



REPUBLIC OF KENYA



KENYA LAW
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**EWK v Jubilee Insurance Co. Ltd; Ruga (Third party) (Civil Suit
875 of 2005) [2023] KEHC 20756 (KLR) (Civ) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT 875 OF 2005

JN MULWA, J

JULY 27, 2023

BETWEEN

EWK PLAINTIFF

AND

JUBILEE INSURANCE CO. LTD DEFENDANT

AND

DR. MAINA RUGA THIRD PARTY

JUDGMENT

1. Vide a Plaint dated 6/7/2005, the Plaintiff sued the Defendant for the following: -
 - a. Special damages in the sum of Kshs. 2,200/-.
 - b. General damages for pain, suffering and loss of amenities.
 - c. General damages for defamation.
 - d. Exemplary damages.
 - e. Interest on (a), (b) and (c) above at court rates.
 - f. Such further relief as this Honourable court may deem fit.
 - g. Costs of this suit.
2. The Plaintiff pleaded that sometime in June 2004, the Defendant agreed to issue her with a Life Insurance Policy, which was conditional upon her undertaking a medical examination to establish her suitability for the same. After paying the Defendant a premium deposit of Kshs. 6,974/=, she attended



the services of the Defendant's duly appointed agent, Dr. Maina Ruga, the 3rd Party herein, for the aforementioned examination on 13/7/2004. However, the Plaintiff claims that in breach of the duty of care owed to her, the Defendant and/or its agent negligently and unskillfully carried out a HIV Antibody Screening Test on her, which produced a false HIV positive result that caused her mental anguish and emotional trauma, for which she holds the Defendant vicariously liable.

3. Further, the Plaintiff averred that the Defendant defamed her by maliciously forwarding the false HIV positive results to a third party through a letter dated 5/8/2004. She averred that the said publication was understood to mean that she is a woman of loose morals who is not self-respecting and who transmitted HIV to her child. It was also her contention that the defamatory publication exposed her to great public ridicule, scorn and shunning by reasonable and right thinking members of the society. In totality, the Plaintiff pleaded that she suffered loss and damages as a result of the Defendant's aforesaid actions and holds it liable.
4. The Defendant denied the claim through a Defence dated 15/8/2005. It averred that the Plaintiff voluntarily consented to the HIV test by executing an identity and consent form and voluntarily elected to attend Dr. Maina Ruga, out of the Defendant's panel of doctors, for the aforesaid medical examination. The Defendant denied that it is vicariously liable for any alleged negligent acts of Dr. Maina Ruga stating that the doctor carried out the test as an independent and qualified professional and gave an expert opinion within his profession. In its view therefore, Dr. Maina is solely liable for any negligence that may be proven in the matter.
5. In addition, the Defendant denied publishing the medical test results to a third party and stated that they were only released to the Plaintiff's personal doctor upon her own written and oral request, in accordance with established Guidelines. According to the Defendant therefore, the Plaintiff's suit does not disclose any reasonable cause of action against it.
6. The Third Party denied the claim vide a Defence dated 13/3/2006 in which he pleaded the doctrine of *volenti non fit injuria*. He asserted that the Plaintiff and the Defendant nominated him to carry out the HIV test without consulting him and that the Plaintiff willingly went to his clinic for the test which was done with her full consent. Further, the Third Party averred that the Defendant only paid him to conduct a HIV screening test (ELISA) for the Plaintiff and not a fool proof test. It was also his averment that the false HIV-positive result from the first Antibody Screening Test was not due to any negligence on his or any of his agents part but was occasioned by factors beyond their control *inter alia* the Plaintiff's health at the material time. Lastly, the doctor denied disclosing the Plaintiff's results to any third party other than the Defendant.

Evidence

7. PW1, E.W.K was the Plaintiff herein. She adopted her witness statement dated 21/11/2011 as her evidence in chief and adduced her List of Documents in support thereof. It was her testimony that on 13/7/2004, Mr. Mathew Kongo, an agent of the Defendant, took her to the Third Party herein for medical examination. She did not know that she was to undergo a HIV test. After being tested, she was advised that the results would be forwarded to the Defendant.
8. PW1 testified that after a while, the Defendant sent her a letter dated 5/8/2004 informing her that they were unable to offer her a Life Insurance Policy and that she should consult her personal medical doctor for details. She stated that she went to her doctor and had various tests conducted on her, all of which turned negative. Thereafter, she went to the Defendant's offices and asked the agents to explain why they had refused to insure her but they instructed her to write a letter requesting that the results be released to her doctor. She wrote the said letter on 6/9/2004.



9. The Plaintiff further averred that she learned that the results had been sent to her personal doctor, Kinyua, at Zimmerman Clinic prior to writing the letter and that the doctor had returned them to Defendant because he was unable to disclose them to her. She went back to the Defendant's offices and was advised to go back to the Third Party herein. Further, PW1 asserted that on 13/9/2004 upon arrival at the Third Party's offices, she paid Kshs. 700/- for consultation and doctor Ruga told her that she was HIV Positive, without any prior counselling. The revelation traumatized her and all she could think about was how it was going to impact her marriage and the health of her 5-month old baby, whom the doctor advised her to bring to him to commence medication. It was PW1's testimony that 14/9/04, she returned to Dr. Ruga and requested him to repeat the HIV test, for which she paid Kshs. 800/-. The second test came out negative but the Third Party never apologized or refunded her money.
10. The Plaintiff testified that she went back to the Defendant's offices and was sent to another doctor to carry out a HIV test which also turned out to be negative. She then requested the Defendant to release to her the initial false positive results but the Defendant's agents refused to release them to her and instead referred her to their legal adviser who offered to pay her Kshs. 1,000,000/- which she declined to accept. Subsequently, on 23/9/2004, the Defendant purported to offer her the Life Insurance Cover but she refused to accept.
11. On cross-examination, the Plaintiff reiterated that she did not know that she was being tested for HIV and Jubilee did not tell what tests were going to be done. She asserted that she was not the one who filled the policy application form but admitted that she signed it. She averred that she could not recall whether she was given a list of doctors to choose from. Further, the Plaintiff admitted that she signed the Consent form that gave approval for medical tests to be done and that she is the one who authorized Jubilee to give the results to her doctor Kinyua. She also averred that she sued Jubilee because she did not know Dr. Ruga.
12. PW1 further stated that she knew her HIV status was negative as she had been tested at Nazareth hospital when pregnant. She also averred that the doctor apologized for the first test but the damage had already been done. She maintained that Dr. Ruga did not counsel her or explain to her why the two results were different. In her view, a second test ought to have been done immediately after the first one. She asserted that since she was married, it was very difficult to tell her husband that she was HIV positive but she eventually told him about the false-positive test result. PW1 further confirmed that Dr. Ruga was not involved in the transmission of the results to third parties.
13. In re-examination, the Plaintiff stated that Dr. Ruga was chosen by Jubilee and its agent took her to him. She was adamant that the Defendant did not explain to her the tests she was to undergo and neither did Dr. Ruga.
14. The Defendant's witness, DW1, Kigunda Kagwana, a Business Manager at the Defendant Company adopted his statement dated 5/11/2021 and adduced the Defendant's List of Documents dated 2/10/2008 and Supplementary List of Documents dated 12/3/2013.
15. It was his testimony that on 11/6/2004, the Plaintiff applied for a Career Life Policy for the sum of Kshs. 300,000/- and was issued with an application form which she signed. Based on the sum assured by the Plaintiff, the Defendant requested the Plaintiff to undergo various medical tests including a HIV test. That prior to the tests, the Plaintiff was required to read the Identity and Consent form (page 2 of Defendant's List of Documents) and thereafter fill two forms namely an Extract of Identity Card Details form (page 3) and a Declaration of Informed Consent to HIV Test form (page 5). That it was also standard procedure that the person drawing the blood sample executes a Declaration Form (page 4) confirming that the informed consent of the patient had been obtained prior to testing.



16. Further, DW1 averred that out of the doctors in the Defendant's panel, the Plaintiff settled on Dr. Maina Ruga for purposes of the HIV test which was conducted on 13/7/2004. Thereafter, the Defendant received the laboratory report indicating that the Plaintiff has tested Positive for HIV, under confidential cover. According to DW1, at the time, a HIV positive person could not be covered under the Career Life Policy hence the reason why the Defendant wrote the letter of 5/8/2004 declining the Plaintiff's proposal and processed a refund of the premium deposit.
17. It was DW1's further assertion that the Plaintiff wrote to the Defendant on 6/9/2004 asking it to forward the medical report to Dr. Kinyua of Zimmerman Clinic through an agent of Jubilee, one Mathew Kongo. He stated that the medical report was forwarded to the said Dr. Kinyua vide a confidential letter dated 8/9/2004 and copied to the Plaintiff. However, Dr. Kinyua wrote to the Defendant on 8/9/2004 indicating that he was unable to disclose the medical results to the Plaintiff. That as such, on 9/9/2004, the Defendant forwarded the results back to Dr. Ruga to disclose them to the Plaintiff. Thereafter, on 20/9/2004, Dr. Ruga wrote to the Defendant indicating that he had undertaken fresh counselling and fresh HIV testing on the Plaintiff and the results turned out negative. That in light of this new development, the Defendant made an acceptance letter dated 23/9/2004 to the Plaintiff but she refused to take up the policy.
18. In addition, DW1 testified that on 12/10/2004, one Mr. Perminus Gibson presented a letter dated 11/10/2004 purporting to be from the Plaintiff seeking to collect her initial medical report. However, the Defendant refused to provide the report as it could not ascertain the identity of the said Perminus Gibson who claimed to be Dr. Kinyua but failed to produce his National ID. As such, on 21/10/2004, the Defendant wrote to the Plaintiff and referred her to Dr. Ruga for collection of her initial results. DW1 asserted that the Defendant did not disclose the Plaintiff's medical results to anybody else other than Dr. Kinyua, at the Plaintiff's request.
19. On cross-examination, DW1 admitted that the HIV test was not specified in the consent form. He claimed that it is the doctor who specifies the test to be done. He admitted that the Defendant advised the Plaintiff to see her personal doctor but did not indicate the reason. He stated that following the Plaintiff's written request, they released the results through agent Kogo to deliver to her doctor. He stated that they did not request a repeat test but when Dr. Ruga sent them the second medical report, they offered a letter of acceptance to the Plaintiff based on that. Further, DW1 confirmed that the Defendant only paid Kshs. 790/- for the Plaintiff's HIV test.
20. The Third Party herein Dr. Maina Ruga, a general medical practitioner based in Nairobi adopted his Witness Statement dated 13/3/2013 as his evidence in chief. He stated that the Plaintiff was sent to his clinic on 13/7/2004 by the Defendant. He averred that he did not meet the Plaintiff on that day but she was directed to the laboratory where her blood sample was taken. He testified that the initial results from the laboratory showed that the Plaintiff was HIV Positive and the results were released to the Defendant as per the instructions of the Defendant and with the Consent of the Plaintiff. It was his testimony that he however met the Plaintiff on her second visit to the clinic on 13/9/2004. That he personally counselled the Plaintiff on the different result, offered possible reasons for the same and offered an apology for the previous false HIV-positive results.
21. The Third Party testified that he then immediately called the Underwriting Department of the Defendant to explain the error in the initial laboratory test results. In his view, the error in the initial test results may have resulted from a defect in the test kit that was used at the laboratory which can only be attributed to the manufacturer. It was also his view that the false HIV test result may also be caused by a patient's health condition and/or other reasons at the material time such as:
 - a. Whole blood or plasma containing other anticoagulants other than EDTA.



- b. Levels of antibodies in Plaintiff and of other viruses other than HIV 1 and II.
 - c. Disease state of the Plaintiff at time of test and other potentially interfering substances in the blood.
 - d. Protein cross reaction due to the congregation of antibodies at one place.
 - e. Causes of unknown aetiology reacting in a positive manner, but the origin of the cause at that time is unknown.
22. The doctor noted that medical laboratory tests for HIV are not full proof and that is why repeat tests are normally advised. Further, he stated that on both occasions, the test results from his laboratory were sent to the Defendant only and were concealed with a mark of the requisite confidentiality, with the Plaintiff's knowledge and consent. He maintained that the sum of Kshs. 770/- paid by the Defendant for the test only covered the screening test and/or HIV (eliza) and not foolproof tests.
23. On cross-examination, Dr. Ruga stated that he was appointed to the Defendant's panel in 1999 and the Defendant paid for services referred to him. He averred that on 13/7/2004, his lab technician, Ann Njoroge, did the test and counselled the Plaintiff accordingly. He asserted that the Plaintiff signed a consent for the test to be done. Lastly, the doctor noted that Jubilee received the first Report on 21/7/2004.

Analysis and Determination

24. The court has perused and carefully considered the parties' pleadings, documents, evidence adduced as well as the submissions and numerous authorities cited. The following are the issues that fall for determination :-
- i. Whether the Plaintiff's informed consent was obtained prior to HIV testing
 - ii. Whether the Plaintiff underwent post-test counselling before being told that she was HIV positive?
 - iii. Whether the Third Party was negligent in the manner in which he conducted the HIV testing and informed the Plaintiff that she was HIV positive when she was not
 - iv. Is the Defendant vicariously liable for the negligent acts of the Third Party?
 - v. Whether the Plaintiff has made out a case for defamation against the Defendant
 - vi. Whether the Plaintiff is entitled to the Reliefs sought.

Whether the Plaintiff's informed consent was obtained prior to HIV testing

25. The Plaintiff claimed that she was not informed that she was to undertake a HIV test. However, during cross-examination, she admitted that she signed the 'Declaration of Informed Consent to HIV Test' (page 5 of Defendant's List of Documents). The Defendant also adduced a document titled 'Declaration by Person Drawing the Sample' (page 4 of Defendant's List of Documents) executed by one Anne N. Njoroge and confirming that the informed consent of a patient of Identity Card Number 14608642 who was the Plaintiff herein, was obtained prior to testing for HIV antibodies. In the premises, the court finds that there is no evidence that the Plaintiff was subjected to involuntary HIV testing. Her consent was duly obtained prior to the exercise.



Whether the Plaintiff underwent post-test counselling before being told that she was HIV positive

26. The Plaintiff pleaded and testified that the Third Party did not counsel her prior to informing her about the initial HIV false-positive result. On the other hand, the doctor maintains that he personally saw the Plaintiff on her second visit to the clinic and counselled her accordingly. The court notes that the Defendant adduced a letter dated 20/9/2004 from the Third Party indicating that he counselled the Plaintiff on 13/9/2004 and took another blood sample, which turned negative (page 12 of the Defendant's List of Documents). Notably, the Plaintiff did not controvert the contents of this letter hence the court can only deduce that the Plaintiff was indeed counselled by the Third Party on 13/9/2004 when she went for her initial results and decided to undertake a confirmatory/ repeat test on that basis.

Whether the Third Party was negligent in the manner in which he conducted the initial HIV testing

27. It is not in contention that the Plaintiff was a victim of a false-positive HIV result. The Plaintiff accused the Third Party of conducting the HIV Antibodies screening test negligently and unskillfully. Her claim is anchored on the contention that a confirmatory test was not done soon after the false-positive result to avoid a misdiagnosis.
28. Negligence was defined in the case of *Blyth vs. Birmingham Water Works Co.* 11 Ex. 784 as, "The omission to do something which a reasonable man would do; or doing something which a reasonable man would not do."
29. In *Lucy Njeri Ngugi & another v Avenue Healthcare Ltd & 2 others* [2018] eKLR, Njuguna J. held that:
- "A doctor can only be held guilty of medical negligence when he falls short of the standard of reasonable medical care and not because in a matter of opinion he made an error of judgment. For negligence to arise there must have been a breach of duty and the breach of duty must have been the direct or proximate cause of the loss, injury or damage. By proximate, I mean a cause which in a natural and continuous chain, unbroken by any intervening event, produces injury and without which injury would not have occurred. The breach of duty is one equal to the level of a reasonable and competent health worker."
30. In the case of *Jimmy Paul Semenye v Aga Khan Hospital & 2 Others* [2006] eKLR, the court stated that:
- "There exists a duty of care between the patient and the doctor, hospital or health provider. Once this relationship has been established, the doctor has the following duty;-
- a. Possess the medical knowledge required of a reasonably competent medical practitioner engaged in the same specialty;
 - b. Possess the skills required of a reasonable competent health care practitioner engaged in the same specialty;
 - c. Exercise the care in the application of the knowledge and skill to be expected of a reasonably competent health care practitioner in the same specialty; and
 - d. Use the medical judgment in the exercise of that care required of a reasonably competent practitioner in the same medical or health care specialty.
- When a physician or other medical staff member does not treat a patient with the proper amount of quality care, resulting in serious injury or death they commit medical negligence."



31. It is common ground that the Third Party performed a HIV Antibodies Screening Test using the ELISA method. In the court's view, although the Third Party was nominated to conduct the HIV test on the Plaintiff without his prior approval, once he agreed to test her at his clinic, a duty of care arose on his and his staff part to the Plaintiff herein. That duty required the Third Party to ensure that his laboratory technician who attended the Plaintiff possessed the knowledge, skills and expertise to conduct the test and that the same is done in a proper and reasonable manner.
32. The question therefore would be whether a reasonable doctor would have immediately carried out a confirmatory test to establish whether the Plaintiff was indeed HIV positive before transmitting the results to the Defendant. In the court's considered view, the answer to this question is in the affirmative. The Stanford Medicine Healthcare in their online article on Enzyme-Linked Immunosorbent Assay (ELISA) states that a positive (reactive) ELISA test must be used with a follow-up (confirmatory) test, such as the Western blot test, to make a positive diagnosis. The Third Party himself testified and indeed confirmed on cross examination that medical laboratory tests for HIV are not foolproof hence repeat tests are normally advised.
33. The Third Party, being the one possessed of the knowledge and skills of HIV testing in his capacity as a doctor, was obligated to inform the Defendant that a single HIV Positive test result was insufficient under the circumstances because of the possibility of erroneous results. It was incumbent upon the doctor to advise the Defendant to withhold any action based on the initial positive results and to allow the Plaintiff to undertake a confirmatory test so as to establish her true HIV status. Rather, the Third Party simply transmitted the false results to the Defendant and kept mum until the Plaintiff took herself back to his clinic and requested for a repeat test upon being informed that she was HIV positive.
34. In the premises, the court finds that the Third Party breached the duty of care which a prudent doctor possessed of experience and special knowledge and skill would have been expected to exercise keeping in mind the best interest of the patient and the impact that false HIV-positive results can have on someone. Suffice it to note, there is no doubt that as a result of the wrong diagnosis, the Plaintiff suffered great mental anguish and emotional trauma. The Plaintiff has therefore proven negligence on the part of the Third Party.
35. Is the Defendant vicariously liable for the negligent acts of the Third Party? In this court's considered view, indeed it is as it nominated, authorised and paid the Third Party to conduct the initial HIV test that produced erroneous results, for its own use.

Whether the Plaintiff has made out a case for defamation against the Defendant

36. According to *Black's Law Dictionary*, 9th Edition at page 479 defamation is defined as:

“The act of harming the reputation of another by making a false statement to a third person.”
37. Patrick O'Callaghan in *The Common Law Series: The Law of Tort* at paragraph 25.1 stated that the law of defamation is primarily concerned with the protection of a person's reputation and not his or her character.
38. The elements of defamation were outlined by the Court of Appeal in case of *Selina Patani & another v Dhiranji V. Patani* [2019] eKLR and *Raphael Lukale v Elizabeth Mayabi & another* [2018] eKLR as follows:
 - i. The statement must be defamatory.
 - ii. The statement must refer to the plaintiff.



- iii. The statement must be published by the defendant.
 - iv. The statement must be false.
39. In the instant case, the Plaintiff claims that the Defendant defamed her by publishing the initial erroneous HIV positive results to a third party. There is no doubt that such a publication would be defamatory as it can lower the Plaintiff's reputation in the estimation of right thinking members of society generally or expose her to public hatred, contempt or ridicule or shunning. It is also crystal clear that the said results which appear at page 6 of the Defendants List of Documents refer to the Plaintiff by her three names. Further, there is no contention that the statement was false as it was later discovered to be erroneous and when a confirmatory test revealed that the Plaintiff is HIV negative.
40. The issue in contention is whether the Plaintiff proved that the Defendant published the erroneous results to third parties. The Court of Appeal in the case of *Wycliffe A. Swanya v Toyota East Africa Ltd & Another* civil Appeal 70 of 2008 [2009] eKLR stated that publication in the sense of defamation means that the defamatory statement was communicated to someone other than the person defamed. In this case, the Plaintiff claims that she discovered that the Defendant forwarded the erroneous results to a third party through a letter dated 5/8/2004. She also claims that the results were initially sent to her personal doctor without her approval.
41. The court has carefully examined the evidence on record. Foremost, the court notes that the Plaintiff's allegations are not backed by any evidence. She did not tell the court how she came to learn that her doctor had been sent the erroneous results without her approval and neither did she call the said doctor to testify in court and corroborate that assertion. Instead, the evidence on record corroborates DW1 testimony that the results were released to the Plaintiff's doctor with her full consent.
42. Indeed, on 6/9/2004, the Plaintiff wrote a note to the Defendant requesting that her medical report be forwarded to Dr. Kinyua of Zimmerman Clinic through Mathew Kongo. (See page 9 of Defendant's list of Documents). Subsequently, on 8/9/2004, the Defendant forwarded the Plaintiff's medical report to her doctor as instructed. (See page 10 of Defendant's list of Documents). On the same day, the Plaintiff's doctor wrote back to the Defendant confirming receipt of the report and informed the Defendant that he could not divulge the information to the Plaintiff. (See page 11 of Defendant's list of Documents). On that basis, through a letter dated 9/9/2004, the Defendant returned the Plaintiff's medical report a letter to the Third Party so he could get in touch with her.
43. Consequently, the court finds that the Plaintiff did not prove that the Defendant published and/or communicated the erroneous results to any third party without her consent. The tort of defamation has therefore not been proved against the Defendant at all.

Whether the Plaintiff is entitled to the Reliefs sought. Special damages in the sum of Kshs. 2,200/-.

44. Special damages must be specifically pleaded and strictly proved. The Plaintiff only adduced two receipts from Exchange Laboratory Services for a total sum of Kshs. 1,500/-. That is the only amount recoverable as special damages.

General damages for pain, suffering and loss of amenities.

45. There is no doubt that the Plaintiff suffered great mental anguish and emotional trauma from the time she learnt about the erroneous results on 13/9/2004 up to 14/9/2004 when the repeat test was conducted. The Plaintiff has urged that she be awarded general damages of Kshs. 7,000,000/- while the Defendant urged that an award of Kshs. 1,000,000/- would suffice in this regard. In *M K v Seventh Day Adventist Health Services & Maragia Omwega* [2016] eKLR, Serгон J. awarded Kshs. 6,000,000/- to



a Plaintiff who was misdiagnosed with HIV and was traumatized for eight (8) months before a repeat test revealed that he was HIV negative. In *Lucy Njeri Ngugi & another v Avenue Healthcare Ltd & 2 others* [2018] eKLR, the Court awarded the plaintiff general damages of Kshs. 600,000 for pain and suffering occasioned by the side effects of malaria misdiagnosis. In the instant case, taking into account the fact that the plaintiff suffered mental trauma and anguish for just a day, the court will award general damages of Kshs. 600,000/-.

General damages for defamation

46. There is no basis for this award as defamation was not proved.

Exemplary damages

47. Exemplary damages also known as punitive damages are awarded to punish and deter. The Court of Appeal *Godfrey Julius Ndumba Mbogori & another V. Nairobi City County* [2018] eKLR stated that:

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute”.

48. In the present case, the court has not found any basis for awarding exemplary damages.

Conclusion

49. The upshot is that:

- i. judgment is entered for the Plaintiff against the Defendant and the Third Party jointly and severally as follows:-
 - a. Special damages – 1,500/-
 - b. General damages for pain and suffering - Kshs. 600,000/- payable by the Defendant and the Third Party jointly and severally.
 - c. General damages for defamation - Nil.
 - d. Exemplary damages - Nil.Total Kshs. 601,500/-.
- ii. General damages will accrue interest at court rates from the date of this judgment while the special damages will earn interest from the date of filing of the suit.
- iii. The Plaintiff is also awarded the costs of the suit.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 27TH DAY OF JULY 2023.

JANET MULWA

JUDGE

