Daimler Executive Cab & Car Hire Limited v Geminia Insurance Limited (Commercial Appeal E128 of 2022) [2024] KEHC 11933 (KLR) (Commercial and Tax) (26 September 2024) (Judgment)

Neutral citation: [2024] KEHC 11933 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL APPEAL E128 OF 2022

MN MWANGI, J

SEPTEMBER 26, 2024

BETWEEN

DAIMLER EXECUTIVE CAB & CAR HIRE LIMITED ..... APPELLANT

AND

GEMINIA INSURANCE LIMITED ..... RESPONDENT

(Being an Appeal from the Judgment of the Honourable H.M. Nyaga, Chief Magistrate, delivered on 7th September, 2022 in the Chief Magistrate's Court at Milimani Nairobi Commercial Suit No. E704 of 2020)

JUDGMENT

1. The plaintiff (now appellant) filed a suit against the respondent vide a plaint dated 26th August, 2020 seeking judgment for Kshs.6,000,000.00, general damages, interest from the month of September 2017 at the current prevailing Court rates, damages for loss of income at the rate of Kshs.200,000.00 per month from September 2017, any further relief the Honourable Court may deem fit and just to grant, and costs of the suit. The appellant claimed to have insured their motor vehicle registration No. KCJ 040Y, valued at Kshs.6,000,000.00 with the defendant, who issued it with a Certificate of Insurance No. A7886302 on 24th August, 2017. It averred that on 27th August, 2017, the suit motor vehicle while being driven by John Nduati Wanjiku, was involved in an accident and was written off.

2. The said accident was reported to Parklands Police Station via O.B. No. 11 of 28th August, 2017, and the vehicle was moved from Loresho to D.T Dobie Limited. The appellant stated that it then lodged a claim with the defendant (now respondent) but the claim was rejected on 27th August, 2018 on grounds that the accident occurred before the insurance policy begun. The appellant provided evidence that the vehicle was in use at various times and locations between 24th and 26th August, 2017. Upon receipt

of the aforesaid information, the respondent informed the appellant that it had appointed another investigator, but has remained silent to date. The appellant argued that there was a breach of the insurance policy as the defendant failed to remit the insured amount.

3. In opposition to the appellant's suit, the respondent filed a statement of defence where it denied all the averments contained in the appellant's plaint. The respondent averred that the insurance policy issued to the appellant was obtained through misrepresentation or non-disclosure of material facts, breaching the principle of utmost good faith. It claimed that the insurance certificate relied upon by the appellant was invalid. The respondent claimed it had the right to repudiate the claim due to the said breach and was entitled to investigate the claim's genuineness. Additionally, the respondent asserted that the appellant's suit was contractually time-barred, making it legally invalid and defective.

4. In a judgment delivered on 7th September, 2022, the Trial Court found that the appellant had proved its case on a balance of probability, thus the respondent should make good and/or compensate the appellant under the motor vehicle's insurance policy cover. The Court ordered the respondent to either repair the appellant's vehicle under the insurance policy, or if repairs were uneconomical, to pay the insured the value of the vehicle minus any routine deductions. The appellant was also awarded the costs of the suit.

5. Aggrieved by the judgment, the appellant filed a Memorandum of Appeal dated 22nd September, 2022 raising the following grounds of appeal -

    i. That the learned Magistrate erred in both law and fact in completely ignoring the pleadings, evidence and submissions filed by plaintiff in the suit;

    ii. That the learned Magistrate erred in both law and fact in ignoring the fact that the plaintiff's testimony on oath was not challenged, the defendant having failed, refused and or neglected to call any witnesses at the hearing of the suit;

    iii. That the learned Magistrate erred in both law and fact in failing to consider that all the plaintiff's statements on oath made before the Court were not denied on oath and therefore remained facts and the truth;

    iv. That the learned Magistrate erred in both law and fact by failing to consider and or appreciate that failure by the defendant to deny the statements on oath had the net effect of rendering the entire claim in the suit undefended;

    v. That the learned Magistrate erred in both law and fact in ignoring the fact that there was no counter-claim filed, nor were there any alternative orders sought by the plaintiff, when after finding for the plaintiff, issued orders effectively varied (sic) the prayers in the plaint;

    vi. That the learned Magistrate erred in both law and fact in failing to acknowledge that the motor vehicle accident, subject of the suit herein occurred in 2017, five years before judgement was rendered and as such the plaintiff a car hire company, was entitled to all the reliefs sought;

    vii. That the learned Magistrate erred in both law and fact in failing, refusing and/or neglecting to consider the plaintiff's unchallenged testimony on oath confirming the losses and damages incurred and instead stating that the plaintiff had not provided sufficient evidence;

    viii. That the learned Magistrate erred in both law and fact in misconstruing Section 108 of the *Evidence Act*, the plaintiff having presented its evidence on oath, the onus on challenging the evidence was on the defendant and not the Court;

ix. That the learned Magistrate erred in both law and fact in failing to disambiguate between the claim for loss of income and the general damages prayed for in the plaint;

x. That the learned Magistrate erred in both law and fact in finding that the plaintiff had not proven its claim for loss of earnings yet the defendant did not challenge (or adduce evidence contrary to) the plaintiff's evidence that the motor vehicle subject of the suit was leased at the rate of Kshs.200,000.00 a month, one witness confirmed that he had hired the motor vehicle and the insurance policy subject of the suit was for a passenger service vehicle;

xi. That the learned Magistrate erred in both law and fact in failing to appreciate the following unchallenged facts:

a. The defendant did not deny any of the plaintiff's testimony and evidence on oath and as such the said testimony and evidence remains uncontroverted;

b. The plaintiff is a car hire company engaged in leasing out luxury motor vehicles for benefit, (the name of the company, the clear labelling of the subject motor vehicle as a Passenger Service Vehicle (PSV) on the insurance certificate and policy document and was hired by J. N. Murage Advocate (sic));

c. The plaintiff leased out the subject motor vehicle at the rate of Kshs.200,000.00 per month;

d. The plaintiff's motor vehicle was valued by the defendant at Kshs.6,000,000.00 which is expressly indicated in the insurance policy document;

e. The plaintiff dutifully paid its premiums ergo the issuance of the insurance policy and certificate (sic);

f. The plaintiff was involved in a road accident on or about 27th August, 2017 which caused the insured motor vehicle to be written off; and

g. The plaintiff has not only suffered the loss of its car but has also suffered loss of business from its use of the said car since August 2017 more than five (5) years now;

xii. That the learned Magistrate erred in law by completely ignoring the pleadings, submissions and documents filed by the appellant and thereby arrived at a decision that ignored the irrefutable evidence, law and facts prevailing;

xiii. That the learned Magistrate's final orders were completely based on hearsay, conjecture and issues that were not plead (sic);

xiv. That the learned Magistrate failed to exercise his judicial powers and discretion judiciously and failed to consider all relevant facts.

6. The appellant's prayer is for the instant appeal to be allowed with costs, for the judgment delivered on 7th September, 2022 and the consequential decree to be set aside and be substituted with a decision of this Court granting the appellant the prayers sought in its plaint dated 26th August, 2020 filed in the lower Court.

7. The respondent was also dissatisfied with the Trial Court's Judgment and filed a Memorandum of Cross-Appeal dated 5th October, 2022 raising the following grounds –

i. That the learned Trial Magistrate erred in law and fact by failing to judiciously analyze and consider the applicable provisions of the law and case law thus arriving at a finding that the suit

was properly before the Court which finding was erroneous, untenable and manifestly unjust to the respondent;

ii. That the learned Trial Magistrate erred in law and fact by rendering judgment in favour of the appellant that was in contrary (sic) to his judicial analysis and findings of the evidence on record which decision was self-contradicting, unsupported by evidence and resulted into a miscarriage of justice;

iii. That the learned Trial Magistrate erred in law by making an award that was never prayed for by the appellant which decision is highly irregular, untenable and manifestly unjust to the respondent;

iv. That the learned Trial Magistrate erred in law in shifting the initial burden of proof of the appellant's case to the respondent by directing the respondent to make an assessment of the damage and carry out repairs on the subject motor vehicle within 60 days in default of which it would be liable to pay the appellant the insured value of Kshs. 6,000,000.00 with interest which award was not prayed for by the appellant which decision was erroneous, untenable and highly unjust to the respondent;

v. That the learned Trial Magistrate erred in law and fact by entering judgment in favour of the appellant despite having found that it had not proved its claim which decision is erroneous, untenable and highly irregular and manifestly unjust to the respondent; and

vi. That the respondent shall upon receipt of the typed proceedings file a supplementary Memorandum of Appeal to include other grounds and reasons that may become apparent therein.

8. The respondent's prayer is for the judgment delivered by the Trial Court on 7th September, 2022 to be set aside, and for the appellant's suit in the Trial Court and the appellant's appeal to be dismissed with costs to the respondent.

9. The instant appeal was canvassed by way of written submissions. The appellant's submissions were filed by the law firm of Murage Juma & Company Advocates on 13th December, 2023, whereas the respondent's submissions were filed by the law firm of Morara Apiemi & Nyangito Advocates on 16th February, 2024.

10. Mr. Murage, learned Counsel for the appellant relied on the decisions in *Kenya Akiba Micro Financing Limited v Ezekiel Chebii & 14 Others* [2012] eKLR, and *East Africa Portland Cement, CFC Stanbic Limited & another v Peter Ividah Muliro* [2019] eKLR and submitted that since the respondent stood down its witness at the hearing before the Trial Court on 1st March, 2022, the defence filed in opposition to the appellant's suit was untestable, not tested, and unsupported by evidence, sworn or otherwise, and the appellant's evidence stands uncontroverted. He cited the Court of Appeal case of *CMC Aviation Ltd v Kenya Airways Ltd (Cruisair Ltd)* [1978] eKLR, and argued that the appellant did not admit to any of the averments in the respondent's defence, thus the said defence consisted of mere allegations.

11. Counsel referred to the Court of Appeal case of *Chalicha FCS Ltd. v Odhiambo & 9 others* [1987] KLR and contended that given the learned Magistrate's finding in this case, to the effect that the plaintiff had proved its case on a balance of probabilities, the Court should have granted the specific reliefs sought in the plaint without varying or amending them in the final orders. Mr. Murage urged this Court to be guided by the Court of Appeal's finding in the case of Edward Mariga through *Stanley Mobisa Mariga*

v Nathaniel David Schulter & another [1997] eKLR, and grant the appellant the prayers sought in its plaint since it proved its case on a balance of probability.

12. Mr. Mugambi, learned Counsel for the respondent referred to Order 1 Rule 4 of the *Civil Procedure Rules, 2010* and the case of *Affordable Homes Ltd v Ian Henderson & 2 others* HCCC No. 524 of 2014 cited by the Court in the case of *East Africa Portland Cement Ltd v Capital Markets Authority & others* (*supra*), and argued that the verifying affidavit to the appellant's plaint, sworn by Mr. Brian Mundia Ng'ang'a, lacked proper authorization from the appellant company's Board of Directors. Further, during the main suit hearing, Mr. Ng'ang'a testified as the appellant's witness and confirmed that he had no authority to swear the verifying affidavit accompanying the appellant's plaint.

13. Counsel argued that the Trial Magistrate erroneously held that Mr. Ng'ang'a, the deponent of the appellant's verifying affidavit, was authorized to depone to the said affidavit. He contended that the Magistrate also erroneously shifted the burden of proof to the respondent, to show that Mr. Ng'ang'a was not authorized, contrary to the legal principle that the person required by law to act must prove compliance in case of a dispute. Counsel asserted that the Trial Magistrate erred in finding that the appellant's suit was properly before the Court. It was submitted by Mr. Mugambi that it is trite aw that general damages cannot be awarded for breach of contract. Thus, the Trial Magistrate did not err in finding that the claim for general damages should fail.

14. He further submitted that the claim for loss of income should also fail since the appellant's witness confirmed that he had not tendered any evidence in support of that claim. On the claim for value of the suit motor vehicle, Mr. Mugambi stated that despite the fact that the Trial Magistrate found that the appellant had not proved its claim, he entered judgment for the appellant against the respondent on the ground that the appellant had proved its case on a balance of probabilities, then proceeded to grant reliefs that had not been sought by the appellant in its plaint.

Analysis and Determination.

15. This being a first appeal, this Court is alive to its duty as the first appellate Court, which duty was restated by the Court of Appeal in *Gitobu Imanyara & 2 others v Attorney Genera*l [2016] eKLR, as follows -

> " An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect"

16. It is trite law that an appellate Court will not interfere with the finding of fact by a Trial Court unless it is based on no evidence, or it is based on a misapprehension of the evidence, or the Judge is shown demonstrably to have acted on wrong principles or to have misapplied the or law in reaching his conclusion. See *Mkube v Nyamuro* [1983] LLR 403-415 at 403.

17. I have examined the Record of Appeal and given due consideration to the written submissions by Counsel for the parties. The issues that arise for determination are –

    i. Whether the appellant's suit could be sustained in the absence of a Board Resolution sanctioning it;

    ii. Whether the appellant is entitled to the reliefs sought in its plaint dated 26th August, 2020; and

    iii. Whether the trial Magistrate issued orders that were not sought for by the appellant in its plaint.

Whether the appellant's suit could be sustained in the absence of a Board Resolution sanctioning it.

18. The appellant is a limited liability company, incorporated on 24th August, 2016, and has a single Director by the name Brian Mundia Nganga. Order 4 Rule 1(4) of the *Civil Procedure Rules, 2010* provides that –

> Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

19. The deponent to the appellant's verifying affidavit and the appellant did not tender evidence in the form of an authority to depone to the said affidavit and/or a Board resolution sanctioning the filing of this suit. However, upon cross examination of Mr. Brian Mundia Ng'ang'a, the deponent of the appellant's verifying affidavit, he testified that he is the sole Director of the appellant company, thus no resolution was needed before the institution of this suit. It is indeed not disputed that Mr. Brian Mundia Ng'ang'a is the sole Director of the appellant company. This means that he solely controls the affairs of the appellant company. The Court of Appeal in the case of *Makupa Transit Shade Limited & Another v Kenya Ports Authority & Another* [2015] eKLR in addressing a similar issue held that -

> " In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorized by it. It was therefore sufficient for the deponents to state that "they were duly authorized." It was then up to the appellants to demonstrate by evidence that they were not so authorized."

20. Further, the Court of Appeal in *Spire Bank Limited v Land Registrar & 2 others* [2019] eKLR, interpreted the provisions of Order 4 Rule 1(4) of the Civil Procedure Rules, 2010 as hereunder-

> It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.

21. From the foregoing, it is clear that the absence of a Board resolution or authority to swear an affidavit is not necessarily fatal to a suit. Although the deponent of the appellant's verifying affidavit did not attach such authorization, it is my finding that the omission was not fatal to the appellant's suit since Mr. Ng'ang'a is the sole Director of the appellant company, thus duly authorized to conduct its affairs. In any event, the respondent's challenge to this suit based on the lack of a Board resolution or authority was not supported by evidence showing that Mr. Brian Mundia Ng'ang'a lacked the authority to file the suit or swear the verifying affidavit on behalf of the appellant. Sections 107, 108 &109 of the *Evidence Act* provide that he who alleges must prove, therefore, the respondent having claimed that Mr. Ng'ang'a lacked authority to file the suit or swear a verifying affidavit on the appellant's behalf, bore the burden of proving this allegation, which burden it did not discharge.

22. In the premise, this Court finds that Mr. Brian Mundia Ng'ang'a being the sole Director of the appellant company did not need a resolution from the company to authorize the appellant's filing of the suit before the Trial Court. As such, the appellant's suit could be sustained in the absence of a Board Resolution sanctioning it.

Whether the appellant is entitled to the reliefs sought in its plaint dated 26th August, 2020.

23. The parties herein entered into a contract in the form of an insurance policy, where it was agreed that the respondent would provide the appellant with an insurance cover for its motor vehicle registration No. KCJ 040Y valued at Kshs.6,000,000.00, upon payment of requisite premiums by the appellant. The appellant paid the agreed premiums and was issued with a Certificate of Insurance by the respondent confirming that it had insured the appellant's suit motor vehicle for the sum of Kshs.6,000,000.00. It is not disputed that the said motor vehicle got into a Road Traffic Accident on 27th August, 2017, during which time it still had a valid insurance cover with the respondent. The appellant contended that as a result of the said accident, the suit motor vehicle was written off but to date, the respondent has not compensated it by paying it the insured sum of the vehicle despite several reminders, the appellant contended that the respondent was in breach of its contract with the appellant.

24. The respondent submitted that it does not dispute the fact that it had insured the appellant's motor vehicle registration No. KCJ 040Y for the sum of Kshs.6,000,000.00, as at the time the said vehicle was involved in a road traffic accident on 27th August, 2017. It is however evident from the record that to date, the respondent has neither compensated the appellant by paying it the insured sum of Kshs.6,000,000.00 and/or ensuring that the suit motor vehicle is repaired and back to working condition. For this reason, I am persuaded that the respondent breached the insurance policy between the parties herein.

25. Upon perusal of the reliefs sought by the appellant, it is noteworthy that they take the form of general and special damages. The appellant sought an award of general damages for breach of contract as a result of the respondent's breach of the insurance policy between the parties herein. As correctly found by the Trial Magistrate, it is now well settled that general damages are not awardable for breach of contract or breach of contractual obligations. A contract for performance of specific duties or obligations such as the one between the parties herein, would lead to compensation for the specific loss suffered as a result of the breach, but not general damages.See theCourt of Appeal case of *Capital Fish Kenya Limited v Kenya Power & Lighting Company Limited* [2016] eKLR, where it was held that –

> ... no general damages may be awarded for breach of contract

26. The nature of damages awarded in cases of breach of contract were summarized by the Court in *Consolata Anyango Ouma v South Nyanza Sugar Company Limited* MGR HCCA No. 53 of 2015 [2015] eKLR, as hereunder -

> The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This is principle is encapsulated in the Latin phrase restitution in integrum (see *Kenya Industrial Estates Ltd v Lee Enterprises Ltd* NRB CA Civil Appeal No. 54 of 2004 [2009]eKLR, *Kenya Breweries Ltd v Natex Distributors Ltd Milimani* HCCC No. 704 of 2000 [2004]eKLR). The measure of damages is in accordance with the rule established in the case of Hadley v Baxendale (1854) 9. Exch. 341

> that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see *Standard Chartered Bank Limited v Intercom Services Ltd & Others* NRB CA Civil Appeal No. 37 of 2003 [2004]eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see *Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others*, NRB CA Civil Appeal No. 192 of 92 (UR) and *Charles C. Sande v Kenya Co-operative Creameries Ltd*, NRB CA Civil Appeal No. 154 of 1992 (UR)). Emphasis added

27. It is trite law that special damages must be specifically pleaded and strictly proved. See *Nizar Virani T/A Kisumu Beach Resort v Phoenix of East Africa Assurance Company Limited* Civil Appeal No. 88 of 2002 [2004] 2 KLR 269. The appellant claimed the sum of Kshs.6,000,000.00 being the insured amount of the suit motor vehicle, on the ground that the said vehicle was extensively damaged as a result of the road traffic accident that occurred on 27th August, 2017, thus the said vehicle was written off. For this Court to make a finding that the appellant is entitled to the sum of Kshs. 6,000,000.00 being the insured value of the suit motor vehicle, the Court has to be satisfied that indeed the suit motor vehicle was written off. Section 108 of the *Evidence Act* provides that the burden of proof in a suit or proceeding lies with the person who would fail if no evidence at all were given on either side.

28. It is my finding that in the circumstances herein, the appellant bore the burden of demonstrating that indeed the suit motor vehicle was extensively damaged as a result of the accident of 27th August, 2017, and it was written off. Counsel for the appellant submitted that the appellant's witnesses' testimonies were neither rebutted nor controverted by the respondent, since it did not call any witnesses or produce any documents in opposition to the appellant's suit. In as much as the respondent did not call any witnesses to rebut the appellant's evidence on oath that the vehicle was written off, the appellant still bore the burden of proving its allegation. In the absence of proof, the said allegations cannot stand simply because they were not rebutted and/or controverted by the respondent's witnesses on oath.

29. I have perused the Court record, and the evidence adduced by all the appellant's witnesses and I agree with the Trial Magistrate that the appellant did not tender any evidence in the form of an assessment report confirming that the suit motor vehicle was extensively damaged as a result of the accident of 27th August, 2017, to the extent of being a write off. For this reason, I find that from the outset, the appellant is not entitled to the claim for Kshs.6,000,000.00 being the insured amount of the suit motor vehicle.

30. The appellant also claimed for loss of income at the rate of Kshs. 200,000.00 per month from September 2017. The Court of Appeal in the case of *Cecilia W. Mwangi & another v Ruth W. Mwangi* [1997] eKLR held that -

> Loss of earnings is a special damage claim. It must be specifically pleaded and strictly proved. The damages under the head of "loss of earning capacity" can be classified as general damages but these have also to be proved on a balance of probability.

31. I note from the record that during cross-examination of Mr. Ng'ang'a, he stated that the suit motor vehicle was making Kshs. 200,000.00 a month and confirmed that he had not tendered any evidence to that effect. For this reason, I find that the claim for loss of income at the rate of Kshs. 200,000.00 per month from September, 2017 was not been proved. I have read the Trial Magistrate's finding on this issue and I agree with him that the said earnings as claimed, are more or less presumptuous and uncertain as the same is predicated on whether or not the said vehicle was hired, thus it is wanting in certainty.

32. Consequently, this Court finds that the appellant is not entitled to the claim for loss of income at the rate of Kshs.200,000.00 per month from September 2017.

Whether the Trial Magistrate issued orders that were not sought by the appellant in its plaint.

33. The respondent's case is that the Trial Magistrate erred in law and fact in finding that the appellant had not proved its claim, then proceeding to enter judgment for the appellant against the respondent on the ground that the appellant had proved its case on a balance of probabilities, and granting it reliefs that had not been sought by the appellant in it plaint.

34. Having found that indeed the suit motor vehicle got into an accident on 27th August, 2017 during which time it was validly insured by the respondent, the Trial Magistrate held that –

> " The upshot is that the plaintiff has proven its case on the balance of probabilities to the extent that the defendant is liable to make good and/or compensate the plaintiff under the suit's insurance policy cover. The defendant is thus obligated to undertake the repairs to the said vehicle under the policy. The defendant should therefore take steps to have the vehicle repaired and if found uneconomical to do so must adhere to the policy and pay the plaintiff the insured value of the suit motor vehicle, less any normal or routine deductions.
>
> To that end, the defendant is given 60 days to make an assessment of the damage and carry out the above repairs and in default shall be liable to pay the plaintiff for the insured value of Kshs. 6,000,000/= with interest."

35. It is evident from the plaint that other than the general and special damages sought by the appellant, it also sought an order for the Court to grant any further relief it may deem fit and just to grant. In view of the foregoing, I am persuaded that this was a proper case for the Trial Court to invoke Section 3A of the *Civil Procedure Act* which gives it inherent powers to grant orders as it deems fit for the ends of justice to be met.

36. In this regard, this Court finds that the orders issued by the Trial Court were properly issued despite the fact that they were not specifically sought by the appellant in its plaint.

37. In the premise, I find that the appeal by the appellant and cross-appeal by the respondent are devoid of merits. Consequently, they are hereby dismissed. Therefore, the judgement of the Trial Court remains in force.

38. Each party shall bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF SEPTEMBER, 2024. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Gitahi h/b for Mr. Murage for the appellant

Mr. Mugambi for the respondent/cross-appellant

Ms B. Wokabi - Court Assistant.