduct.
26. In view of the foregoing, the court finds that the Respondent has not put forward any credible material to support his averment that the professional undertaking was founded on an illegality, which would render it void and therefore unenforceable. In the court's view, the Respondent is bound by his obligations, as set out in the professional undertaking. Consequently, orders 6) and 7) of the second Motion are denied. Besides, it may be too late in the day to impeach the undertaking in this manner, as will be seen in the consideration of the prayers seeking the review of the orders made on 14.12.2021.
27. Concerning the question whether the decretal sum has been settled either in full or in excess by the Respondent, his assertion was that he has paid the outstanding sums on the decretal amount in excess of Kshs. 8,039,150.58 and that he is therefore entitled to a refund on the said sum. In contrast, the Applicant argued that the Respondent had only partially settled the decretal sum of Kshs. 17,743,315/- leaving an outstanding balance of Kshs. 1,309,293.04 pending settlement.
28. The record shows that by way of the Summons, the Applicant sought the sum of Kshs. 1,743,315/- plus interest, against the Respondent, pursuant to the professional undertaking. This goes to confirm that prior payments had been made by the Respondent in settlement of the decretal sum of Kshs. 17,743,315/-.



29. The Respondent annexed to his supporting affidavit a letter dated 1st February, 2023 accompanied by a cheque dated 1st February, 2023 for the sum of Kshs. 872,000/- (JMK-10) being part payment on the sum ordered by the court on 14th December, 2023. The said payment was acknowledged by way of a letter dated 9th February, 2023 from the Applicant (JMK-11). From a perusal of the record, the Respondent did not tender any credible evidence to show that further payments had been made in addition to the aforesaid cheque, in settlement of the outstanding balance on the decretal amount.
30. In the premises, the court has no basis upon which to conclude that the outstanding sums have either been settled in full or have been paid in excess of what was owing. Consequently, the court declines to grant prayers 8) and 9) of the second Motion.
31. This leaves the prayers pertaining to a review of the orders made on 14th December 2021 and 8th December, 2022 respectively. The germane principles to guide this court in deciding whether to review the order issued on 14th December, 2021 are found under Order 45 of the CPR and which provision is reaffirmed under Section 80 of the Civil Procedure Act Cap. 21 Laws of Kenya thus:

“ Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

32. The following grounds ideally form the basis of an application seeking review of a decision of the court:
- a. the discovery of new and important matter or evidence, or
 - b. some mistake or error apparent on the face of the record, or
 - c. any other sufficient reason.
33. The Supreme Court in the case of *Parliamentary Service Commission v Martin Nyaga Wambora & others* [2018] eKLR quoting with approval the decision of the East Africa Court of Appeal in *Mbogo and Another v Shah* [1968] EA held as follows:-

“ Consequently, drawing from the case law above, particularly *Mbogo and Another v Shah*, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion as follows:

- i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this Court.
- ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;



- iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application.
 - iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically.
 - v. During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review.
 - vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:
 - a. as a result, a wrong decision was arrived at; or
 - b. it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.”
34. It is clear from the foregoing that the decision on whether to review its decision lies purely within the discretion of the court. Consequently, it is upon an applicant to tender sufficient and credible material to convince the court to exercise its discretion in his or her favour.
35. From a reading of the second Motion, the Respondent sought to review the order made on 14th December, 2021 and to set aside of the order of 8th December, 2022 on the grounds of ‘error apparent on the face of the record’ and ‘new and important evidence.’
36. On the principle of ‘error apparent on the face of the record’ reference is made to the case of *Muyodi v Industrial and Commercial Development Corporation & Anor* [2006] 1 EA 243 where the Court of Appeal rendered itself in the following manner, in describing what constitutes an error of such nature:
- “In *Nyamogo and Nyamogo v Kogo* [2001] EA 174 this court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”
37. The Court of Appeal echoed the above principle when it held the following in the earlier decided case of *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR:-
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition



of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

38. Thus, an error apparent on the face of the record must be a self-evident error which need not require elaborate arguments to support it.
39. Going by the averments on record, the Respondent based the prayer for review and/or setting aside on the argument that the aforesaid orders made on 14th December, 2021 and 8th December, 2022 were founded on the professional undertaking dated 13th May, 2020 which undertaking allegedly constituted an illegality and a misrepresentation of the facts on the ground. That moreover, it was apparent that the Applicant had sought sums in excess of that which was owing from the Respondent.
40. In response, the Applicant deemed and supported the professional undertaking as valid and enforceable, further stating that no grounds have been brought forth to warrant a review and/or setting aside of the above orders.
41. It is worth mentioning here that the questions relating to the validity of the professional undertaking as well as the payments made towards settlement of the decretal sums have already been determined above.
42. No credible material was presented by the Respondent to indicate any error apparent on the face of the record, warranting a review of the order of 14.12.2021, as sought in the second Motion. In the court’s view, the matters raised in the second Motion cannot be deemed self-evident. In the same manner, the court finds that the Respondent did not tender any material showing new and important evidence which was not within his knowledge as at the time of issuance of the aforesaid orders. In the court’s view, going by the arguments raised by the Respondent in pursuing review, he is essentially calling upon the court to sit on appeal against its decision as well as the decision rendered by Mulwa J. All arising from his dissatisfaction with the orders made. In that case, an appeal from the order of 14.12.2021 should have been filed in the appropriate forum. The court therefore finds that no grounds to justify review and/or setting aside have been demonstrated by the Respondent. Consequently, the court declines to grant any of the orders sought in the second Motion.
43. The court will now consider the first Motion, essentially seeking a variation/correction of the order made on 8th December, 2022 to include all the interest/accrued interest awarded by the court on 14th December, 2021 (resulting in the order made on 14th April, 2022). The grounds and applicable principles encapsulating a review have already been laid out herein above and the court need not belabor them further.
44. It is apparent that this Motion was similarly brought under Order 45 of the CPR on review, the Applicant averring that by her order of 8th December, 2022 Mulwa J fixed the interest rate payable by the Respondent, whereas this court had already set it at the rate of 14% p.a. as prayed in the Summons; and hence there is need to correct the order made on 8th December, 2022 accordingly. In retort, the Respondent argued that the order issued on 14th December, 2021 was founded on an illegality, and could therefore not be reviewed in the manner sought. This objection was also raised by the Respondent in respect of the second Motion, which matter the court has already determined.
45. As earlier mentioned, the court by way of its decision rendered on 14th December, 2021 (resulting in the order made on 14th April, 2022) allowed the Summons as prayed, thereby ordering the Respondent to pay the outstanding sum of Kshs. 1,743,315/- plus interest at the rate of 14% p.a. from 15th August, 2020 until payment in full. Following the Respondent’s application dated 29th June, 2022 court by the ruling of 8th December, 2022 ordered the Respondent to settle the sum of Kshs. 1,743,315/- together



with interest in the sum of Kshs. 2,181,293.04 in two (2) equal instalments, that is, on or before 30th January, 2023; and on or before 28th February, 2023.

46. It remains unclear how the interest of Kshs. 2,181,293.04 was tabulated. Be that as it may, the court is satisfied that for uniformity, good order and compliance, there is need for the order made on 8th December, 2022 to be reviewed particularly on the subject of interest, in tandem with the earlier substantive decision rendered by the court on the same subject.

47. Consequently, the following are the orders made:

- a. The Notice of Motion dated 28th January, 2023 is hereby allowed as prayed, with costs to the Applicant. Consequently, the ruling/order made by Mulwa J on 8th December, 2022 is hereby varied/corrected on the aspect of interest, in order to harmonize the latter order with the ruling delivered on 14th December, 2021 (resulting in the order made on 14th April, 2022), to the extent that the interest payable herein shall be calculated at the rate of 14% p.a. from 15th August, 2020 until payment in full.
- b. The Notice of Motion dated 6th March, 2023 is hereby dismissed with costs to the Applicant.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 6TH DAY OF MAY 2024.

C.MEOLI

JUDGE

In the presence of:

For the Applicant: Mr. Machira

For the Respondent: Mr. Abantu h/b for Mr. Kamau

C/A: Erick

