



REPUBLIC OF KENYA



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**Real People Kenya Limited & another v Nyandega t/a Akmal Enterprises & another
(Civil Appeal 33 of 2020) [2022] KEHC 2118 (KLR) (23 February 2022) (Judgment)**

Real People Kenya Limited & another v John Nyandega t/a Akmal Enterprises & another [2022] eKLR

Neutral citation: [2022] KEHC 2118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL 33 OF 2020
JN KAMAU, J
FEBRUARY 23, 2022**

BETWEEN

**REAL PEOPLE KENYA LIMITED 1ST APPELLANT
JAIRO OUNZE MUKOYA T/A YAMUKO AUCTIONEERS 2ND APPELLANT**

AND

**JOHN NYANDEGA T/A AKMAL ENTERPRISES 1ST RESPONDENT
EUNICE ODODA 2ND RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon R.K. Ondieki (SPM) delivered
at Kisumu in Chief Magistrate's Court Case No 219 of 2019 on 3rd June 2020)*

JUDGMENT

Introduction

1. In his decision of 3rd June 2020, the Learned Trial Magistrate, Hon R. K. Ondieki, Senior Principal Magistrate, entered Judgment in favour of the Respondents as against the Appellants jointly and severally as follows:-
 - a. Loss of profits Kshs 15,000 x 45 days Kshs 675,000/=
 - b. Cost of insurance Kshs 215,044/=
 - c. Sums paid as at 31st August 2017 Kshs 1, 296,000/=
 - d. Costs of the suit.



2. Being aggrieved by the said decision, on 2nd July 2020, the Appellants filed a Memorandum of Appeal dated 30th June 2020. They relied on nine (9) grounds of appeal.
3. Their Written Submissions were dated 22nd October 2021 and filed on even date while those of the Respondents were dated 3rd November 2021 and filed on 5th November 2021.
4. The Judgment herein is based on the said Written Submissions which the parties relied upon in their entirety.

Legal Analysis

5. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
6. This was aptly stated in the case of *Selle & Another vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
7. Having looked at the Grounds of Appeal and the respective parties' Written Submissions, it appeared to this court that the Appellants focused on five grounds of appeal out of the initial nine (9) issues that had been placed before it to consider. These were:-
 - a. Whether or not the Appellants had proved their case;
 - b. Whether or not the Learned Trial Magistrate erred in having dismissed the 1st Respondent's Counterclaim.
8. This court therefore dealt with the said issues under the following distinct and separate heads.

I. Proof Of The Respondents'case

9. The Respondents' case was that vide an undated Agreement (hereinafter referred to as "the Agreement"), the 1st Appellants advanced them a loan of Kshs 1,250,000/= to purchase Motor Vehicle registration Number KCE 076Q (hereinafter referred to as "the subject Motor Vehicle"). The said loan was repayable from 15th November 2015 to 15th November 2018, a period of thirty six (36) months.
10. Due to a slump in the period leading to the general elections in 2017, they fell into arrears. At the same time, the 1st Respondent requested them to park the subject Motor Vehicle at the Respondents' parking yard under the pretext that the subject Motor Vehicle would be free from risk of damage from post-election violence that was rife in Kisumu at the time. They were to collect the said subject Motor Vehicle on 31st August 2017.
11. However, when they went to collect the said subject Motor Vehicle, they were informed that the same had been sold in a public auction for a sum of Kshs 620,000/=. They termed the sale an illegality as they were not issued with any notices, proclamation and the same was not advertised for sale. They added that the sale was also fraudulent as they were duped to taking the subject Motor Vehicle to the parking yard to avoid the post election skirmishes.



12. They averred that they suffered loss of profits, future earnings, cost of insurance and a sum of Kshs 1,296,000/= that had been paid as at 31st August 2017 and sought judgment jointly and severally against the Appellants herein.
13. On their part, the Appellant's case was that the Respondents were to pay the loan amount in instalments of Kshs 65,705/= but that they fell into arrears in March 2017, April 2017 and July 2017. They denied the illegality and fraud that had been itemised in the Plaint. Their Counter-claim was for a sum of Kshs 745,509.47, which sum was to be fully repaid on or before 15th November 2018, which sum continued to accrue interest until payment in full. They therefore sought for entry of judgment in their favour against the Respondents herein.

A. Terms Of The Contract On Recovery

14. Grounds of Appeal Nos (1), (2) and (3) were dealt with under this head.
15. The Appellants argued that Paragraph 15 of the contract entered into and executed by the 1st Appellant and the Respondents herein was totally different from Paragraph 15 (sic) that was cited by the Learned Trial Magistrate in his judgement. They asserted that the said Paragraph 15 merely prescribed one of the remedies that they were entitled to and was discretionary as it used the word, "may" which showed that the same was not mandatory and/ or the only recourse.
16. They argued that the said Learned Trial Magistrate rewrote the existing contract which action was contrary to the law. In this regard, they relied on the cases of Margaret Njeri Muiruri vs Bank of Baroda (Kenya) Limited [2014]eKLR and the case of National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Limited & Another[2001] eKLR where the common thread was that the interpretation of a contract derives from the terms in it and that courts cannot re-write contracts between parties.
17. They further argued that 'legal proceedings' were not limited to court proceedings as was erroneously interpreted by the Learned Trial Magistrate as Paragraph 11 of the said Agreement provided in case of default, the Agreement could be terminated by way of written notice and/or written demand notice calling for immediate payment of all amounts due and accrued interest. They added that Paragraph 19 which provided for general lien or similar right meant that the 1st Appellant had other rights provided in law including the right to repossess and/or sell the subject Motor Vehicle by way of auction after following due process of the law. It was therefore their submission that the subject Motor Vehicle was repossessed after adhering to the due process of the law.
18. They added that the Respondents voluntarily handed over the subject Motor Vehicle on the understanding that they would collect the same after paying the arrears. They denied that they hood winked the Respondents to hand over the said Motor Vehicle.
19. On their part, the Respondents agreed that it was trite law that the interpretation of a contract derived from the terms in it and in that regard concurred with the cases that the Appellants cited in support of their case.
20. They argued that there was nothing ambiguous about Clause 15 of the said Agreement and were emphatic that the Learned Trial Magistrate did not re-write their contract. They added that the 1st Appellants reserved its right to terminate the contract and then sue to recover outstanding amounts by attaching and disposing of the subject Motor Vehicle but not repossess the subject Motor Vehicle before suing.
21. They averred that it was trite law that where property was attached in ostensible execution of a debt, such attachment was illegal if no instrument was executed charging the property in question. In this



regard, they relied on the cases of *Chris Osenga vs Francis Arumba Nairobi HCCC No 1682 of 2000 (Milimani)* and *Simon Muiruri Wanjohi vs Resma Commercial Agencies and Another (eKLR citations not given)* where the common thread of the said cases was that an agreement purporting to grant a party the right to repossess a motor vehicle was not a chattels mortgage and did not create any right over a borrower's property.

22. They were emphatic that the 1st Appellant had sought to rely on stretched interpretation of clauses that it drafted to impose remedies that did not exist. They argued that if the parties had intended that the 1st Appellant would have the right to recover by attaching the said motor vehicle, nothing would have been easier than for them to have stated as much.
23. They further argued that the contract was drafted by the 1st Appellant and therefore it had the luxury of ensuring that all the terms that were favourable to it because they did not have the opportunity to negotiate the terms of the contract.
24. Notably, it was not disputed that the 1st Appellant entered into a Loan Agreement with the Respondents herein. As submitted by parties, it is trite law that parties to a contract are bound by the terms and conditions stipulated therein unless fraud, coercion, misrepresentation, mistake or undue influence are demonstrated as was held in the case of *National Bank of Kenya vs Pipeplastic Samkolit (K) Ltd & Another (Supra)*.
25. In the case herein, parties acknowledged having entered into the said Agreement for the sale of the subject Motor Vehicle. As none of them complained of any vitiating factors that they could each have relied on to have avoided the contract between them, they were accordingly bound by the terms of the said Agreement. What was left was for this court to ascertain and give effect to the common intention (emphasis court) of the parties, a conclusion that the court arrived at in the case of *Sun Sand Dunes Limited vs Raiya Construction Limited [2018]eKLR*.
26. Notably, Clause 15 of the said Agreement read as follows:-

“The Company reserves the right to terminate this Loan Agreement and proceed with legal proceedings which proceedings may result in a court of law enforcing the repayment of the Borrower's outstanding obligations in terms of this Loan Agreement.”
27. In his decision, the Learned Trial Magistrate spelt out the Clause to have read as follows:-

“that the vendor shall reserve the right to realize any outstanding balance from the purchaser through recourse in Court or otherwise in the event there is practical difficulty in repossessing the motor vehicle which shall at times be available for inspection by the Vendor before the clearance of the outstanding balance”
28. Having examined the material Clause 15 of the said Agreement against the Learned Trial Magistrate's phrase in page 3 of Judgement, it was apparent that the two (2) paragraphs were very different from each other as was submitted by the Appellants herein.
29. The interpretation from the Learned Trial Magistrate's phrase was that the vendor therein would only proceed in court in the event it experienced practical difficulties in repossessing the motor vehicle. This court's interpretation of Clause 15 of the said Agreement was that in case of default, the 1st Appellant reserved a right to terminate the contract and proceed with legal proceedings, which proceedings may (emphasis court) result in a court of law enforcing the repayment of the Respondents' outstanding obligations in terms of the loan agreement.



30. In the mind of this court, the use of the word “may” did not mean that the legal proceedings would not necessarily be a recourse in court but rather that the court in which the proceedings had been filed had the discretion of granting reliefs that enforced the repayment of any outstanding monies due and owing to the 1st Appellant herein. In other words, it was not mandatory that the court would grant those reliefs. This is obvious for the reason that a court will only grant reliefs if the claims have been proven to the required standard and not merely because a claim had been lodged in court.
31. This court therefore agreed with the Respondents that if the parties herein had intended that repossession was the means of recovery of the subject Motor Vehicle, nothing would have been easier than for them to have included the same in their said Agreement in the same manner the clause the Learned Trial Magistrate had erroneously alluded to had clearly stated.
32. This court had due regard to Section 4 of the Chattels Transfer Act Cap 28 (Laws of Kenya) which stipulates as follows:-
- “All persons shall be deemed to have notice of an instrument and of the contents thereof when that instrument has been registered as provided by this Act:”
33. No such Chattels Instrument was presented to this court to have authorised the 1st Appellant to have repossessed the subject Motor Vehicle.
34. As was held in the case of Simon Muiruri Wanjohi vs Resma Commercial Agencies & Another [2005] eKLR, where there was no registered chattels mortgage, a party had no authority to repossess a chattel. Its only recourse would be to seek the court’s intervention because in the absence of this, it would be a jungle with no rules.
35. This court thus determined that the terms of the contract in the Agreement as regards the recovery of any outstanding sums due and owing to the 1st Appellant excluded repossession of the subject Motor Vehicle at the first instance but included the following remedies:-
- a. Payment of interest payable at any time of demand and represent a reasonable pre-estimate of the loss suffered by the lender;
 - b. Penalty interest on default and/or on any amount not paid on the due date;
 - c. Full outstanding balance of the Loan capital together with all agreed charges/fees (including unpaid accrued interest) become due and payable upon the sole discretion and instance of the 1st Appellant;
 - d. Terminate the Agreement and proceed with legal proceedings;
 - e. Recovery of attorneys or registered debt collector’s fees which costs shall include commission at agreed debt collector’s rate.
36. The court therefore further agreed with the Respondents that the 1st Appellant could not have repossessed the subject Motor Vehicle without first having obtained requisite orders from the court pursuant to instituting legal proceedings in court.
37. In the premises foregoing, there was no merit in Grounds of Appeal Nos (1) and (2) that the Learned Trial Magistrate had erred in having determined that the 1st Appellant was required to have instituted legal proceedings before repossessing the subject Motor Vehicle and the same be and are hereby dismissed. However, Ground of Appeal No (3) relating to the Learned Trial Magistrate having erred in having introduced a term that was not in the contract was merited and was upheld.



B. Validity Or Otherwise Of Sale Of Motor Vehicle

38. Ground of Appeal No (4) was dealt with under this head.
39. The Appellants submitted that prior to the repossession and sale of the subject Motor Vehicle, due process of the law was adhered to. They argued that the Respondents produced letters in court which confirmed that the 1st Respondent's proprietor, John Nyandega (hereinafter referred to as "PW 1") personally handed over the subject Motor Vehicle to the 1st Appellant's agent on agreement that he avails two (2) months loan arrears owing to it before collecting the subject Motor Vehicle. They added that that was done voluntarily and there was no hoodwinking or false representation whatsoever.
40. The 1st Appellant stated that it duly issued the Respondents with the requisite demand notices on 12th June 2017, 22nd June 2017 and 14th July 2017 and statutory notices informing them of their default. It was emphatic that that it instructed the 2nd Appellant to commence recovery proceedings against the Respondents to enable them recover the outstanding loan amount that was due and owing to it.
41. The Appellants contended that it was only upon the subject Motor Vehicle being valued and being advertised that the same was sold at a public auction and a certificate of sale was issued to the bona fide purchaser for value. They were categorical that the said sale fetched the 1st Appellant a sum of Kshs 620,000/- being the forced value and as such the 1st Appellant's account still had an outstanding balance of Kshs 283,314.27/- as at 3rd September 2017.
42. The Appellants added that they issued the Respondents with a notification of the said outstanding loan balance which they were required to pay so as to avoid recovery proceedings against themselves.
43. On their part, the Respondents submitted that it was incumbent upon the Appellants to have proven service of the impugned notices. They invoked Rule 12 of the Auctioneers Rules in arguing that they were never served with a Proclamation, Redemption notice and notification of advertisement. They were emphatic that there was clear breach of the Auctioneers Act and Auctioneers Rules and the court found as much. They submitted that the Appellants failed to prove that they served them with the requisite notices and consequently, the Learned Trial Magistrate could not be faulted for having arrived at the conclusion that he reached.
44. They asserted that the fact that they owed the 1st Appellant money did not absolve the said Appellants from following known procedures of execution. In this respect, they relied on the cases of Oakpark Apartments Mombasa Limited vs Kenya Revenue Authority [2018]eKLR , J. N Kinoti t/a Max Auctioneers vs Dr Christopher Luusa [2009]eKLR and Amaco Ltd vs Hezron Getuma Onsongo [2019]eKLR where the common thread in the said cases was that an execution process that violates the Auctioneers Rules was null and void.
45. Notably, Rule 12 (b) of the Auctioneers Rules, 1997 states that person whose goods are to be sold must be served with a Proclamation of Sale and that if he refuses to sign the same, then the auctioneer shall sign a certificate to that effect.
46. Further, Rule 15 (c) of the Auctioneers Rule states that the owner of the goods must be given seven (7) days notice to redeem the goods so proclaimed failing which the auctioneer shall attach the same in accordance with Rule 15 (d) of the Auctioneers Rules. In addition Rule 15 (f) of the Auctioneers Rules states that an auctioneer shall arrange sale not earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter.
47. This court perused the Demand Notices dated 12th June 2017, 22nd June 2017, 14th July 2017, the Notification of Sale of Movable Property dated 15th August 2017, Notification of Sale dated 28th



August 2017 and noted that although the Notices by the Auctioneers had purported to comply with the provisions of the law, none of the notices showed that they were acknowledged by the Respondents herein. There were also no Certificates of Postage to show that the said Notices were sent to the Respondents by way of registered mail.

48. In the absence of any evidence to prove proper service, this court concluded that the Respondents were not served with the Proclamation, the Redemption notice and the notification of advertisement as required by the law which then rendered the entire advertisement in the Newspaper in the Star Newspaper of 25th August 2017 defective ab initio as the purported sale was tainted with illegalities. Further, it found and held that the Respondents were entitled to general damages for unlawful sale. However, it could not for a fact state that the sale was fraudulent as no evidence was presented in court in that regard.
49. In the premises foregoing, this court found and held that Ground of Appeal No (4) was not merited and the same be and is hereby dismissed.

C. Proof Of Claim For Loss By The Respondent

50. Grounds of Appeals Nos (7), (8) and (9) were dealt with under this head as they were all related.
51. The Appellants argued that the Learned Trial Magistrate awarded the Respondents lost profits at Kshs 675,000/= being the value of the contract allegedly left unserved with the Independent Electoral and Boundaries Commission (IEBC) following their alleged breach.
52. They argued that the Respondents were not entitled to the said award for the reason that they never adduced cogent evidence to prove that they indeed worked with the Independent Electoral and Boundaries Commission (IEBC), that they used to earn Kshs 15,000/= per day and that the remaining contract period with the Independent Electoral and Boundaries Commission (IEBC) was for forty five (45) days.
53. They submitted that it was trite law that special damages must be specifically pleaded and strictly proved. In this regard, they relied on the case of Capital Fish Kenya Limited vs The Kenya Power & Lighting Company Limited [2016] eKLR among other cases where the court held that special damages need to be specifically pleaded before they can be awarded. They were emphatic that no credible evidence was tendered in support of the Respondent's claim for loss of profits at Kshs 675,000/=.
54. They further argued that the Learned Trial Magistrate erred in having awarded the Respondents costs of insurance in the sum of Kshs 215,044/= yet Clause 25 of the said Agreement stipulated that the Respondents had an obligation to insure the suit motor vehicle against loss, damage or any other risks pending the full and final settlement of the assent finance facility. They pointed out that the insurance policy that they produced in court commenced on 26th September 2015 and expired on 26th September 2016 before the cause of action arose.
55. They further submitted that the Learned Trial Magistrate erred in having awarded the Respondents Kshs 1,296,000/= being sums paid as at 31st August 2017. They contended that the said sums were paid by the Respondents towards payment of the outstanding loan amount. They argued that the Respondents could not be allowed to benefit from their own wrong at the expense of the 1st Appellant who continued to suffer loss at the expense of the Respondents default.
56. On their part, the Respondents argued that the impugned awards were not only justified but they were also supported by law. They argued that exhibits they produced during trial were convincing enough. They added that the authorities cited by the Appellants on this ground were inapplicable to the case at hand. In this regard, they relied on the case of Capital Fish Kenya Ltd vs KPLC [2016] eKLR where the



court disallowed a claim of special damages on the ground that neither oral nor documentary evidence was led in proof.

57. Notably, the Respondents herein had themselves stated that they took the vehicle to the Appellants and were to collect the same on 31st August 2017. The invoices to IEBC were for 31st July 2017 and 14th August 2017 around the time they said they took the subject Motor Vehicle to the Appellants' parking yard to mitigate the risks of election violence.
58. It is important to point out that save for stating that they were servicing a contract with IEBC losing a sum of Kshs 675,000/= and that they stood to lose income in the sum of Kshs 11,700,000/=, PW 1 did not lay any basis for the said claims. He did not even explain what the Vehicle Fleet Log Sheets and invoices for transport services had to do with the Respondents' case.
59. Going further, Clause 25 of the said Agreement provided as follows:-

The Borrower undertakes to insure and keep insured the Assets purchased with the Loan proceeds against loss, damage by fire such other risks shall deemed desirable or expedient. Proof of the aforesaid insurance must be provided by the Borrower to the Company before any disbursement of the loan proceeds will take place.”

60. Be that as it may, the copy of Policy No 003/084/1/006540/2015/09 was for the period from 26th September 2015 to 25th September 2016. The suit herein was filed on 3rd May 2019. The Learned Trial Magistrate erred and applied the wrong principles in having relied on the said document to reimburse the Respondents insurance that was paid before their claim accrued.
61. Further, awarding the Respondents the sum of Kshs 1,296,000/= was wrong in that the same amounted to double and unjust enrichment. The Respondents could not purport to have taken a loan, purchased a vehicle and claimed to be refunded the instalments they had paid in accordance with the said Agreement when it was clear from the evidence they adduced in court that they were already using the said subject Motor Vehicle to carry on business.
62. Without belabouring the point, this court found and held that the Respondents' claims being special damages, had to be specifically proven. However, the Respondents had failed to prove the same to the required standard of law, which in civil cases is proof on a balance of probability.
63. This court thus came to the firm conclusion that as it was not disputed that the Respondents defaulted in repayment of the monies that were due and owing to the 1st Appellant herein, the Respondents were not entitled to the awards that were granted by the Learned Trial Magistrate.
64. In the premises foregoing, this court found and held that Grounds of Appeals Nos (7), (8) and (9) were merited and the same be and are hereby allowed.

C. Proof Of The Appellants' Counterclaim

65. Ground of Appeal Nos (5) and (6) were dealt with under this head as they were related.
66. The Appellants argued that the Learned Trial Magistrate erred in law and fact when he held that the 1st Appellant breached the contract between the Respondents and themselves and as such the 1st Appellant was estopped from pursuing its counter-claim grounded on a contract which had been breached at their instance. They argued that on the contrary, it was the Respondents who breached the terms of the contract by failing to pay the loan as and when the same fell due.
67. They contended that the Respondents having failed to honour their contractual obligations, it was only fair for the Learned Trial Magistrate to have ordered the Respondents to comply with the terms



- of the said Agreement and pay the outstanding loan amount which they argued continued to accrue interest and penalties until payment in full as per the terms of the agreement. They pointed out that the remaining balance with accrued interests and penalties was Kshs 745,509.47 as at the time of instituting their counter-claim. They submitted the same was proven by the statement of account they tendered in evidence.
68. They were emphatic that the Learned Trial Court's holding that they were wrong in repossessing and disposing of the subject Motor Vehicle was based on the reason that the contract did not entitle the 1st Appellant to repossess the subject Motor Vehicle. In this regard, they relied on The Modern Law of Contract, 8th Edition, where Richard Stone wrote that if only a small portion of a contract was left to be performed, the innocent party was not entitled to treat the contract as vitiated but it could maintain a cause of action in damages.
 69. On the other hand, the Respondents submitted that the Learned Trial Magistrate's decision could not be faulted for finding that once the Appellants had breached the Agreement by conducting an illegal and secret sale of the suit motor vehicle, they could not benefit from that very contract that the court found them having breached.
 70. They further argued that it was an undisputed fact that they had paid a sum of Kshs 1,269,000/= as against a loan of Kshs 1, 250,000/= and consequently, the Learned Trial Magistrate correctly found that what was due were the interests and penalties on the arrears, which they averred was not disputed or appealed against.
 71. Notably, the Learned Trial Magistrate proceeded on an assumption that having paid the principal sum, the Respondents would not have difficulties sorting out the penalties and interest taking into account that the contract had a remainder of its life span. However, as the Respondents had admitted being indebted to the 1st Appellant, they were estopped from avoiding the contract merely because the sale of their subject Motor Vehicle was tainted with illegalities. Equity demanded that they have clean hands by meeting their obligations as had been stipulated in the said Agreement.
 72. The Respondents did not dispute the amount of Kshs 873,317/= that was indicated in the Notification of Sale of Movable Property dated 15th August 2017. The Appellants informed them of the sale of the subject Motor Vehicle at Kshs 620,000/= vide a letter dated 3rd September 2017, a figure they disputed as having been an undervalue, leaving a balance of Kshs 283,414.27.
 73. In the mind of this court, the question of whether the Appellants ought not to have sold the subject Motor Vehicle as the Respondents had already paid principal sums, all narrowed down to the terms of the said Agreement. This court was thus persuaded that the Learned Trial Magistrate erred when he dismissed the 1st Appellant's Counter-Claim as the 1st Appellant and the Respondents were bound by the terms of their contract and the court could not and/or could not purport to re-write their contract for them.
 74. In the premises foregoing, Grounds of Appeal Nos (5) and (6) were merited and the same be and are hereby allowed.

Conclusion

75. It was clear that both the Appellants and the Respondents breached the said Agreement. Whereas the Appellants' recovery process was irregular, the Respondents defaulted in their obligations under the contract. They must then not benefit from the omissions and breaches of each other. Conversely, they must also fulfil the obligations they have towards each other.



Disposition

76. For the foregoing reasons the upshot of this court's decision was that the Appellant's appeal lodged on 2nd July 2020 was partially merited. The effect of this decision is that the judgment of the Learned Trial Magistrate be and is hereby set aside and substituted in the following terms:-
- a. Judgment be and is hereby entered in favour of the 1st Appellants against the Respondents jointly and severally for the sum of Kshs 283,414.27 together with interest thereon at court rate from 3rd September 2017 until payment in full.
 - b. Judgment be and is hereby entered in favour of the Respondents against the 1st Appellant herein for the sum of Kshs 500,000/= being general damages for unlawful sale of the Respondents' subject Motor Vehicle together interest thereon at court rates from the date of judgment herein until payment in full.
 - c. As the Respondents were also partly successful in having general damages awarded to them, this court will deviate from the general principle that costs follow the event and the Appellants and the Respondents bears their own costs of this Appeal.

77. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF FEBRUARY 2022

J. KAMAU
JUDGE

