



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSES NO. 230 AND 231 OF 2017

(Formerly HCCC Nos. 128 AND 129 of 2016 (OS) at Nairobi)

IN THE MATTER OF SECTIONS 44, 45, 46 AND 47 – 52 OF THE ADVOCATES ACT, 2016, LAWS OF KENYA

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES 2010, ORDER 52 RULES 4

AND

IN THE MATTER OF THE CONSENT ORDER DATED 15TH DECEMBER 2015 IN HCCC NOs.216/2007, 219/2007 AND 255/2007 AT NAIROBI

AND

IN THE MATTER OF INDUSTRIAL CAUSE NO.561 OF 2014 AT NAIROBI CONSOLIDATED WITH INDUSTRIAL CAUSE NO.1988 OF 2014 AT NAIROBI

GEOFREY MURIITHI MURAGE.....1ST PLAINTIFF/APPLICANT

DOROTHY MWAWASI.....2ND PLAINTIFF/APPLICANT

(Suing on their own behalf and on behalf of 704 others)

AND

ADRIAN SAMITA MANGOLI.....3RD PLAINTIFF/APPLICANT

(Suing on own behalf and on behalf of 306 others)

- VERSUS -

ANTONY OLUOCH T/A A.T. OLUOCH &

COMPANY ADVOCATES.....1ST DEFENDANT/RESPONDENT

THOMAS LETANGULE T/A LETANGULE &

COMPANY ADVOCATES.....2ND DEFENDANT/ RESPONDENT

SILVIA MALEMBA KITONGA T/A S.M KITONGA &

COMPANY ADVOCATES.....3RD DEFENDANT/ RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 27th April, 2018)

RULING

The plaintiffs or applicants filed their respective suits in the High Court at Nairobi on 18.04.2016 and through Sirma & Company Advocates. The 1st and 2nd plaintiffs filed HCCC No. 128 of 2016 (OS) against the named three defendants. The 3rd plaintiff filed HCCC No.129 of 2016 (OS) against the mentioned 1st and 3rd defendants. By the ruling of the High Court delivered on 03.02.2017 by G.L. Nzioka J, the suits were transferred to the Employment and Labour Relations Court for directions and further orders. Consequential to the transfer, the suits were registered as ELRC Cause Nos. 230 and 231 respectively.

The plaintiffs commenced each suit by filing an Originating Summons together with a chamber summons seeking interim orders. This ruling is on the respective chamber summons but in opposing the chamber summons the respondents have challenged the main suits. The applications were brought under Order 52 Rule 4, Order 40 Rules 1, 2, & 3 of the Civil Procedure Rules, 2010, Sections 44, 45, 46 and 47 – 52 of the Advocates Act, Cap.16 and Sections 3 and 3A of the Civil Procedure Act, Cap.21, Laws of Kenya and all enabling provisions of the law.

In cause 230 of 2017 the substantive prayers subject of this ruling are as follows:

- 1) Spent
- 2) Spent
- 3) Spent
- 4) That the respondents herein be compelled to give an account of and particulars of disbursement of the settlement sum of Kshs.1,300,000,000.00 in HCCC No.216/2007, HCCC No. 219/2007 and HCCC No. 255/2007 at Milimani, Nairobi (As consolidated) with copies availed to counsels for the applicants.
- 5) That the respondents give an account and particulars of the Joint Client A/C No. 0102033007500 National Bank Upper Hill Branch or all other aforementioned Bank Accounts indicated in prayer No.3 above held and operated by the respondents on behalf of the plaintiffs or applicants vide consent order dated 15.12.2015 in HCCC No.216/2007, HCCC No. 219/2007 and HCCC No. 255/2007 at Milimani, Nairobi (As consolidated).
- 6) That the Court be pleased to constitute the required coram and give directions pursuant to the provisions of section 45 (2) and (2A) of the Advocates Act, Cap. 16 Laws of Kenya in regard to proceedings over contested agreements or fee notes for remuneration in Nairobi Employment and Labour Relations Court Causes Nos. HCCC No.216/2007, HCCC No. 219/2007 and HCCC No. 255/2007 at Milimani, Nairobi (As consolidated).
- 7) Spent
- 8) That the costs of this application be provided for.

The application was based on the supporting affidavit of Geoffrey Muriithi Murage attached thereto and the grounds stated in the application and the said Murage's further supporting affidavit filed on 27.07.2017. The 2nd defendant opposed the application and Originating Summons by filing the replying affidavit of Larry Mulomi Advocate on 27.06.2017 through Letangule & Company Advocates.

In cause 231 of 2017 the substantive prayers subject of this ruling are as follows:

- 1) Spent
- 2) Spent
- 3) Spent
- 4) That the respondents herein be compelled to give an account of and particulars of disbursement of the settlement sum of Kshs.500,000,000.00 in Nairobi Employment and Labour Relations Court Cause No. 561/14 (As consolidated) with Cause No. 1988 of 2014 with copies availed to counsels for the plaintiff/ applicant.
- 5) That the respondents give an account and particulars of the Joint Client A/C No. 0010011255 Oluoch & Kitonga Advocates with Oriental Commercial Bank, NIC Bank City Center Branch A/C name A.T Oluoch & Company Advocates A/C No. 1002370502, Oriental Commercial Bank, Nairobi Branch A/C Name Sylvia M. Kitonga A/C No. 5128976002 or such other bank accounts held and operated by the respondents on behalf of the plaintiff or applicants vide consent order dated 15.12.2015 in Nairobi Employment and Labour Relations Court Cause No. 561/14 (As consolidated) with Cause No. 1988 of 2014.
- 6) That the Honourable Court be pleased to constitute the required coram and give directions pursuant to the provisions of section 45 (2) and (2A) of the Advocates Act, Cap. 16 Laws of Kenya in regard to contested agreements or fee notes for remuneration in Nairobi Employment and Labour Relations Cause No. 561/14 (As consolidated) with Cause No. 1988 of 2014.
- 7) Spent

8) That the costs of this application be provided for.

The application was based on the supporting affidavit of Adrian Samita Mangoli attached thereto and the further supporting affidavit by the said Mangoli filed on 27.07.2017. The 1st and 3rd defendants opposed the applications and the Originating Summons by filing on 27.06.2017 the replying affidavit of Sylvia Malemba Kitonga through Anyango Opiyo Advocate.

The grounds in support of the applications are as follows:

- 1) The defendants are Advocates of the High Court of Kenya who acted for the plaintiffs in the cases stated in the prayers in the chamber summons.
- 2) In HCCC No. 216/2007 consolidated with HCCC No. 219/2007 and 255/2007, in consent recorded on 15.12.2015 it was agreed that Telkom Kenya Limited pays the claimants therein Kshs. 1, 300, 000,000.00 plus agreed legal costs of Kshs. 30, 000, 000.00. It was further recorded in the consent that Telkom Kenya Limited would thereby be discharged of all and any claims in the referenced matters and arising from the employment relationship with the claimants therein.
- 3) In Nairobi Employment and Labour Relations Court Cause No. 561/14 (As consolidated) with Cause No. 1988 of 2014, on 16.12.2015 a consent order was recorded between the parties therein that Telkom Kenya Limited pays the claimants a lump sum of Kshs. 500,000,000.00 plus agreed legal costs of Kshs. 20,000,000.00. It was further consented and recorded that the suits as consolidated be marked as fully and finally settled and that Telkom Kenya Limited would thereby be discharged of all and any claims in the referenced matters and arising from the employment relationship with the claimants therein. In the present application, it is the 3rd plaintiff's case that the consent was recorded without the knowledge of the claimants therein and no express instructions to record the same were ever issued to the 1st defendant and 3rd defendants to proceed and enter the consent as was done.
- 4) That it is only prudent for the court to direct that the defendants herein give a full and transparent breakdown and account for how much money they agreed to pay the applicants and the mode used in dispatching the same and how much money in total was released to the defendants (in settlement of the consent orders).
- 5) The defendants are liable to give an account of the monies, documents, papers and other relevant materials received and held on behalf of the Applicants pursuant to the purported consent.
- 6) The court enjoys jurisdiction to intervene and order the defendants to produce documents relating to payment and distribution of the settlement amount and the agreed costs in the purported consent.

The 1st and 3rd defendants have opposed the application upon the following grounds:

- 1) The present suits seek to commence a fresh suit and a fresh cause of action within the dead suits. Thus the court lacks jurisdiction to hear and determine the suit as well as the application because the same are abusive of court process.
- 2) The suits were determined by consent orders recorded in the Employment and Labour Relations Court and the circumstances under which the said consent orders should be vacated or set aside have not been demonstrated.
- 3) The defendants were given full instructions to act for the claimants in Cause No. 561 which was initiated and concluded as a representative suit as per Order 1 rule 8 of the Civil Procedure Rules. The consent was filed in court and recorded on 15.12.2015.
- 4) The defendants entered the consent orders in line with written authority of the claimants therein to proceed accordingly and as per the letter dated 25.11.2015 being exhibit 2 on the replying affidavit and which stated in part thus, **“(e) We hereby agree that Legal Fees at 30% of the agreed settlement shall be deducted from each and every Claimant payable amount from agreed settlement”** and, **“(f) We hereby agree that administrative charges shall also be deducted from each and every claimant payable amount from the agreed settlement.”**
- 5) The claimants in Cause 561 of 2014 were paid consequential to the consent orders and each received the money and signed discharge forms confirming receipt of the money and relinquishing the defendants from any liability.
- 6) That an application was filed in the said cause 516 of 2014 seeking orders similar to the ones sought in the present application and suit. That the application was determined by Mbaru J per exhibit SMK5 on replying affidavit herein (but the Court observes that the decision by Mbaru J has not been exhibited as was stated in paragraph 17 of the replying affidavit).
- 7) There are no established grounds to set aside the consent orders.
- 8) The present suit is bad by reason of the doctrine of *res judicata*; (but about which the Court returns that *res judicata* would not apply unless the decision by Mbaru J is interrogated in that regard but which has not been filed or exhibited).
- 9) Cause 561 of 2014 involved about 1000 claimants and the present suit involves only 306 of those claimants and there is no established reason or consent to lift the Advocate – Client confidentiality with respect to claimants not being party to the present suit as far as prayers are made that the defendants provide information held in confidence with respect to those claimants not party to the present suit. Such confidential information is privileged to disclosure as prayed for and the final pay advice had given a breakdown of the payments made.

10) The legal costs awarded in the consent order of Kshs.20,000,000.00 amounted to party to party costs payable to the claimants in the suit and was not the advocate's fees which is Advocate – Client bill which is about legal fees payable to the Advocate by the client for legal services rendered.

11) The jurisdiction of the Employment and Labour Relations Court does not include determination of disputes on taxation or legal fees payable.

The 2nd defendant opposed the application upon the following grounds:

1) The suit herein was filed in violation of Order 1 Rule 13 (1) and 2 of the Civil Procedure Rules, 2010 with applicants riding on false and illegal authority to institute the suits on behalf of all claimants, whose claims are not similar and whose authorization has been illegally procured.

2) The plaintiffs failed to disclose that their representatives in the suit in which the consent orders were recorded had authorized the 2nd defendant to deduct 1% auctioneer fees, 2% administrative fees and 30% legal fees. Further the plaintiffs filed complaints against the 2nd defendant at the Advocates Complaints Commission and upon same grounds as in the present matter but the same were withdrawn, a fact not disclosed to the court by the plaintiffs. Further, the claimants signed an agreement for legal fees at 30% with the 2nd defendant to avoid acrimonious and long taxation of costs so that the present application is an abuse of court process. Thus, the principle of estoppel applies accordingly.

3) The 2nd defendant does not hold any money for the plaintiffs and the prayer for release of such monies allegedly so held is misconceived.

4) The present dispute springs from an employment dispute in HCCC No.216/2007, HCCC No. 219/2007 and HCCC No. 255/2007 at Milimani, Nairobi (as consolidated) and which was ultimately settled by consent order recorded in court in December 2015. The employment dispute was seriously contested both at the High Court and Court of Appeal and subsequently parties signed on 08.08.2014 a settlement deed but the employer had gone back on the agreement necessitating applications for its recording as decree and for execution. Negotiations resumed culminating in a consent recorded in Court on 15.12.2015 in the suits as consolidated. Prior to the consent orders, auctioneers' fees had been taxed at Kshs.150, 000,000.00 in two of the involved files. Instructions by claimants therein to negotiate auctioneer's fees were given resulting in agreement on 1% deduction for auctioneer's fees.

5) The 2nd defendant had acted for claimants in HCCC No. 219 of 2007 and obtained judgment in favour of the claimants therein. It is the 2nd defendant's case that HCCC No.219 of 2007 was not an ordinary suit but a complex matter.

6) In an agreement signed on 08.01.2016 being exhibit LM 9 on the replying affidavit, the claimants' representatives in HCCC No. 219 of 2007 agreed as follows:

- a) To a negotiated legal fees to be charged at the rate of 30% of the amount due to each party of claimant.
- b) Negotiated auctioneer's fees and administrative fees at the rate of 1% and 2% respectively of the amount due to each claimant.
- c) Services of Senior Counsel namely Ahmed Nassir Adullahi and Pheroze Nowrojee are to be catered for in the said 30% in (i) above.
- d) That the 30% legal fees is inclusive of representation in three levels or hierarchy of court the matter has been escalated to namely High Court, Court of Appeal and Supreme Court each of which attract individual, separate and distinct legal cost but which we have elected to collapse into a single percentage to lessen the burden to the claimants.
- e) The Advocates herein (Letangule & Company Advocates) are discharged from any claim whatsoever from the claimants and individual discharge forms indemnifying the Advocates from future claim arising out of the settlement.

The court has considered the applications, affidavits and parties' submissions on record. The court makes findings as follows.

First, the plaintiffs pray for an account by the defendants about and with respect to the satisfaction of the consent orders recorded in the decided cases. Section 13 of the Employment and Labour Relations Court Act, 2011 provides that a judgment, award, order or decree of the court shall be enforceable in accordance with the rules made under the Civil Procedure Act, Cap 21 Laws of Kenya. The Court holds that provisions of the Civil Procedure Act apply to satisfaction or otherwise enforcement of a judgment, award, order, or decree by the Court. Section 34 of the Civil Procedure Act states as follows:

“34. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.”

The Court returns that the consent orders were made in the representative suits and all matters relating to the execution, discharge or satisfaction of the decree or consent orders in issue shall be determined by the Court executing the decree and not by a separate suit. The plaintiffs' alleged grievance in the present suits and applications is that the defendants having received settlement monies on behalf of the claimants in the suits in which the consent orders were recorded, the defendants have resorted to extortionate deductions leaving the plaintiffs with peanuts to take home as the deductions were not disclosed to the plaintiffs. The court returns that clearly the grievance would be an issue about satisfaction or discharge or enforcement of the consent orders and such a grievance is to be determined in the suits in which the consent orders were made and not separate suits like in the instant proceedings. To the extent that the applications and the suits relate to and seek prayers with respect to satisfaction of the consent orders, the court returns that the suits and the applications were misconceived and irreparably so. The Court holds that the mistake goes to the roots of the Court's jurisdiction which, as a result, is impaired.

Second, it is clear that in all the determined suits in issue (in which the parties recorded consent orders) there was an award of legal costs by consent of the parties. The Court has considered the material on record together with the dispute at hand and returns that there is no disclosed dispute between the parties about that award of legal costs as per the consent orders (except to the extent that the plaintiffs herein have generally challenged the consent orders in their entirety for alleged want of their authority for the defendants to conclude and record the consent orders in court as was done). It is the Court's view that had the costs been awarded by judgment of the court and falling for taxation by the taxing master, the court's jurisdiction would fall due by way of a reference under rule 11(2) of the Advocates (Remuneration) Order.

It was submitted for the defendants that the Employment and Labour Relations Court lacked jurisdiction in matters of taxation of costs. The Court holds that the submission was misconceived because section 12 (4) of the Employment and Labour Relations Court Act, 2011 provides that in proceedings under the Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just. Rule 29 of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides as follows:

- 1) The Court shall be guided by section 12(4) of the Employment and Labour Relations Court Act and the Advocates (Remuneration) Order in awarding costs.**
- 2) The Court may order reasonable reimbursements of money spent by litigants in the course of litigation.**
- 3) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.**

In view of those provisions, the Court returns that where the Court has made an order on costs in a suit before it, such an order is subject to the Court's jurisdiction and any matters flowing from such an order including disputes about the taxed costs and related matters would be determined by the Court. Thus, the Court has found that the court's jurisdiction would fall due by way of a reference under rule 11(2) of the Advocates (Remuneration) Order in cases where costs are taxed.

In the instant cases, the legal costs having been fixed by the consent orders, the Court returns that it has no jurisdiction to investigate the issue of legal costs as there would be no conceivable reference against the taxing master's decision. However, in a proper application for review questioning the validity or otherwise fairness of the consent orders, the Court would entertain such jurisdiction to revisit the issue of legal costs as was made in the consent orders. The Court's involvement would only be limited to a proper application for review or satisfaction of the consent orders as may be necessary to revisit the recorded order on legal costs and as may be appropriate – but such application currently not having been placed before the Court.

Third, in so far as the clients and the advocates entered a remuneration agreement after the conclusion of the suits by way of the consent orders, the court returns that the High Court would have the jurisdiction to uphold, vary, set aside or order taxation of the costs as may be appropriate in a proper application before the High Court made under section 45 (2) of the Advocates Act, 2016. Thus, the Court's view is that such remuneration agreements were made outside the suits and were not incorporated in the consent orders. The remuneration agreements being outside the consent orders, the same would not be subject of an application for review or satisfaction of the consent orders. The Court's considered view is that in such circumstances, the allegedly offending remuneration agreements can only be subject of the jurisdiction of the High Court as per section 45 (2) of the Advocates Act, 2016. Accordingly, the court will not delve into the validity, fairness and other matters relating to the parties' advocate - client remuneration agreements clearly concluded after the suits were determined by consent orders because the jurisdiction to vary the remuneration agreements between the advocates and their clients is clearly vested in the High Court. In any event, there is no such application before the court.

For avoidance of doubt and as submitted for the defendants, the legal costs were clearly as between the parties to the suits (party to party costs) and the remuneration agreements were clearly advocate's fees (advocate –client bill). However, if the advocates' fees in the remuneration agreements were to be paid out of the ordered legal costs partially or wholly, the same would fall for determination in the concluded suits as per section 34 of the Civil Procedure Act and as already found by the court to have been the legitimate process in an event that, disputes on satisfaction of the consent orders, are desired to be determined – and the Court makes it clear that availability of its jurisdiction would be on whether the legal fees is to be satisfied wholly or partially out of the monies in the consent orders while the issue of quantum of legal fees and fairness or validity of the advocates' remuneration agreements would be left to the jurisdiction of the High Court under section 45 (2) of the Advocates Act, 2016.

While making that finding, the Court has considered the definition of “costs” under section 2 of the Advocates Act, 2016 which states that “costs” includes fees, charges, disbursements, expenses and remuneration. The Court has also considered section 45(3) of the Act which provides, “45. (3) An agreement made by virtue of this section, if made in respect of contentious business, shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time

being in force for the taxation thereof: Provided that any such agreement shall be produced on demand to a taxing officer and the client shall not be entitled to recover from any other person, under any order for the payment of any costs to which the agreement relates, more than the amount payable by him to his advocate in respect thereof under the agreement.”

In view of the provisions, the court returns that as submitted for the respondents, the legal costs as provided for in the consent orders were party to party costs payable to the claimants by the respondents in the suits in which the consent orders were recorded. Such legal costs as ordered may have been lower or higher than the legal fees in the subsequent remuneration agreement between the claimants and their respective advocates, but which facts have so far not been disclosed. It is also not clear whether the legal costs as ordered in the consent orders was released to the claimants by their respective advocates out of the funds released to the advocates by the defendant in the suits, Telkom Kenya Limited. If the legal costs as ordered were not paid out to the claimants then the claimants would be entitled to a declaration that the satisfaction of the consent orders was incomplete or oppressive. Section 45 (3) of the Act is clear that a client may not recover from a judgment debtor an amount of money in taxed costs beyond the amount agreed upon as the advocates’ remuneration in an advocate – client remuneration agreement. Taking all the considerations into account, the court considers that, in a proper application about satisfaction of the consent orders, the claimants would be entitled to an account by the defendants as to the sum of the legal fees in the remuneration agreement as against the legal costs in the consent orders, and, the figures on disbursement of the legal costs to the individual claimants as per the consent orders.

Fourth, the plaintiffs have lamented that the consent judgment ought to be set aside. In particular, it is the 3rd plaintiff’s case that the consent was recorded without the knowledge of the claimants therein and no express instructions to record the same were ever issued to the 1st defendant and 3rd defendants to proceed and enter the consent as was done. Further at paragraph 14 of the submissions filed on 27.07.2017 it is submitted that the present claim also seeks to have the consent judgment reviewed and subsequently set aside on grounds of fraud, misrepresentation of facts, and of deliberate discrimination of the clients.

Section 16 of the Employment and Labour Relations Court Act, 2014 provides that the Court shall have power to review its judgments, awards, orders, or decrees in accordance with the Rules. Rule 33(2) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides that an application for review of a decree or order of the court shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that other judge is not attached to the court station. Under rule 33(2) the application is by a notice of motion supported with an affidavit and copy of the judgment, decree, or ruling or order to be reviewed shall be filed. The court returns that an application for review is clearly made in the suit in which the judgment, decree, or ruling or order was made and not a fresh suit like in the instant case. Accordingly, to the extent that the suits in which the present applications are made are fresh suits seeking review of the consent orders in issue, the Court returns that the suits and the applications are clearly misconceived and an abuse of court process. The Court returns that the mistake goes to jurisdiction of the Court and the jurisdiction is thereby irreparably impaired.

Fifth, the plaintiffs in the originating summons which constitute the pleadings initiating the suits have made prayers substantially similar to the prayers in the applications namely, an account; delivery of all papers and documents and payment schedules; and constituting a coram to determine a bill of costs – all as per the prayers in the applications. The Court holds that it is an abuse of court process to seek in an application purported interim orders, which when granted, would thereby determine the main suit in terms of the final prayers as set out in the main suit.

Finally, the Court has considered section 3(1) of the Employment and Labour Relations Court Act, 2011 which provides that the principal objective of the Act is to facilitate the just, expeditious and proportionate resolution of disputes governed by the Act. The Court has also considered section 12 (3) (viii) of the Act which provides that in exercise of its jurisdiction under the Act, the Court shall have the power to make any other appropriate relief as the Court may deem fit to grant. The Court has considered its findings in the present matter including that the plaintiffs may have an appropriate remedy as they may deem necessary by way of a proper application to this Court for review or satisfaction of the consent orders in issue, or, a proper application to the High Court under section 45 of the Advocates Act, 2016 with respect to the remuneration agreements in issue. The Court has considered that its jurisdiction has been found to be seriously impaired and irreparably so because there is no proper application for review before the court or for satisfaction of the consent orders. The Court further considers that the pendency of the current suits should not be allowed to stand in the way of any of the parties who may be desirous of taking steps as may be necessary towards expeditious, effective, and conclusive resting of the matter as may be necessary. Accordingly the Court having found that the suits and the applications are an abuse of court process, the same are liable to being struck out respectively. The Court has considered the defendants’ submission that the present representative suits might have been without proper authority and further considered all circumstances of the case and returns that each party shall bear their own costs of the present proceedings.

In conclusion, the respective suits by Originating Summons filed herein on 18.04.2016 and the respective applications by Chamber Summons filed herein on 18.04.2016 are hereby struck out respectively, with orders:

- a) that each party shall bear their own costs of the proceedings; and
- b) appropriate applications for review or satisfaction of the consent orders may be filed as may be necessary as per applicable substantive law and rules of procedure and not later than 02.06.2018.

Signed, dated and delivered in court at Nairobi this Friday 27th April, 2018.

BYRAM ONGAYA

JUDGE