



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CIVIL APPEAL NO. 9 OF 2019**

**OYUGI JUMA JOSEPH.....APPELLANT**

**VERSUS**

**GRACE OMWANDA OGOLLA.....RESPONDENT**

*(An Appeal from the Ruling and Order of the Principal Magistrate's court at Bondo*

*in Civil Case No. 53 of 2017 delivered by Hon. E.N. Wasike, SRM*

*delivered on 21.2.2019)*

**RULING ON AMENDMENT OF JUDGMENT AND DECREE**

1. I have considered the application dated 19.1.2021 Under Certificate of Urgency. I have considered the grounds thereof and supporting affidavit. I certify it as urgent.
2. I observe that the application seeks for correction of a mathematical error in the judgment of the court on quantum of damages as arrived at by the court.
3. The power to amend a judgment or decree to correct an apparent error is vested in the court under Section 99 of the Civil Procedure Act which provides that:

***“Clerical or arithmetical mistakes in judgments, decrees or orders or errors therein from any accidental slip or omission may at any time be corrected by the court either on its own motion or on the application of any of the Parties.”***

4. I have considered the application and the stated mistake or error which is arithmetical. I am in agreement with the applicant's Counsel that there is an accidental slip of the figures given on quantum in terms of the 10% contribution and the totals given on page is of the judgment delivered on 30.11.2020.

5. The amount/award made is as follows:

Pains and Suffering	-	KShs. 20,000.00
Loss of Expectation of life	-	KShs.100,000.00
Loss of Dependency	-	KShs.467,536.00
Less 10% contribution	-	KShs.166,753.06
Add Special damages	-	<u>KShs. 1180.00</u>
<b>Total damages</b>	-	<b><u>KShs.419,602.00</u></b>

The same figures when added correctly should read as follows:

Pains and Suffering	-KShs. 20.000.00
Loss of Expectation of Life	- KShs.100,000.00
Loss of Dependency	- KShs.467,536.00
Total	- KShs.587,536.00
Less 10% contribution	- <u>KShs. 58,753.6</u>
<b>Total general damages</b>	- <b><u>KShs.528,782.4</u></b>
Add Special damages	- <u>KShs. 1180.00</u>
<b>Total damages</b>	- <b><u>KShs.529,962.4</u></b>

6. Having so found that there was an arithmetical error in the calculation of damages awarded to the applicant, I hereby allow this application dated 19.1.2021 and amend the judgment and decree of this court made pursuant to the judgment of 30.11.2020 to reflect the correct award as re-calculated above.

7. I make no orders as to costs.

8. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 21<sup>st</sup> Day of January, 2021**

**R.E.ABURILI**

**JUDGE**