**Koech v Tapmoke & another (Suing as Personal Representatives and Legal Administrators of the Estate of Eric Maiywa - Deceased) (Civil Appeal 17 of 2018) [2022] KEHC 11311 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11311 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BOMET**

**CIVIL APPEAL 17 OF 2018**

**RL KORIR, J**

**JULY 29, 2022**

**BETWEEN**

**CHRISTOPHER KOECH ..... APPELLANT**

**AND**

**GRACE CHERONO A. TAPMOKE ..... 1ST RESPONDENT**

**LYDIA MAIYWA ..... 2ND RESPONDENT**

**SUING AS PERSONAL REPRESENTATIVES AND LEGAL ADMINISTRATORS OF THE ESTATE OF ERIC MAIYWA - DECEASED**

## JUDGMENT

1. Judgment in the trial court was delivered on 23rd July 2018 in the following terms: -

    a. Liability

        The trial court found the Plaintiff and the Defendant equally liable and apportioned the liability in the ratio of 50:50.

    b. Quantum

        The Plaintiff was awarded the following:
Pain and Suffering Kshs 100,000Loss of expectation of life Kshs 200,000Loss of Dependency Kshs 1,377,552Special Damages Kshs 18,000Less 50% Kshs 847,776Total Amount awarded Kshs 847,776

**The Plaintiff was also awarded half costs of the suit.**

2. Being dissatisfied and/or aggrieved with the decision of the trial court, the Appellant filed his Memorandum of Appeal dated 6th August 2018 relying on the following grounds: -

i. Thatthe trial Magistrate erred in law and fact by not appreciating that the standard of proof in civil cases is on a balance of probability.

ii. Thatthe trial Magistrate erred in law and fact by wrongly evaluating the evidence on record and thereby arriving at a wrong conclusion that the Appellant was an employee of the Respondent on the date of the accident.

iii. Thatthe learned trial Magistrate erred in law and fact in not assessing Quantum of damages.

3. The Appellant prayed that the Judgment of the trial court be set aside and this court assesses the damages and deliver an appropriate Judgment.

**The Plaintiffs/respondents Case.**

4. It was the Respondents' case that on 3rd July 2010, Erick Maiywa (hereinafter referred to as the deceased) was lawfully walking at Kyogong area along Bomet-Narok road when motor vehicle registration number KAE 116R caused an accident in which the deceased suffered fatal injuries. It was their further case that the Appellant was the beneficial owner of the said motor vehicle.

5. The Respondents contended that the deceased was a diligent, hardworking and brilliant 27 year old farmer and businessman who earned about Kshs 25,000 per month and enjoyed robust health and had a promising future. That as a result of the death, his dependants suffered great loss and damage.

**The Respondents' Submissions.**

6. The Respondents submitted that the police officer who produced the police abstract was able to prove that the vehicle belonged to the Appellant. It was their further submission that the abstract was not objected to. Further that the Appellant failed to enjoin the possible owner of the motor vehicle during the trial and therefore he could not allege that he was not the owner of the vehicle without sufficient proof. They relied on the case of Jotham Mugalo VS Telkom (K) Kisumu HCCC NO. 166 OF 2001 to support their submission.

7. It was the Respondents' submission that the trial court applied the correct principles and properly assessed the damages payable to them. That the court gave regard to previous decisions and the award was neither inordinately high nor low. It was their further submission that comparable injuries ought to be compensated by comparable awards. They relied on Cecilia Mwangi & Another Vs Ruth W. Mwangi (UR) and Telkom Orange Kenya Limited Vs I S O Minor Suing Through His Next Friend and Mother J N (2018) eKLR to support this submission.

8. The Respondents submitted that an appellate court would only interfere with an award of damages if the trial court took into account an irrelevant factor, or left out a relevant factor, or if the amount awarded was inordinately high or low. They relied on Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini Vs A.M.M & Another (1998) eKLR and Bashir Ahmed Butt Vs Uwais Ahmed Khan (1982-88) KAR 5 to support this submission.

9. The Respondents submitted that the award made by the trial court was fair and reasonable. It was their further submission that the trial court arrived at a reasoned decision after considering the evidence adduced, the circumstances of the case and precedents in similar circumstances. They concluded that the Appeal was unmerited.

**The Defendant's/appellant's Case.**

10. In the Defence dated 21st April 2017, the Defendant denied being the owner of motor vehicle registration number KAE 116R. He further stated that the vehicle belonged to Father Julius Rotich of the Diocese of Kericho and that it was registered in the name of the Diocese of Kericho.

11. It was the Appellant's case that if any accident occurred on 3rd July 2010, it was caused by the deceased's negligence.

**The Appellant's Submissions.**

12. The Appellant submitted that the evidence produced by the Respondent's first witness could not link him to the accident. That the evidence was hearsay as the witness was not at the scene of the accident. It was the Appellant's further submission that the witness did not produce a marriage certificate to prove that she was the wife of the deceased.

13. The Appellant submitted that the contents of the Occurrence Book recorded on 2nd July 2010 indicated that the victim of the accident was Michael Kipkoech Cheruiyot and not Erick Maiywa. That the oral evidence given by the base commander and the contents of the Occurrence Book contradicted the contents of the Police Abstract which was produced as part of the Respondents' evidence.

14. It was the Appellant's submission that according to the Police Abstract dated 22nd December 2010, the alleged accident occurred on 3rd July 2010 at around 1930 hrs. involving motor vehicle registration number KAE 116R Subaru. That the Plaint indicated that the vehicle which caused the accident was KAE 116R Isuzu. It was his further case that the contents of the Police Abstract could have been manufactured from non-existent facts.

15. The Appellant submitted that as per the documents filed in court on 31st August 2017, the registered owner of the motor vehicle was the Diocese of Kericho and that there was no relationship between the said owner and the Appellant. That the said owner was not brought on board to clarify who had the vehicle at the time of the accident. It was his further submission that he ought to be exempted from liability as the deceased was liable for the accident, if at all it occurred.

16. It was the Appellant's submission that it was the duty of the Respondent to tender proof as provided for under Section 6 of the *Traffic Act*. That he denied ownership of the motor vehicle and it was incumbent upon the Respondents to prove their case. It was his further submission that the Respondents did not bring the registered owner on board to prove whether he was its employee. He relied on Alfred Kioko Muteti Vs Timothy Miheso & Another (2015) eKLR And Osapil Vs Kaddy (2000) 1ealr 187 to support this submission.

17. The Appellant submitted that the Respondent's first witness who claimed to be the deceased's wife failed to prove the deceased's earnings from his alleged farming activities. He relied on the case of Pleasant View School Limited Vs Rose Mutheu Kithoi & Another (2017) eKLR.The Appellant further submitted that the Respondents did not produce a marriage certificate or birth certificates to indicate that the deceased had dependants. That it was trite law that dependency was a matter of fact which had to be proved.

18. The Appellant submitted that on the issue of multiplier, this court should be guided by the case of Benedeta Wanjiku Kimani Vs Changwon Cheboi & Another (2013) eKLR.

19. It was the Appellant's submission that the Respondents did not bring any eye witness to prove the fact that the accident occurred. That the Respondent's second witness confirmed that the deceased was

staggering in the middle of the road making the occurrence of the accident inevitable. It was his further submission that if the Appellant was liable, then the extent of his liability would be 10%.

20. I have considered the Memorandum of Appeal dated 6th August 2018, the trial court proceedings, the Appellant's Written Submissions and Authorities dated 27th July 2021, the Respondent's Written Submissions and Authorities dated 24th November 2021 and the two main issues which arise for my determination are whether liability was proved and whether the award was reasonable.

**I. Liability**

21. It is now settled that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and fact and come up with its own findings and conclusions. In the case of Selle & Another Vs Associated Motor Boat Co. Ltd And Others (1968) EA 123, the Court of Appeal pronounced itself as follows:

> " .....this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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 allowance in this respect".

22. PW2 (No. 234267 CIP Raphael Kioko) testified that he was the Base commander in Bomet. He testified that the accident occurred on 2nd July 2010 and the same was booked in the OB at around 2147 hrs. It was his further testimony that the accident involved the motor vehicle registration number KAE 116R Subaru which was driven by the Appellant. That the Appellant was recorded as the owner of the vehicle in the Police Abstract which was produced and marked as P.Exh. 3. PW1 (Lydia Maiywa) testified that her husband, the deceased died from a road accident which took place on 3rd July 2010.

23. The Police Abstract stated that the accident occurred on 3rd July 2010 at Kyogong area along Bomet-Narok road. It also indicated that the person who was fatally injured was Erick Maiywa. It is salient to note that the Occurrence Book was not produced in court as evidence.

24. In the Pleadings, the Appellant denied the existence of the accident. CIP Raphael Kioko (PW2), who was the Base Commander testified that the accident occurred on 2nd July 2010. He produced the Police Abstract Prosecution Exhibit No.3 which indicated that the Motor Vehicle involved in the accident was KAE 116R. The occurrence of the accident was not challenged on cross examination and neither did the Appellant produce evidence to rebut the occurrence of the accident. I find it proven on a balance of probability that the accident between motor vehicle registration number KAE 116R and Erick Maiywa, did occur.

25. Ownership of the accident motor vehicle KAE 116R was disputed by the Appellant both at trial and on submissions on appeal. It is also suspected that that was what he aimed to raise as Ground No.2 in his grounds of appeal because that Ground does not make sense at all.

26. As earlier stated, Respondents' witness (PW2) exhibited Police Abstract (Exh3) and testified that the motor vehicle was owned by the Appellant. The Appellant on the other hand contended that the owner was the Diocese of Kericho.

27. From the Record, it is salient to note that the Appellant chose not to call any witness but instead prayed that the witness statements filed be adopted as evidence. The Appellant attached a copy of vehicle records from the Kenya Revenue Authority as at 3rd July 2010 which indicated that the registered

owner of KAE 116R was the Diocese of Kericho. The trial court ruled that adoption of the witness statements without the owners of the statements being called would prejudice the Respondent's case. This therefore meant that any documentary evidence that the Appellant intended to rely on could not be produced and marked as exhibits. The said document from KRA (Motor Vehicle Record) was not properly on record and could not be relied on as evidence. In the case of Kenneth Nyaga Mwige Vs. Austin Kiguta & 2 Others (2015) eKLR, the Court of Appeal held as follows:

> " The fundamental issue for our determination is the evidential effect of a document marked for identification that is neither formally produced in evidence nor marked as an exhibit. Is a document marked for identification part of evidence? What weight should be placed on a document not marked as an exhibit?
>
> The mere marking of a document for identification does not dispense with the formal proof thereof. How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved. First, when the document is filed, the document though on file does not become part of the judicial record. Second, when the documents are tendered or produced in evidence as an exhibit by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved, not proved or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents – this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.
>
> The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of a document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.
>
> Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account".

I am guided by the above authority to hold that in the circumstances of this case the Appellant did not disprove that he was not the owner of the accused vehicle.

28. I associate myself and agree with the sentiments of Warsame J (as he was then) in the case of Jotham Mugalo Vs Telkom (K) Ltd (UR) where he stated:

> " Whereas it is true that it is the responsibility of the plaintiff to prove that the certificate of search is a valid way of showing the ownership, it is not the only way to show that a particular individual is the owner of the motor vehicle as this can be proved by a police

abstract. Since a police abstract is a public document, it is incumbent upon the person disputing its contents to produce such evidence since in a civil dispute the standard of proof requires only balance of probabilities. Where the defendant alleges that the motor vehicle which caused the accident did not belong to him, it is up to them to substantiate that serious allegation by bringing evidence contradicting the documentary evidence produced by the plaintiff as required by section 106 and 107 of the *Evidence Act*. The particulars of denial contained in the defence cannot be a basis to reject a claim simply because a party has denied the existence of a fact as a fact denied becomes disputed and the dispute can only be resolved on the quality or availability of evidence."

29. The Appellant stated in his Defence that he was not the owner of the subject Motor Vehicle. He however failed to adduce evidence to dispute and/or challenge the contents of the Police Abstract which was produced as P. Exhibit 3. In the case of Wellington Nganga Muthiora Vs. Akamba Public Road Services Ltd & Another (2010) eKLR the Court of Appeal held as follows: -

> " Where a police abstract was produced and there was no evidence adduced by a defendant to rebut it and not even cross-examination challenged it, the police abstract being a prima facie evidence not rebutted could be relied on as proof of ownership in the absence of anything else as proof in civil cases was within the standards of probability and not beyond reasonable doubt as is in criminal cases. However, where it was challenged by evidence or in cross-examination, the plaintiff would need to produce certificate from the Registrar or any other proof such as an agreement for sale of the motor vehicle which would only be conclusive evidence in the absence of proof to the contrary"

30. In the absence of such evidence and failure by the Appellant to challenge the ownership on cross examination or to produce the KRA vehicle Registration document, I will rely on the Police Abstract which is equally a public document to ascertain the owner of the subject Motor Vehicle. It is my finding therefore that the Motor Vehicle registration number KAE 116R belonged to the Appellant. The submissions on appeal is not of much assistance since the Appellant did not even enjoin the owner reflected in the KRA Vehicle Registration Certificate which was not produced in evidence.

31. The trial court stated in its Judgment that it could not ascertain who was liable for causing the accident. In the case of East Produce (K) Ltd Vs Christopher Astaido Osiro (2006) eKLR, the court held that: -

> " It is trite law that the onus of proof is on he who alleges and in matters where negligence is alleged, the position was well laid out in the case of Kiema Mutuku vs. Kenya Cargo Hauling Services Ltd 1991 where it was held that there is as yet no liability without fault in the legal system in Kenya, and a Plaintiff must prove who between the driver and the pedestrian ws negligent. Some negligence against the defendant where the claim is based on negligence".

32. From the record, the Respondent's witness did not witness the accident. The only witness included in the Police Abstract was the Appellant who did not testify either. The trial court indicated that it was unable to get proper evidence on how the accident took place because of lack of an eye witness. In the case of Farah Vs Lento Agencies(2006) 1 KLR 124,125, the Court of Appeal held that: -

> " Where there is no concrete evidence to determine who is to blame between the two drivers, both should be held equally to blame. As no side could establish the fault of the opposite party, liability for the accident could be equally on both the drivers. Therefore, each driver was to blame".

33. I therefore do not find fault with the trial court's apportionment of liability in the ration of 50:50.

II. Quantum

Assessment of damages is the discretion of the trial court and an appellant court should be reluctant to interfere with the award.

34. In the case of Johnson Evan Gicheru Vs Andrew Morton & Another (2005) eKLR, the Court of Appeal stated that;

> " In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the court of appeal should be convinced that either the judge acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the appellant was entitled".

35. In this case, it was not in dispute that the said accident resulted in the death of Erick Maiywa. PW1 testified that she was the wife to the deceased and that they had two children. She produced a letter from the Chief of Kyogong location which contained the list of beneficiaries left behind by the deceased. The same was marked as P. Exh. 4. The contents or authenticity of the letter was not challenged during cross examination. I am satisfied on the strength of the chief's letter that PW1 was the wife of the deceased. The letter also included the mother and father of the deceased as beneficiaries.

36. The Respondents were awarded the following by the trial court: -Pain and Suffering Kshs 100,000Loss of expectation of life Kshs 200,000Loss of Dependency Kshs 1,377,552Special Damages Kshs 18,000

37. In regard to the pain and suffering, the trial court awarded Kshs 100,000. The court stated that the deceased passed away at Tenwek Hospital a day after the accident.

38. From the Record, the only evidence is P.Exh 1 which was the Death Certificate of the deceased. It showed that the deceased died as a result of a cardiac arrest due to severe head injury and haemorrhage due to Road Traffic Accident. In the case of Sukari Industries Limited Vs Clyde Machimbo Jumba (2016) eKLR the court stated: -

> " On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged after death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say the sum of Kshs 50,000 awarded under this head is unreasonable".

39. Bearing in mind the circumstances of the accident and the fact that the deceased a day after the accident, I do not find fault with the trial Magistrate's award of Kshs 100,000. The same was a fair assessment for pain and suffering.

40. With regard to loss of expectation of life, the trial court awarded the sum of Kshs 200,000. In the case of Makano Makonye Monyanche Vs Hellen Nyangena (2014) eKLR, Sitati J held: -

> " I find no reason to interfere with the award on loss of expectation of life under *Law Reform Act* as the same is always awarded at Kshs. 100,000/- across the board".

Also, in the case of n Mercy Muriuki & Another Vs. Samuel Mwangi Nduati & Another (Suing As The Legal Administrator Of The Estate Of The Late Robert Mwangi) (2019) eKLR, the court observed:

"The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Ksh. 100,000/- while for pain and suffering the awards range from Ksh. 10,000/= to Ksh. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death."

41. It is my finding therefore that the amount awarded under loss of expectation of life was high. The award is set aside and replaced with one hundred thousand shillings (Kshs 100,000.)

42. In regard to the loss of dependency, the trial court heard the testimony of PW1 that the deceased was a farmer and a businessman in the business of buying and selling timber. That he made about Kshs 25,000 a month. The court held that since there was no documentary evidence adduced, Kshs 5,218 would be reasonable. It based the same on the minimum wage in Regulation of Wages (General) (Amendment) Order, 2013 (Legal Notice No. 197). The court then used a multiplier of 33 years.

43. On quantum on the loss of dependency under the *Fatal Accidents Act*, Section 4 provides as follows;

" Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so caused and shall , subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct".

44. The general scope of assessment of damages was considered in the case of Beatrice Wangui Thairu Vs Hon. Ezekiel Barngetuny & Another Nairobi Hccc No. 1638 Of 1988 where Ringera J (as he was then) stated thus: -

" The Principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must in the first instance find out the value of the dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should them multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased and the dependants. The sum thus arrived at must then be discounted to allow legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature".

45. Regarding the issue of dependants, the presumption in law is that the deceased is taken to spend1/3 of his income on himself and 2/3 is available as reserve for the dependents.

46. In determining the loss of dependency and calculation for damages arising out of a fatal accident, the court in Cookson Vs Knowles (1978) 2 All ER 604 stated: -

> " This kind of assessment artificial though it may be, nevertheless calls for consideration of a number of highly speculative factors, since it requires the assessor to make assumptions not only as to the degree of likelihood that something may actually happen in the future, such as the widow's death, but also as to the hypothetical degree of likelihood that all sorts of things might happen in an imaginary future in which the deceased lived on and did not die when in actual fact he did. What in that event would have been the likelihood of his continuing work until the usual retiring age? Would his earnings have been terminated by death or disability before the usual retiring age or interrupted by unemployment or ill health? Would they have increased, and if so, when and by how much? To what extent if any would he have passed the benefit of any increases to his wife and dependent children?"

47. Income or revenue received during the lifetime of a deceased person should not be subjected to a restrictive interpretation. I therefore see no reason to interfere with the award by the trial court. The court did not misdirect itself in using Kshs 5,218 as the base sum. The learned Magistrate was guided by the Minimum Regulation of Wages (General) (Amendment) Order, 2013 (Legal Notice No. 197).

48. Regarding the issue of multiplier, the trial court used a multiplier of 33 years. The case of Shah Vs Mbogo Kemfro Africa Ltd & Another (1985) eKLR, the Court Of Appeal stated: -

> " I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken consideration and I doing so arrived at a wrong conclusion".

49. The life expectancy in Kenya as per the 2019 World Bank Data was 67 years. The deceased worked in the informal sector with no statutory retirement age. There is also nothing on record to show that the deceased may have suffered from an ailment as life expectancy is dependent on good health at the very least. Taking into consideration the vicissitudes and vagaries of life, this court agrees with the trial court on the use of 33 years as a reasonable multiplier. Accordingly, the loss of dependency is maintained at Kshs 1,377,552.

50. Regarding special damages, it is trite law that funeral expenses may be awarded where a claim has been made based on the fact that burials attract certain expenses borne by the relatives of the deceased.

51. Section 6 of the *Fatal Accidents Act* makes provision for funeral expenses. In the case of Premier Dairy Limited Vs Amarjit Singh Sagoo (2013) eKLR , the Court of Appeal stated that;

> " We do take judicial notice that it would be wrong and unfair to expect bereaved families to be concerned with the issue of record keeping when their primary concern is that a close relative has died".
>
> Further, in the case of Jacob Ayiga Vs Simon Obayo (2005) eKLR, court held that:-
>
> "We agreed and the courts have always recognized that a reasonable award ought to be made in respect of reasonable and legitimate funeral expenses. But when such a large sum is claimed for such expenses then there ought to be proof of what the money was spent on. We however must not be understood to be laying down any law that in subsequent cases

Kshs 60,000 must be given as reasonable funeral expenses. Those items are and must remain subject to proof in each and every case and the Kshs 60,000 awarded herein apply strictly to the circumstances of this case".

52. I find the trial magistrate's award of Kshs 18,000 as special damages was too low. I set it aside and award Kshs 30,000/= as reasonable funeral expenses.

53. In the upshot, the Appeal partially succeeds to the limited extent only that the award to the Respondents is revised as follows: -

    i. Pain and Suffering Kshs 100,000

    ii. Loss of expectation of life Kshs 100,000

    iii. Loss of Dependency Kshs 1,377,552

    iv. Special Damages Kshs 30,000

    TOTAL Kshs 1,607,552

    Less 50% Contribution

    **Kshs 803,776**

54. Each Party shall bear their costs on this appeal while the Respondents shall get half the costs in the trial court and interest until payment in full.

Orders accordingly.

**JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF JULY, 2022.**

**.....**

**R. LAGAT-KORIR**

**JUDGE**

Judgement delivered virtually in the absence of the parties and Kiprotich (Court Assistant).