

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**

**JR.414 OF 2014**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY,**

**MINISTRY OF EDUCATION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MESHACK OCHIENG ..... EXPARTE APPLICANT**

**RULING**

- 1.** On 20<sup>th</sup> May 2019 the High Court held that the Applicant herein is a vexatious litigant barring him from filing pleadings without the leave of the court.
- 2.** The Applicant was subsequently granted leave to move the court as a result of which he filed the instant Application which is dated 15th July 2025.
- 3.** He seeks the following orders;
  - 1) The Application be certified as extremely urgent on the ground of the age of the Application on 13th February 2012 to date unless certified urgent the Application would be rendered nugatory.

- 2) As the court deems fit to uphold order of Court of Appeal the sum of Kshs. 30,571,250.10 was to be paid within thirty (30) days from 30<sup>th</sup> September 2013 and in default the same would attract compound interest at commercial bank lending rate of KSHS. 17.50% per annum until payment in full status quo order dated and delivered at Nairobi this 8th day of May 2015 before E.M. Githinji Judge of Appeal W. Ouko Judge of Appeal A.K. Murgor Judge of Appeal certified by Deputy Registrar compatibility law Notice of Motion dated 29th February 2024 in support affidavit annexed MO 2 and MO 7 with accrument of KSHS. 588,599,519.90 being the balance due.
- 3) That as court deems fit to uphold court of Appeal determination provides Rule 96, Rule 97, Rule 98, Rule 99, Rule 100, Rule 101 expressly in terms of (1) (2) (3) (4) (5) dated 20th June 2016 before W. Karanja Judge Of Appeal, P.M. Mwilu Judge Of Appeal, F. Azangalala Judge Of Appeal Nairobi Civil Appeal No. 54 Of 2015 Bog Ngi'ya Girls High School Versus Meshack Ochieng T/A Mecko Enterprises and Hon. Attorney General, PS Ministry of Education, Cabinet Secretary Ministry of Education by consent signed by Meshack Ochieng T/A Mecko Enterprises the 1st Respondent, Otieno Ragot & Co. Advocates for the Appellant, Emmanuel Kiarie State Counsel for the Attorney General, Advocate for PS Ministry of Education and Cabinet Secretary National Treasury.
- 4) This Honourable Court be pleased to cite the Permanent Secretary Ministry of Education, Cabinet Secretary National

Treasury and Hon. Attorney General for being in contempt of the Certificate of Order of this Honourable court dated 20th June 2016 compatibility Kenya Gazette CXXII – No. 21 Nairobi 31st January 2020 Gazette Notice No. 771 of the Court of Appeal.

- 5) This Honourable court be pleased that summons be issued forthwith against the said Permanent Secretary Ministry of Education for not paying the ex-parte Applicant in accordance with section 21 (1) of the Government Proceedings Act to which Government Liberty accrued to KSHS. 588,599,519.90 until payment in full and show cause why they should not be committed to civil jail.
  - 6) As the court deems fit to uphold proceedings in Notice of Motion dated 29th February 2024 in support affidavit case law annexed MO 40, MO 41, MO 42, MO 43, MO 44, MO 45 and MO 46.
  - 7) That the costs of this Application be provided for.
4. The Applicant invokes Order 53, Order 40 Rules 1, 2 and 3 and Order 51 of the Civil Procedure Rules 2010, Sections 1A, 1B, 3A section 7, explanations 5, 6 of the Civil Procedure Act, section 108 of penal code cap 63, section 107, of evidence act cap 80, section 5(1) of the Judicature Act and all other enabling provisions of the Law.

**The Applicant's Case:**

5. The court has taken cognizance of the fact that the Applicant is a self-representation litigant. To support his Application he filed a host of documents which the court has considered.
6. The Applicant relies on a document known as written Highlighting Submissions rejoinder dated 5th June, 2025 in advancing his case.
7. He also relies on the final decree for the purpose of the execution as set out in the Kenya Gazette Vol. CXXII No. 21 Nairobi 31st January, 2020.
8. The Applicant also relies on what he referred to as Appendix to Justify Final Written Submission and Substantial Analysis Determination Dated 13<sup>th</sup> October, 2025.
9. He relies on the Notice of Summons (O.5 r 26 (2) the Third schedule [s 18A (2)] form of Notice to the attorney general in government proceedings Act Cap 40.
10. He invokes Section 31 of Government Proceedings Act Cap 40 and Form 14 being an Application for execution of decree (O.22 r 6) and Form No. 32 Award (O.46 r 19).
11. He also refers to Form No. 4 Certificate of execution of decree transferred from court of appeal to judicial review (O.22 r 4) and the Gazette Notice No. 771 and 770.
12. The Applicant also filed what he referred to as consolidated submissions, analysis, and determination by way of notice of motion dated 15<sup>th</sup> July 2025.

- 13.** This contains what is titled as legal wrong substantial evidence attached list of documents, highlighting of consolidation, consolidated submissions, written submission, reliefs sought, verifying affidavit, analysis, and determination, verifying verification, declaration, attaching the various emails exchanged.
- 14.** It is his case that the counter affidavit against the PS ministry of education sworn by Amb (Prof) Julius K CBS Bitok filed on 8/9/2025 and served on 22/10/2025 via email at 02:08 pm acted beyond 14 days. He is also asking the court to strike out the non-compliant replying Affidavit.
- 15.** It is his case that in the replying affidavit there is specific error by omission to thwart consent judgment expressly in terms of (1) (2) (3) (4) (5) at Nairobi Court of Appeal dated 20/06/2016 under section 39 on the question of law arising from the domestic Arbitration Act cap 49 provides Article 159 of the constitution of Kenya 2010.
- 16.** According to him, the issues in question are whether or not the court may issue an order of mandamus.
- 17.** He is also asking the court to exercise its discretion under section (8) and (9) of Fair Administrative Action Act 7L to effect Article 47 of the Constitution of Kenya to issue other orders sought in the application that is before the court.
- 18.** He takes issue with the State Counsel's statement that,

*“My submissions are both in PDF and in word format to assist the court in drafting a Ruling” which according to him does not*

*have the mandatory averments as required by the law to Notice of Motion dated 15/07/2025 is uncontested.”*

- 19.** He is argues that he is asking for services from the state officials.
- 20.** It is his case that Order 1(2) of the Civil Procedure Rules states that the plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in the plaint.
- 21.** It is further asking the court can exercise its discretion or not as provided for under order 7 rule 1 (3) which allows discretion by use of the word (May).
- 22.** It is his case that Order 7 rule 1 (e) does not allow the court any use of discretion for order 7 rule 1 (3) only refers to order 7 rule 1 (2) and no more.
- 23.** He closes by submitting that the Notice of Motion dated 17<sup>th</sup> July 2025 should be allowed.

### **The Respondent’s Case;**

- 24.** The Application is vehemently opposed by the Respondent who argues that this suit stems from arbitration proceedings and an arbitral award published on 30 th September 2013.
- 25.** According to the Respondent, the Arbitration Act does not avail an avenue for recourse to the Applicant through the present proceedings.
- 26.** It is the Respondent’s case that in a Ruling delivered on 27th February 2014,the High Court held that the award of compound

interest, as awarded in the arbitral award published on 30th September 2013, was awarded irregularly and so the award of interest was set aside.

- 27.** It is further its case that on 18th March 2014, the High Court proceeded to hear and determine an Application dated 15th October 2013 filed by the Applicant seeking the adoption of the arbitral award as a judgment of the High Court.
- 28.** According to the Respondent, Prayer No. 5 of Applicant above stated Application read as follows; That this Honourable Court do issue an order for interest as ordered by the arbitrator from the date of the award till payment in full.
- 29.** It is its case that on 18th March 2014, the Parties agreed that the arbitral award should be adopted in so far as it was consistent with the Ruling of 27th February 2014 which set aside the award of interest. Therefore, interest was not payable to the Applicant.
- 30.** The High Court subsequently issued a Decree on 19th March 2014 which captured the consent of the parties that prayers (3), (4) and (5) of the Application be and are hereby dismissed.
- 31.** In the Application before the court, the Applicant seeks to make reference to a Court of Appeal Ruling delivered on 8th May 2015 in Nairobi Court of Appeal Civil Appeal No. 4/2015 where the Court directed that status quo be maintained pending determination of an appeal filed by the Board of Governors Ng'iya Girls High School.

- 32.** It is its case that the order of stay issued by the court in Nairobi Court of Appeal Civil Appeal No. 4/2015 is not tantamount to;
- a) An Order setting aside the decision of the High Court setting aside interest;
  - b) An Order setting aside the consent entered by the Parties on 18th March 2014 where the Parties agreed that the arbitral award should be adopted in so far as it was consistent with the Ruling of 27th February 2014; or
  - c) A finding that interest is payable to the Applicant herein.
- 33.** It further argues that the intended appeal in Nairobi Court of Appeal Civil Appeal No. 4/2015 was eventually withdrawn by the Board of Governors Ng'iya Girls High School after the Ministry of Education directed that it will settle the decretal amount as directed by the High Court pursuant to the Ruling delivered on 27th February 2014.
- 34.** It is argued that the Ministry of Education proceeded to settle the uncontested sum that was awarded by the Tribunal.
- 35.** A principal sum of Kshs. 30,571, 250.10 plus costs of the arbitration was paid to the Applicant as full and final settlement of this dispute.
- 36.** The Respondent further submits that the High Court is not vested with jurisdiction to hear and determine an intended Application seeking payment of interest after a challenge to the arbitration award has been determined.

**37.** It submits that the supervisory jurisdiction donated to the High Court is limited in scope by dint of sections 10 and Section 35 of the Arbitration Act.

**38.** It is further submitted that Section 10 of the Arbitration Act provides as follows;

*Extent of court intervention*

*‘Except as provided in this Act, no court shall intervene in matters governed by this Act.’*

**39.** The Respondent submits that on the other hand, Section 35 of the Arbitration Act provides as follows;

1) *Recourse to the High Court against an arbitral award may be made only by an Application for setting aside the award under subsections (2) and (3).*

2) *An arbitral award may be set aside by the High Court only if*  
—

a) *The party making the Application furnishes proof—*

i. *that a party to the arbitration agreement was under some incapacity; or*

ii. *the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the laws of Kenya; or*

- iii. *the party making the Application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
- iv. *the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside; or*
- v. *the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; or failing such agreement, was not in accordance with this Act; or*
- vi. *the making of the award was induced or affected by fraud, bribery, undue influence or corruption;*

b) *The High Court finds that—*

- i. *the subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or*

ii. *the award is in conflict with the public policy of Kenya.*

3) *An Application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that Application had received the arbitral award, or if a request had been made under section 34 from the date on which that request had been disposed of by the arbitral award.*

- 40.** It is its case that a challenge under Section 35 of the Arbitration Act was filed by the Respondent through a Notice of Motion dated 10th December 2013. The said Application inter alia prayed for an order to set aside an award of compound interest at the rate of 17.5% per annum.
- 41.** In a Ruling delivered in Nairobi High Court Commercial Case No. 445/2013 on 27<sup>th</sup> February 2014, the High Court set aside the Tribunal's award of compound interest at the rate of 17.5% per annum as contained in an arbitration award.
- 42.** The Respondent submits that Section 35 of the Arbitration Act expressly provides that the High Court can only set aside an award either partially or entirely. However, through the Notice of Motion Application dated 15th July 2025, the Applicant is in effect seeking the leave of court to review the Ruling of the High Court delivered on 27th February 2014 to allow for payment of compound interest at the rate of 17.5% per annum.

43. The Respondent submits that the Arbitration Act does not vest the High Court with jurisdiction to review or appeal decisions issued following an Application under Section 35 of the arbitration act.
44. The Respondent submits that the Arbitration Act does not clothe the High Court with jurisdiction to review/ appeal the Ruling of the High Court delivered on 27<sup>th</sup> February 2014.
45. After the High Court delivered the above mentioned Ruling on 27<sup>th</sup> February 2014, the Applicant's Application for recognition and enforcement of the award published on 30<sup>th</sup> September 2013 came up for hearing on 18<sup>th</sup> March 2014.
46. It submits that on 18th March 2014, the Parties agreed, by consent that the arbitral award should be adopted by the High Court as a Judgment of the court only in so far as it was consistent with the Ruling delivered on 27th February 2014 (which set aside the award of interest). Consequently, the High Court issued a Decree on 19th March 2014 which expressly stated that interest, among other things, have been dismissed.
47. The Respondent therefore submits that through the Application dated 15th July 2025, the Applicant is in effect seeking leave of court to set-aside and to review the Decree issued by the High Court on 19th March 2014.
48. Reliance is placed in the case **Owners of Motor Vessel "Lillian S" Vs. Caltex Oil Kenya Limited (1989) KLR 1** it was stated that;

*“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*

**49.** The Respondent further relies on Nairobi **High Court Judicial Review Misc/E125/2024- Seven Seas Technologies Ltd vs State Law Office and Ministry of Health**, where it was held that a final award published by an arbitral tribunal did not award interest on awarded sums. The Applicant being aggrieved, filed a judicial review Application seeking an Order of mandamus to compel the Respondent to pay interest on awarded sums. The court inter alia held as follows;

*a) It is a well-established principle that arbitration is intended to be final and binding. As stipulated in Section 35 of the Arbitration Act, the Court’s intervention is strictly limited to setting aside an award on narrowly defined procedural or jurisdictional grounds.*

*b) The Arbitration Act does not empower the Court to vary, review, or supplement the substantive terms of an arbitral award. Consequently, to grant interest in the absence of an express award by the arbitrator would amount to the Court exceeding its mandate and undermining the doctrine of finality that underpins the arbitral process.*

- c) *It is for that reason that this Court concurs with the Respondents' submission that, having found that the arbitral award did not award interest to the Ex parte Applicant, the court lacks jurisdiction to impose such interest at this stage.*
- 50.** The Respondent submits that the issues raised by the Applicant in the Application dated 15<sup>th</sup> July 2025 revolve around payment of interest as awarded by an arbitral tribunal and which award was subsequently set aside in a Ruling delivered on 27<sup>th</sup> February 2014.
- 51.** The High Court has upheld its decision to set aside the arbitral award of compound interest in several Rulings involving the same Parties and touching on this very subject matter and so the Respondent submits that the issues which the Applicant intends to bring up are *res judicata*.
- 52.** The Respondent submits that the Applicant has failed to demonstrate to this court that there is a prima facie ground for a suit against the Respondents.
- 53.** The Respondent has failed/ neglected to state an actionable cause of action (one which is not *res judicata*) in the Notice of Motion Application dated 15<sup>th</sup> July 2025.
- 54.** The Respondent submits that the Ruling that was delivered on 27<sup>th</sup> February 2014 (which set aside compound interest) is of a final decision.
- 55.** It relies on the case of **Nyutu Agrovet Limited V Airtel Networks Kenya Limited; Chartered Institute Of**

**Arbitrators-Kenya Branch (Interested Party) SCK Petition No. 12 Of 2016 [2019] EKLRL** the Court of Appeal stated that:

*“But in the event it is set aside as was the case here, that decision of the High Court is final and remains their own. None of the parties can take steps to go on appeal against the setting aside ruling. It is final and the parties who so agreed must live with it unless, of course, they agree to go for fresh arbitration. The High Court decision is final and must be considered and respected to be so because the parties voluntarily chose it to be so. They put that in their agreement. They desired limited participation by the courts in their affairs and that has been achieved.”*

- 56.** In **Elevonic Lift Services Limited V the National Treasury, Nairobi HCArb.E060/2023** Hon Justice Visram Aleem Alnashir in his Ruling held that the Arbitration Act is self-governing by dint of section 10 and so the Civil Procedure Rules do not apply.
- 57.** A principal sum of Kshs. 30,571,250.10 plus a further amount for arbitrator’s costs was paid in full by the Ministry of Education to the Applicant sometime in the year 2014.
- 58.** Considering interest on the principal sum as awarded by the arbitral tribunal was set aside in a Ruling delivered by the High Court on 27<sup>th</sup>February 2014, the Respondent submits that there is no outstanding amount that is payable to the Applicant.
- 59.** The Respondent submits that, the award of compound interest having been set aside, this court cannot substitute the flawed award of

compound interest and in its place substitute it with a decision for payment of simple interest.

- 60.** It relies on the case of Premier **Bag & Cordage Limited V National Irrigation Board** **MI HC No. 1123 of 2001 [2014] EKLK** and **Ministry of Environment and Forestry V Kiarigi Building Contractors & another** **MI Misc. Civil Application No. E320 Of 2019 [2020] EKLK** where it was held that charging interest on interest otherwise known in the commercial world as compound interest is punitive and not compensatory. Interest is meant to compensate a party for having been kept out of its/his funds or property for some time and not either to enrich such a party or punish the opposing party. In this regard, the moment any interest is levied on any accumulated interest and not the principal sum, such interest stops being simple and becomes compounded, and therefore punitive.
- 61.** According to the Respondent the Application for payment of interest amounting to Kshs. 588,599,519.90 out of a mere principal sum of Kshs. 30,571,250.10 relies on compound interest computation yet compound interest was set aside by the High Court.
- 62.** The Respondent respectfully submits that the application no should be dismissed with costs to the Respondent.

### **Analysis and determination;**

Upon perusing the Application, the supporting documents, the response and the rival submissions as filed by the parties, this court finds the following to be the issues for determination;

- 1) Whether pleadings were properly filed.
- 2) Whether the Application has merit.
- 3) Who shall be at the costs.

**The first issue is whether the pleadings were properly filed.**

- 63.** This court notes that the Respondent sent its replying affidavit and submissions to the court through an email late indicating that there was a challenge uploading them on the court filing system on the 13th of October 2025.
- 64.** The court also notes that on his part the Applicant filed a totally different suit being number E344 of 2025 since he was facing challenges uploading some of his documents in the system. The court directed that the documents be deemed to be holding documents for the instant suits. The documents were subsequently placed in this file.
- 65.** The Applicant admits that he was served by the Respondent with its documents via email.
- 66.** The court takes note of the fact that the court's electronic filing system was inundated with bulky documents that were filed by the Applicant.

67. At some point the court tracking system could not admit documents probably explaining why the litigants were facing challenges uploading documents.
68. The court appreciates that notwithstanding these challenges, the litigants acted the way they did out of mutual diligence which is a demonstration of the interest both sides have in the case.
69. The litigants cannot be said to have acted with the intentional disregard to the rules of the court. These challenges are likely to have caused an unintended delay in the filings.
70. Article 48 of the Constitution stipulates that the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.
71. To shut out or strike out documents that were filed late or in the form that they've been lodged and exchanged will offend Article 48 of the constitution which this court declines to do.
72. In **Raila Odinga & 5 Others v IEBC & Others (2013) eKLR** in which the Court had this to say on the effect of Article 159 of the Constitution:

*“Our attention has repeatedly been drawn to the provisions of Article 159(2) (d) of the Constitution which obliges a court of law to administer justice without undue regard to procedural technicalities. The operative words are the ones we have rendered in bold. The Article simply means that a Court of law should not pay undue attention to procedural requirements at the*

*expense of substantive justice. It was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from the Courts of law ...”*

73. The court notes that the Applicant filed a reaction to the Respondents Replying Affidavit that was filed and served late and he does not stand to suffer any prejudice if the documents are admitted as part of the record.
74. The court has in the spirit of promoting Article 48 and 159 of the Constitution accepted the documents filed in a separate suit by the Applicant and the ones filed by the Respondent as part of the record.
75. The court did not reject any documents. They were all received and printed by the Deputy Registrar and placed in the court file.
76. The court has painstakingly perused all of these documents in arriving at its determination.

**The 2nd issue is whether the Application has merit.**

77. The Court of Appeal in **Republic vs Kenya National Examinations Council Ex-parte Gathenji and 9 Others, [1997] eKLR** where it was held:

*“The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus? Once again we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 FROM Paragraph 89. That learned treatise says:-*

*“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”*

*What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”*

- 78.** The court will first consider whether the Applicant is entitled to Prayers 2, 3, 4 and 5 of the Application. Prayer 1 is spent. This court has looked at what the Applicant’s tendered as evidence to support his Application.
- 79.** In order to support prayer 2 of the Application, the Applicant has placed reliance on the ruling that was delivered on 8th May 2015 in civil appeal Number 4 of 2015 as his evidence.

- 80.** This ruling determined an Application for stay of execution, pending an intended appeal from the ruling and decree of the high court in miscellaneous civil appeal number 445 of 2013.
- 81.** When it comes to prayers 3, 4 and 5 the court notes that the Applicant relies on Gazette Notice No. 770 relates to **The High Court of Kenya At Nairobi Commercial And Admiralty Division Misc Civil Case No. 445 of 2013 M/S Mecko Enterprises (Applicant) Vs The Principal Secretary, Ministry of Education - (1st Respondent); The Chairman, Board Of Governors, Ng'iya Girls High School~ (2nd Respondent) and others.**
- 82.** The court has also perused Gazette Notice 771 and noted that it relates to **The Court Of Appeal At Nairobi - Civil Case No. 54 of 2015 Between Chairman, Board of Governors, Ng'iya Girls High School (Appellant) and Meshack Ochieng; T/a Mecko Enterprises & 4 Others** (Being an appeal from the Ruling of the High Court of Kenya at Nairobi dated 19th December, 2014) (In Misc. Application No. 445 of 2013).
- 83.** It is clear that the parties filed a consent on 17th June, 2016 marking the appeal as fully settled out of court which was adopted as a court order at the request of all parties with appeal No. 54 of 2015 being marked as withdrawn under rule 96 (5) on 20th day of June, 2016.
- 84.** That court has noted that the parties by consent agreed that, the Award made and published on the 30th September 2013 and adopted as a judgment and decree of the High Court in Nairobi High Court

Miscellaneous Civil Application No. 445 of 2013 on 19th March, 2014 as well as the consent recorded in the said suit on 18th March, 2014 shall not be construed as requiring the Appellant herein being the 2nd Respondent in the suit to make any payment directly to the 1st Respondent in respect of the works that were the subject matter of the award, the Appellant having fully discharged its obligations to the 1st Respondent.

- 85.** The court notes that they further agreed that the consent would be filed in the Superior Court and upon the such filing, the entire dispute between the Appellant and the 1st Respondent in respect of the matters the subject of arbitration giving rise to the Award made and published on 30th September, 2013 and the subsequent decree given by the Superior Court in the said suit on 19th March, 2014, be marked as fully settled.
- 86.** The Applicant in the instant suit is relying on the consent order that was entered into on 20th June 2016 in appeal number 54 of 2015 which emanated from a ruling that was given on 19th December 2014 in High Court miscellaneous Application number 445 of 2013.
- 87.** It is clear to the court that the Applicant is seeking to execute the decree of another court. That cannot be allowed. The Applicant should have filed the execution proceedings in miscellaneous civil case number 445 of 2013 and not in the instant suit.
- 88.** The court is not seized of miscellaneous civil case number 445 of 2013. Furthermore it is unfortunate to note that the Applicant has not disclosed to this court the status of that suit nor explained why he

decided not to execute in the correct file or whether there is a parallel execution process running concurrently with what he is pursuing here.

- 89.** The Applicant cannot argue that he does not know the status of miscellaneous 445 of 2013 since he was the Applicant in that suit.
- 90.** Clause number 4 the consent that was entered into in the court of appeal on 20th June 2016 confirms that the appeal touches on the same dispute that is between the Applicant and the 2nd Respondent in the matter before this court.
- 91.** The court has further ascertained from the same clause that the appeal related to the arbitration award that was published on 30th September 2013 and the decree in the High Court entered into on 19th March 2014. The same award forms the basis of the claim in the Application that is before this court for determination.
- 92.** A further perusal of the same clause confirms that the consent marked the matter is fully settled.
- 93.** Order 22 of the Civil Procedure Rules provides for execution of decrees and orders. Rule 6 thereof provides:

*“Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and Applications under this rule shall be in accordance with Form No. 14 of Appendix A.*

- 94.** It is this court’s finding that a decree of another court or suit cannot be executed in a different suit without the legal procedure being followed transferring the decree for the execution by another court.
- 95.** In **Teachers Service Commission v Kenya Union of Teachers & 2 Others [2013] eKLR**, the court stated as follows: -

*“The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed”.*

*“A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”*

- 96.** It is this court’s finding that the Respondent cannot be compelled through an order of Mandamus to act on the basis of an order or a

decree that was issued in a totally different *Lis*. That amounts to an illegality.

97. The Applicant has initiated execution proceedings that are predicated on a ruling and a consent and a decree that are domiciled elsewhere in a different suit and in a court of appeal consent as analysed herein earlier.
98. Citing a Respondent for contempt must not be taken lightly. The consequences are very severe and drastic in nature.
99. The court has not been informed whether there is another contempt Application pending in another court. The court cannot rule out such a possibility. This court declines the Applicant's prayer to cite the Respondent for contempt.
100. Section 107 of the Evidence Act provides thus:

***107. Burden of proof***

*Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist?"*

101. The Supreme Court in **Gwer & 5 others v Kenya Medical Research Institute & 3 others [2020] KESC 66 (KLR)** restated the principle as follows:

*"[49] Section 108 of the Evidence Act provides that, "the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;" and Section 109 of*

*the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”*

*[50] This Court in Raila Odinga & Others v. Independent Electoral & Boundaries Commission & Others, Petition No. 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:*

*“...a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”*

**102.** The court finds that the Applicant did not tender evidence to prove his Application.

**Costs;**

**103.** In the case of **Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR**, it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, Judicial Hints on Civil Procedure, 2nd ed. (Nairobi: Law Africa, 2011), p. 94:

*“Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: **Chamilabs v. LaljiBhimji and Shamji***

*JinabhaiPatel, High Court of Kenya, Civil Case No. 1062 of 1973.”*

**104.** The Applicant shall bear the costs of the Application.

**Determination;**

**105.** The upshot of the foregoing is that the Application lacks merit.

**Order;**

- 1) The Application is dismissed.
- 2) The order issued on 20<sup>th</sup> May 2019 where the High Court held that the Applicant herein is a vexatious litigant barring him from filing pleadings without the leave of the court shall remain in force.
- 3) Costs to the Respondent.

It is so ordered.

**Dated, signed and delivered at Nairobi this 3<sup>rd</sup> day of December 2025.**

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**J. CHIGITI (SC)  
JUDGE**