REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW DIVISION

MISC. APPLICATION NO. 455 OF 2016

PAUL MWANIKI.....APPLICANT

-VERSUS-

THE NATIONAL HOSPITAL INSURANCE FUND

BOARD OF MANAGEMENT.....RESPONDENT

RULING

Introduction

1. This ruling disposes two applications, namely, the Respondent's Notice of Motion dated 27th August 2019 and filed on 2nd September 2019 (herein after referred to as the first application and the applicant's Notice of Motion dated 14th November 2019 filed on 15th November 2019 (herein after referred to as the second application).

2. The factual chronology of the events which triggered the two applications is essentially common cause or not disputed. It is common ground that the applicant's suit was dismissed on 19th June 2019 with costs to the Respondent. The Respondent taxed its Bill of Costs and obtained a Certificate of Taxation. In the first application, the Respondent *seeks entry of judgment as per the Certificate of Taxation.*

3. In the second applicant, the applicant seeks to review the orders made by Aburili J on 16th May 2017 and prays that this suit be marked as settled with no orders as to costs.

4. On 18th November 2019, I directed that the two applications to be argued together. For the sake of brevity, I will address the each application separately.

The first application

5. In the first application, the Respondent's prays for judgment to be entered against the applicant for the sum of Ksh. 188,838/= in respect of Party and Party Costs taxed on 12th June 2019 plus interests at 14% p.a. from 19th June 2018 until payment in full. It also prays for costs of the application. It states that the Certificate of Taxation issued on 12th June 2019 has not been set aside and that the applicant has refused to settle the said sum.

6. In opposition to the first application, the applicant filed grounds of opposition dated 6th December 2019 stating that the Respondent has mischievously misled the court to grant miscellaneous costs over and above those permitted by law, that the application is incompetent and that the decision that the applicant bears costs does not reflect the true spirit of the parties, hence, it ought to be reviewed.

7. Submitting on the first application, Mr. Mutai, the Respondent's counsel argued that the Respondent seeks entry of judgment based on the Certificate of Taxation. He stated that applicant's suit was dismissed with costs on 19th June 2018 after which they filed the Bill of Costs which was taxed. Mr. Mutai submitted that the applicant's substantive Notice of Motion was struck off and the court directed that the applicant's Notice of Motion dated 27th September 2016 be set down for hearing, but one year later, the applicant had not fixed its aforesaid application for hearing. He argued that the applicant fixed the matter for hearing and served the applicant's advocate with a Hearing Notice after which it was heard and dismissed.

8. On his part, Mr. Akusala's, the applicant's counsel urged the court to decline the application and refer the matter to the Deputy Registrar for consideration.

9. In my view, Mr. Akusala's argument is legally frail and unsustainable. His argument collapses not on the following fronts. *First,* if at all the Respondent desired to challenge the Taxation, the procedure is carefully provided under Paragraph 11A of the Advocates Remuneration Order. This was not done. Counsel cannot now purport to assail the Taxation by way of submissions.

10. Second, section 51(2) of the Advocates Act[1] provides that "the Certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."

11. My reading of the above provision is that under section 51 (2) above, a Certificate of costs is final as to the amount of costs indicated therein and the court has power to enter judgment upon a Certificate of taxation if an Applicant satisfies two (2) conditions, namely; (1) The retainer of the Applicant is not disputed; and (2) The Certificate of costs has not been set aside or altered by a competent court. There is no argument before me that the foregoing conditions have not been fulfilled.

12. Mr.Akusala's argument that this matter be referred back for taxation in my view cannot be a valid ground in opposition to the Respondents application which clearly meets the requirements of Section 51 (2) of the Advocates Act.[2] The complaints should have been made before the Deputy Registrar at the time the Party and Party Bill of Costs was taxed.

13. I therefore find and hold that the first application is merited.

The second application

14. In his application dated 14th November 2019 expressed under Article 10 of the Constitution, sections 1A & 3A of the Civil Procedure Act and Order 45 Rule 1 and Order 51 of the Civil Procedure Rules, the Paul Mwaniki, the applicant seeks the following orders:-

> ***a. That*** this honourable court does review its judgment dismissing this suit.
>
> ***b. That*** this honourable court does mark miscellaneous application 455 of 2016 as settled with no orders as to costs.
>
> c. Spent.
>
> ***d. That*** this honourable court grants such other orders as it deems fit and just.
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> **e. That** the costs of this application be in the cause.

15. The application is supported by the grounds listed on the face of the application and the supporting affidavit of Dr. Paul Mwaniki, annexed thereto. Essentially, the grounds are:-

> **a. That** the applicant has not preferred an appeal.
>
> ***b. That*** there is an error on the face of the record which tilts the scales in so far as the judgment appertains.
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> **c. That** there is new information that the court did not have possession of at the time of rendering the said judgment.
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> ***d. That*** the honourable court ruled that it could not find when leave to file the substantive application was issued.
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> ***e. That*** the application for leave is still alive despite the parties having completed the proceedings.
>
> **f. That** the learned judge dismissed the application with costs against the applicant.
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> **g. That** the applicant has been having discussions with the with the applicant with a view to withdrawing the case and the Respondent to stop Kibera criminal case number 3571 of 2016, and following the discussions, the Respondent issued the applicant with a fresh contract for service and also did not proceed with the criminal case.
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> **h. That** unknown to the parties, a bill of costs was filed in this suit and allowed.
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> ***i. That*** the condemnation to pay costs will have tremendous hardship on the applicant considering the negotiation were done in good faith.
>
> **j. That** the applicant will suffer prejudice if the orders sought are refused.
>
> **k. That** this court supports alternative dispute resolution methods and that this court ought not to depart from discussions made in good faith between the parties

16. The application is opposed. On record is the Replying Affidavit of Gideon Mutai, Advocate practising in the firm of Maina & Maina advocates dated 29th November 2019. He averred that the applicant filed an application dated 27th September 2016 seeking leave to commence judicial review proceedings. He averred that on 28th September 2016, the court directed that the application be served for hearing on 4th October 2016. He further averred that on 4th October 2016, the applicant's counsel informed the court that he had not been able to serve the application upon the Respondent but had instead filed a substantive Notice of Motion dated 3rd October 2016.

17. Mr. Mutai averred that the court was led to believe that leave had been granted when in fact it had not been granted and proceeded to fix the application for hearing on 10th October 2016.

18. He averred that the applicant never ensured that he had leave to institute judicial review proceedings and that the parties proceeded to argue the substantive application on 21st March 2017 after which judgment was delivered on 16th May 2017 striking out the applicant's substantive application dated 3rd October 2017 for failure to obtain leave to institute judicial review proceedings with no orders as to costs and directed the applicant to set down the application dated 27th September 2016 for hearing.

19. Mr. Mutai averred that almost one year later, the applicant had not set down the application for hearing, but ultimately, the Respondent's served the applicant's counsel with a hearing notice for 11th June 2018 and the application was subsequently heard on 19th June 2018 when it was dismissed with costs to the Respondent, after which the Respondent filed and served its Bill of Costs which was taxed on 27th May 2019 and a Certificate of Taxation issued. He deposed that the applicant's advocate was aware of the Bill of Costs, and, that, he was served with Mention Notices, Hearing Notice and the Certificate of Taxation.

20. Mr. Mutai averred that under Order 45 Rule 1 (1) (b) of the Civil Procedure Rules, 2010, an application for review must be made without unreasonable delay. He argued that this application was filed two and a half years after the delivery of the judgment. He also deposed that no error on the face of the judgment has not been demonstrated. Further, he averred that no new evidence has been produced which was not within the applicant's knowledge. Additionally, he averred that the letter purported to be new evidence is dated 14th November 2017 long after the delivery of the judgment, hence, it cannot qualify to be knew evidence. Lastly, Mr. Mutai averred that the applicant has not attached the decree he seeks to review.

21. In his submissions, Mr.Akusala, counsel for the applicant stated that he was only pursuing prayers 2, 3 4 and 5 of the application. He submitted that Article 159 (2) (d) of the Constitution frowns upon emphasis of technicalities of procedure. He submitted that the Article encourages parties to use Alternative Dispute Resolution mechanism to resolve disputes. He argued that the applicant has been discussing the case with the Respondent and urged the court to set aside the order dismissing this suit with costs.

22. The Respondent's counsel, Mr. Mutai argued that the applicant seeks to review the judgment two and a half years after its delivery, which, is an undue delay and no explanation has been offered for the delay. On the alleged new evidence, he argued that the letter dated 14th November 2017 and the contract entered into on 1st November 2018, came into being after the delivery of the judgment, hence, they cannot be new evidence. He submitted that the application does not satisfy the requirements of Order 45 Rule 1 of the Civil Procedure Rules, 2010 and urged the court to dismiss it for lack of merits.

23. It is common ground that the High Court has a power of review, but such power must be exercised within the framework of Section **80** Civil Procedure Act[3] and Order **45** Rule **1**.[4] Section **80** of the Civil Procedure Act[5] provides as follows:-

> ***80.*** Any person who considers himself aggrieved-
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> ***(a)*** by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
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> ***(b)*** *b*y a decree or order from which no appeal is allowed by this Act, May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

24. Order **45** Rule **1** of the Civil Procedure Rules, 2010 provides as follows:-

> ***45*** *Rule* ***1 (1)****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 review of judgement to the court which passed the decree or made the order without unreasonable delay."

23. A clear reading of the above provisions shows that Section **80** gives the power of review while Order **45** sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds- ***(a)*** discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; **(b)** on account of some mistake or error apparent on the face of the record, or **(c)** for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.

26. This is a case where counsel for the applicant moved to court on 27th October 2016 seeking leave to commence judicial review proceedings. The court declined to grant the leave *ex parte* and directed him to serve the application. Despite the absence of leave, the applicant's counsel knowing very well that leave had not been granted proceeded to file the substantive application on 4th October 2016, and appeared in court the same day and informed the court that he had not served the application. The court scheduled a date for the hearing of the substantive application which ultimately heard on 21st March 2017. In its judgment dated 16th May 2017, the court noted that leave had not been granted. It struck off the substantive application for being filed without leave, however, it directed the applicant to fix his application for leave for hearing to be determined on merits. Differently put, the court granted the applicant's otherwise hopeless case a new lease of life.

27. Despite the courts magnanimity, one year later, the applicant's counsel had not fixed the matter for hearing. The Respondent's counsel fixed the matter for mention on 21st May 2018 and served the applicant's counsel, but he did not attend court. The court scheduled the hearing of the applicant's application on 19th June 2018 and directed service to be effected.

28. However, on the said date, the applicant's counsel did not attend court despite being served. I dismissed the applicant's application for with costs to the Respondent.The applicant's application was filed on 15th November 2019, over one year after the impugned order.

29. *First*, the failure to attend court despite service has not been explained nor has service been denied.

30. Second, Mr. Akusala argued that there is an error on record which will tilt the scales. On the face of the above scenario, one wonders what sort of error counsel is alluding to. The case was not dismissed as counsel suggests. The court found that the substantive application was filed without leave and granted the applicant a second chance by directing him to fix his application for leave for hearing. Had he done so, he would have perfectly proceeded with his case. The Respondent's counsel moved the court over one year later and fixed the application for hearing and served a Hearing Notice upon the Respondent. The applicant's counsel failed to attend court. In my ruling I considered the application on merits and dismissed it.

31. Curiously, the applicant seeks to review the Ruling made by Aburirli J on 16th May 2017 which gave his client a second chance, but he is not challenging my orders dismissing the application for leave which is the order that gave rise to the costs the subject of the first application. Clearly, the applicant's application is misguided, misconceived, fatally incompetent and unsustainable both in law, in substance and in fact.

32. Third, 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.[6]

33. In Nyamogo & Nyamogo v Kogo**[7]** discussing what constitutes an error on the face of the record, the court rendered itself as follows:-

> "An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a 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 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 possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal."

34. The fact that the case proceeded on the erroneous assumption that leave had been granted cannot constitute an error on the face of the record within the above definition. In any event, the moment the court realized the correct position, it granted the applicant a lease of life by directing him to proceed and prosecute his application for leave. The applicant failed to seize the opportunity accorded to him by the court and a year later he had not fixed the case for hearing prompting the Respondent to take a date and serve his advocate. Despite service, the Respondent's advocate failed to attend court, and the court dismissed the application for leave on merits and with costs. As stated above, the applicant is not challenging the dismissal but is challenging the order which afforded him a second opportunity to breathe life into his case. The said order and the subsequent dismissal cannot be an error of the face of the record.

35. The Indian Supreme Court[8] made a pertinent observation that is it has to be kept in view that an error apparent on the face of record must be such an error, which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. In *Attorney General & O'rs v Boniface Byanyima*,[9] the court citing *Levi Outa v Uganda Transport Company*[10] held that the expression "mistake or error apparent on the face of record" refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment."

36. There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.[11]

37. The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and

detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

38. The wisdom flowing from jurisprudence on this subject is that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.[12] In the instant case therefore, I find and hold that there is no error apparent on the face of the record.

39. Review is impermissible without a glaring omission, evident mistake or similar ominous error. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order or review.

40. The power of **review** is available only when there is an **error appare**nt on the **face** of the **record.** I emphasize that **review** proceedings are not an appeal. The **review** must be confined to **error apparent** on the **face** of the **record** and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.[13] Discussing the scope of review, the Supreme Court of India in the case of[14] had this to say:-

> "the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression "any other sufficient reason" ..... means a reason sufficiently analogous to those specified in the rule"

41. Even though the applicant seeks to review Justice Aburili's order made way back on 16th May 2017, the letter and agreement alleged to be new evidence are dated 14th November 2017 and 14th November 2018, more than a year after the order sought to be reviewed was made. New evidence must be evidence which the applicant as at the time of the hearing did not have or could not get despite the exercise of due diligence.

42. For material to qualify to be new and important evidence or matter, it must be of such a nature that it could not have been discovered had the applicant exercised due diligence. It must be such evidence or material that was not available to the applicant or the court as the time of making the decision. Differently stated, the material presented by the applicant does not qualify to be new evidence.

43. Additionally, a court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed vs Charan Signh and Another*[15] it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter. **Mulla** in the *Code of Civil Procedure*[16] (writing on Order **47** Rule **1** of the Civil Procedure Code of India), (the equivalent of our Order **45** Rule **1**), states that the *expression 'any other sufficient reason'...*means *a reason sufficiently analogous to those specified in the rule*. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out..., would amount to an abuse of the liberty given to the tribunal under the Act to review its judgement.[17]

44. Also relevant is *Tokesi Mambili and others vs Simion Litsanga*[18] where they held as follows:-

> i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.(Emphasis added)
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> ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.

45. I am clear in my mind that the reasons offered by the applicant do not qualify to be *'sufficient reason'* within the meaning of the rules cited above nor are they *analogous* or *ejusdem generis* to the other reasons stipulated in Order **45** Rule **1.** For this holding I rely on *Evan Bwire vs Andrew Nginda*[19]where the court held that *'an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh.* The principles which can be culled out from the above noted authorities are:-

> i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
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> ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
>
> iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
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> iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.

ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.

x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.

46. Guided by the jurisprudence discussed above, it is my finding that the reasons cited by the applicant do not quality to be any of the grounds prescribed in Order 45 Rule 1 of the Civil Procedure Rules.

47. Mr. Akusala invoked Article 159 (2) (d) of the Constitution. True, Article **159 (2) (d)** of the constitution of Kenya 2010 enjoins courts to determine cases without undue regard to technicalities. I must however point out that Article **159** of the Constitution is not a panacea for all problems. It is not lost to this court that the provisions of section **80** of the Civil Procedure Act[20] and Order **45** Rule **1** of the Civil Procedure Rules, 2010 are clear on the scope and province of jurisdiction to review. There is no technicality in the application of such clear provisions of the law. The applicant cannot in the circumstances of this case seek refuge under Article **159 (2) (d)** of the constitution. This position was explained in *APA Insurance Company vs Vincent Nthuka*[21] in the following words:-

> 26. In my view the failure to apply within the time prescribed by the law cannot be ignored pursuant to the provisions of Article 159 of the Constitution. It is my view Article 159(2)(d) of the Constitution cannot be a panacea for all ills. It cannot be relied upon to revive a claim which is expressly extinguished by statute since the provision does not give rise to a cause of action. In my view it is not meant to destroy the law but to fulfill it. It is meant to ensure that the path of justice is not clogged or littered with technicalities. Where, however, a certain cause of action is disallowed by the law, the issue of the path of justice being clogged does not arise since in that case justice demands that that claim should not be brought. Justice, it has been said time without a number, must be done in accordance with the law. Dealing with the said Article of the Constitution, the Supreme Court in Petition No. 5 of 2013, Raila Odinga versus Independent Electoral and Boundaries Commission & Others [2013] eKLR expressed itself as follows: -
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> "...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 courts of law. In the instant matter before us, we do not think that our insistence that parties adhere to the constitutionally decreed timelines amounts to paying undue regard to procedural technicalities. As a matter of fact, if the timelines amount to a procedural technicality; it is a constitutionally mandated technicality."

48. I have nothing useful to add to the above excerpt. In view of my conclusions herein above, I find that the grounds cited by the applicant do not qualify to be grounds for review to bring the applicant's application within the ambit of the grounds specified in Order **45** Rule **1** of the Civil Procedure Rules, 2010. This is not a proper case for the court to grant the review sought or even to exercise its discretion in favour of the applicant. Accordingly, the applicant's application dated 14th November 2019 is totally unmerited. I dismiss the said application with costs to the Respondent.

49. Additionally, flowing from my earlier conclusions pertaining to the Respondent's application, I find and hold that the Respondent's application is merited. Accordingly, I allow the Respondent's application dated **27th** August 2019 and enter Judgment in favour of the Respondent against the applicant Mr. Paul Mwaniki in the sum of **Ksh. 188,838/=** plus costs and interests at the rate of **14%** from the date of Taxation until payment in full. I also award costs of the application to the Respondent.

Orders accordingly.

Signed, Delivered and Dated at Nairobi this 13th day of March, 2020

John M. Mativo

Judge

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[1][1] Cap 16, Laws of Kenya.

[2] Ibid.

[3] Ibid

[4] See Sinha J in *Union of India vs B. Valluvan*, AIR 2007 SC 210; (2006) 8 SCC 686

[5] Supra.

[6] See *National Bank of Kenya Ltd vs Ndungu Njau*, {1996} KLR 469 (CAK) at Page 381.

[7] {2001} EA 170.

[8]In the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharmal*, speaking through Chinnappa Reddy, J., (SCC p. 390, para 3) 1 (1979) 4 SCC 389: AIR 1979 SC 1047.

[9] HCMA No. 1789 of 2000.

[10] {1995} HCB 340.

[11] see This Court in *Thungabhadra Industries Ltd. v. Govt. of A.P.*1

[12] *Batuk K. Vyas Vs Surat Municipality* AIR (1953) Bom 133.

[13] See *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170.

[14] *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608.

[15] {1963}EA 557.

[16] Sir Dinshah Fardunji Mulla, *The Code of Civil Procedure*, 18th Edition, Reprint 2012, at Page 1147, paragraph 10 Civil Appeal No. 90 of 2001; {2001} LLR 6937 (CAK)

[17] Ibid.

[18]{2004} eKLR.

[19] Civil Appeal No. 103 of 2000, Kisumu; {2000} LLR 8340.

[20] Cap 21, Laws of Kenya.

[21] {2018} e KLR.