REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL APPEAL NO 42 OF 2018

JUMA HAJEE PROPERTIES..APPELLANT

VERSUS

HAMIDU MALIO KILIO.......................................1ST RESPONDENT

SOLOMON KIPCHUMBA.....................................2ND RESPONDENT

CIBIEN ENGINEERING CONSTRUCTION......3RD RESPONDENT

(Being an appeal from the judgment and decree in Eldoret CMCC No. 169 of 2014 delivered by Honorable E. KIGEN on 6th April 2018).

JUDGMENT

1. **JUMA HAJEE PROPERTIES** (hereinafter referred to as the Appellant) is aggrieved by the judgment which was entered to the effect that the appellant was liable in negligence for the accident and that the 3rd respondent was vicariously liable for the negligence of the 2nd respondent and consequently holding them 100% jointly and severally liable to the 1st respondent for the accident and injuries sustained. The trial court also made an award of damages which prompted these appeal by the appellants.

2. The background to the claim is that in the suit the 1st respondent **(HAMIDU MALIO KILIO)** had sued the appellant and **SOLOMON KIPCHUMBA** (the 2nd respondent) and **CIBIEN ENGINEERING CONSTRUCTION** (3rd respondent) for damages as result of a road traffic accident involving motor vehicle registration number KAK 992A Isuzu Pick Up which was being driven by the 2nd respondent. The appellant and the 3rd respondent were sued as the joint owners of the vehicle.

3. There are 4 appeals all arising from the judgments and decrees delivered in two running down cases, arising from the same incident. This court issued directions consolidating this appeal with **Civil Appeal No. 43 of 2018 also filed by the appellant and Civil Appeals Numbers 46 and 51 of 2018** filed by the 3rd and 4th respondents as the appeals were related and arose out of the same cause of action.

4. The appellant having been dissatisfied with the said judgment preferred an appeal before this court on grounds that: -

> **i. The learned trial magistrate erred in law and in fact in finding that the appellant was to blame for the accident jointly and severally yet at the time of the accident the appellant had already sold the suit vehicle to the 3rd respondent.**
>
> **ii. The trial magistrate erred in law and in fact in disregarding the evidence adduced concerning the fact that the suit vehicle was no longer in possession and control of the appellant at the material times and that the driver, 1st respondent was acting under the instruction of his employer, the 3rd respondent herein and not the appellant.**
>
> **iii. The trial magistrate erred in law and in fact in failing to consider the evidence and submission of the appellant.**
>
> **iv. The trial magistrate misdirected herself on assessment of quantum of damages awardable to the 1st respondent which were manifestly excessive.**
>
> **v. The trial magistrate erred in law and in fact by taking into account irrelevant factors and disregarding relevant factors therefore arriving at an erroneous decision.**

5. The plaintiff in his evidence stated that he was riding a motor cycle along a murram road while carrying a pillion passenger, the plaintiff in the related file. Upon reaching at the scene of the accident a motor vehicle registration number KAK 992A which was being driven from the opposite side veered off its lane and hit the motor cycle. The police officer (Pw3) confirmed the occurrence of the accident and stated that after investigations, the driver of motor vehicle registration number KAK 992A was blamed for the accident and charges preferred against him. No blame was attributed to the cyclist. Dw1 confirmed the occurrence of the accident and that he was charged with the offence of careless driving. He confirmed that he was employed by the 3rd respondent i.e. **Cibien Engineering and Construction Company**.

6. The evidence before the trial court was that the plaintiff was riding a motor cycle along a murram road while carrying a pillion passenger **(KASSIM SAID SAHA),** the plaintiff in the related file. Upon reaching the scene of the accident a motor vehicle registration number KAK 992A which was being driven from the opposite side veered off its lane and hit the motor cycle. The police officer (Pw3) confirmed the occurrence of the accident and stated that after investigations, the driver of motor vehicle registration number KAK 992A was blamed for the accident and charges preferred against him. No blame was attributed to the cyclist. Dw1 **(SOLOMON KIPCHUMBA KEIYO)** confirmed the occurrence of the accident and that he was charged with the offence of careless driving. He confirmed that he was employed by **Cibien Engineering and Construction Company**.

7. On cross examination, he confirmed that the driver of the suit motor vehicle was the 3rd respondent herein. Dw2 testified that the suit motor vehicle had been sold to Cibien Engineering Company at the time of the alleged accident. He produced a copy of the sale agreement dated 10/12/2013 confirming the same.

8. The appeal was canvassed by way of written submissions. The appellant submitted that PW1 in his evidence produced documents indicating that the appellant herein is the owner of the suit motor vehicle (KAK 992A ISUZU Pick Up).

9. The appellant while acknowledging that Section 8 of the Traffic Act which provides: **The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle,** nonetheless argues that although at the time of the accident the motor vehicle was registered in the appellant's name, regard ought to be given to the fact that every rule has an exception. That the exception in this instance stems from the fact that the trial magistrate erred in finding that the accident took place in June 2013, and not December 2013. Further that the trial court failed to consider whether the appellant was the legal or the beneficial owner of the motor vehicle, and seemed to have concluded that the agreement between the appellant and the 3rd respondent **(CIBIEN ENGINEERING CONSTRUCTION) was inconsequential to the suit**

10. The appellant argues that at the time of the accident, property in the vehicle had not passed to the 3rd respondent (who could therefore not be deemed to be the legal owner) as the written agreement in this case was conditional, because it stated that the ownership of the vehicle would be deemed to have been transferred to the 3rd respondent upon delivery, That the delivery was subject to the appellant receiving a banker's cheque for the purchase price. The appellant in support of this argument also refers to **Section 20(a) of the Sale of Goods Act** which provides that where there is unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of delivery or both be postponed.

11. This court is also urged to consider the definition of a beneficial owner as given in **Black's Law Dictionary** as one recognized in equity as the owner of something, because use and title belong to that person, even though legal title belong to someone else.

12. VICARIOUS LIABILITY: The appellant argues that vicarious liability did not apply to the appellant as the appellant was not the beneficial owner of the vehicle at the time of the accident. That the trial court thus erred in its application of the doctrine of vicarious liability. The court is urged to be guided by the decision in **Securicour Kenya Ltd v Kyumba Holdings Ltd [2005] 1KLR 751** which addressed the application of the doctrine of vicarious liability to the effect that ownership of a vehicle was not sufficient to create vicarious liability for the negligence of everyone who happened to drive the vehicle

The appellant maintains that the uncontroverted evidence is clear to the extent that the vehicle was being driven by the employee of the 3rd respondent, with instructions from, and for the benefit of that company. That the driver had no relationship whatsoever with the appellant, and the vehicle was not being used for the appellant's purposes or benefit.

QUANTUM

13. As regards to **CMCC NO. 170 of 2014,** the appellant contends that the only injury indicated in the discharge summary was "fracture of the right femur". All the injuries pleaded in the plaint were never indicated in the discharge summary, and the award of Kshs. 300,000 would be sufficient for the injury sustained by the plaintiff and urged the court to reassess the amount of Kshs. 1,200,000 awarded to the respondent as general damages.

14. On CMCC NO. 169 of 2014, it is submitted that the injurie only sustained by the plaintiff had already healed. The appellant opined that an amount of Kshs. 100,000 would be sufficient compensation.

15. The 2nd and 3rd respondent submitted that the burden of proof was on the 1st respondent to prove negligence on the part of the appellant and the 2nd and 3rd respondents. That despite the evidence tendered by the 1st respondent that it was indeed his negligence that became a result of the accident, the plaintiff failed to establish liability on the part of the 2nd and 3rd respondents. That the defendants blamed the plaintiff for contributory negligence, and the plaintiff did not dispute or show otherwise the assertions of the defendants.

16. Falling back on the provisions of **section 8 of the Traffic Act** the two respondents argue that the 1st respondent herein produced copy of records which indicated the appellant was the owner of the motor vehicle at the time of the accident. That the alleged accident did occur on 28th December, 2013 and thus at the time of the accident, the ownership had not changed hands and therefore the motor vehicle was still the appellant's property.

17. As pertains **to quantum**, **HCCA 42 of 2018 and HCCA 46 of 2018,** they point out that the medical report showed that the 1st respondent sustained several soft tissue injuries and a fracture of the left femur and thus the damages awarded was not commensurate with the injuries sustained.As regards to **HCCA 43 and 51 of 2018**, the respondents allude to the medical reports prepared by Dr. Aluda showed that the 1st respondent sustained soft tissue injuries which were healing with no permanent disability.

18. ANALYSIS AND DETERMINATION

The two main issues for determination in this appeal are:

> **a). Whether the 1st respondent was able to prove that motor vehicle registration No. KAK 992A belonged to the Appellant.**
>
> **b). If the answer to the above question is in the affirmative, whether the Respondents entitled to the quantum thereof.**

VICARIOUS LIABILITY:

19. The evidence presented before court clearly point to the fact that the driver of motor vehicle registration number KAK 992A (Dw1) was to blame for the accident. He left his lane and hit the cyclist on the extreme end of their lane. As a result of the accident he was charged with offence of careless driving. The trial court's finding that the driver was to blame for the accident cannot be faulted as it is supported by the evidence.

20. The appellant points out that **(SOLOMON)** who was the driver of the suit motor vehicle in his testimony stated that he was employed by Cibien Engineering Company whom he said were the owners of the motor vehicle and not Juma Hajee (the appellant), to argue that vicarious liability did not apply to the appellant as the appellant was not the beneficial owner of the vehicle at the time of the accident. The 1st respondent in his evidence stated that the suit vehicle belonged to both the appellant and the 3rd respondent. He produced a police abstract which showed the 3rd respondent as the owner, (PEXh 4). PW2 the police officer also confirmed the contents of the police abstract that the vehicle belonged to the 3rd respondent at the time of the accident.

21. The 1st respondent had also conducted a search with the Registrar of Motor Vehicles. He produced a copy of records as an exhibit (PEXH 5). The copy of records showed that the suit vehicle was still registered in the name of the appellant at the time of the accident. DW1 testified and stated that he was an employee of the 3rd respondent. He was driving the suit motor vehicle at the time of the accident.

22. DW2 (Janet Khisa) produced a sale agreement entered into between the appellant and the 3rd respondent dated 10/12/2013 but signed on 30/12/2013 as defence exhibit DEXH 1. The same indicated that motor vehicle registration number KAK 992A was sold by the appellant to the 3rd respondent for a sum of Kshs 560,000/=. The said agreement had details regarding delivery and change of ownership, to the effect that the delivery of the vehicle and change of ownership would occur upon receipt of the bankers cheque.

23. DW2 further stated that the vehicle was handed over by the Appellant to the 3rd respondent out of good will, but the payment was made later on 30/12/2013. **(Record shows the year as 2014 which I agree is a typing error as the agreement was entered into in 2013).**

24. It is pointed out by the respondents that the accident occurred on 28/12/2013, by which time the appellant and the 3rd respondent had entered into an agreement of sale in principle and an agreement dated 10/12/2013 prepared. That possession of the vehicle was given to the 3rd respondent out of good will, but the legal and actual ownership of the vehicle still remained with the appellant. The contention is that the agreement (DEXh 1) was only signed on 30/12/2013, the time when payment was made and as per the terms of the agreement, ownership changed.

25. The court is urged to find that copy of records produced by the plaintiff and the evidence presented before court demonstrate that the appellant was the legal and beneficial owner of the vehicle at the time of the accident.

26. The appellant's witness in her evidence testified that the suit motor vehicle had been sold to the 3rd Respondent. She produced a sale of motor vehicle agreement dated 10th Day of December, 2013 as PEx1. The statement reads in part as follows:

> **"Cibien Engineering took control of motor vehicle registration number KAK 992A on the 31st of December 2013 after Juma Hajee properties Ltd's receipt of Cibien Engineering Construction Ltd's cheque number 934…. That on the 28th of December 2013 at special request from Cibien Engineering Construction Ltd for use, the said motor vehicle was involved in an accident while being driven by Solomon Kipchumba an employee of Cibien Engineering Construction Ltd and under instructions of Juma Hajee Properties ltd.**
>
> **… That I wish to state therefore that at the time of alleged accident Juma Hajee Properties Ltd was still in possession and control of motor vehicle KAK 992A Isuzu Pick up".**

27. It is the respondent's contention that this statement confirmed the contents of the sale agreement produced as Dexh1 which was signed on 30/12 2013, thus lending credence to the fact that though the driver, the 2nd respondent was an employee of the 3rd respondent, he was driving the vehicle on behalf of and on the instructions of the appellant who was still the legal and beneficial owner of the vehicle. The 2nd respondent was acting as an agent of the appellant at the time as the 3rd respondent had only requested for the use of the vehicle prior to the completion of the sale.

28. The respondents maintain that the appellant cannot possibly escape liability, given that the vehicle was being used for its benefit too. The benefit being to entice the 3rd respondent to complete the agreement of sale by making payment of the purchase price. That the trial court

was therefore right in her finding that the appellant was vicariously liable for the negligence of the 2nd respondent, pointing out that the appellant's counsel upon realizing that the witness statement filed by the appellants' property manager contradicted the appellant's statement of the defence, sought to step down the witness while being cross examined so as to substitute the statement. This was opposed and the trial court declined to grant the prayer. The statement forms part of the record and was never, expunged from the record. Further, that it is instructive to note that the appellant's witness did not file any other statement and testified in her capacity as the appellant's property manager, the same position held by the witness who filed the statement.

29. The law as regards title to and ownership of motor vehicles, Section 8 of the Traffic Act provides that **".......The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle...."**

30. The documents produced at the trial from the Registrar of Motor Vehicles showed that as at the time when the accident occurred, the Appellant was still the registered owner of the subject motor vehicle. In terms of section 8 aforesaid, it was deemed to be the owner of the motor vehicle, and at the time of the accident the vehicle in law still belonged to the Appellant property in the vehicle had not passed on to the purported purchaser.

31. The police abstract also showed it as the owner of motor vehicle registration number KAK 992A. Further evidence was brought forward by the co- defendants which showed that it was in possession of the vehicle at the time pursuant to an agreement with its co- defendants.

32. I am aware of the decision by Nyarangi J in the case of **Nakuru Automobile House Ltd v Ziaudin [1987] KLR** where a managing director had lent a car belonging to the appellant company to four persons who would use it to enjoy the **1975 Safari Rally**. The company did not participate in the rally, but while the car was being used by the four individuals, it got involved in an accident with the respondent's lorry. The respondent sued the appellant for damages for loss of the lorry which was written off. In setting aside, the finding that the appellant was vicariously liable for negligence of the driver, the court held that since the vehicle was not being used wholly or partly for the appellant's business or purpose, the appellant company could not be liable.

33. I think the scenario here is easily distinguishable from the one obtaining in the afore-cited case, as in that case the issue of ownership was well settled, whereas in the present case, the ownership straddles two entities, one legally, and the other beneficially.

34. As a matter of fact, **Section 9 of the Traffic Act** provides that if a vehicle is transferred from a registered owner, it shall not be used on the road for more than 14 days after the transfer unless the new owner is registered as the owner thereof. In this case the suit vehicle had not been transferred to the alleged purchaser, and if the appellant elected to indulge the respondents and gamble with fate, then it only has itself to blame. I hold and find that the trial court did not err in making a finding that the 2nd and 3rd respondent as well as the appellant were vicariously liable.

35. QUANTUM

The appellant submitted that from the discharge summary produced as PEx 2, the 1st respondent sustained only a fracture of the right femur. They were categorical that the award of Kshs 1,200,000/= general damages that the Trial Magistrate awarded the Respondent was manifestly excessive.

36. The appellant challenges the assessment of general damages made to the plaintiffs as being excessive and that the trial court took into account irrelevant factors and disregarded relevant factors hence arriving at an erroneous decision.

37. The principles upon which an appellate court can interfere with an award of damages are now well settled. **In Kemfro Africa Ltd t/a Meru Express Service –vs- A.M Lubia and Olive Lubia [1982 -88], KAR 727 at page 730** Kneller J.A said;

> **"the principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages. See Illango –vs- Manyoka [1961] EA.705,709, Lukenya Ranching and Farming Cooperative Society Ltd –vs- Kavoloto [1970] EA, 44, 418, 419. This court follows the same principles".**

Indeed, Courts have continued to apply the same principles.

<u>**Civil appeals No. 42 and 46 of 2018**</u>

38. The trial magistrate awarded a sum of 1, 200, 000/- as general damages. The medical report prepared by Dr. S.I. Aluda (PEXh 2a) shows that the 1st respondent had sustained the following injuries:

> **Blunt trauma to the scalp which was tender with bruises.**
>
> **Blunt trauma to the neck which was tender.**
>
> **Blunt trauma to the pelvis which was tender.**
>
> **The right thigh was swollen and tender.**

He sustained a fracture of the right femur (Double fracture of the right femur).

Bruises on the right leg which was tender.

A deep cut wound on the left thigh which was tender and 6cm long.

Bruises and lacerations on the left knee and left leg which were tender.

39. **PW2 Dr. Paul Kipkorir from Moi Teaching and Referral Hospital** testified on behalf of the hospital where the 1st respondent was admitted and treated for the injuries. He confirmed that the 1st respondent was treated and sustained injuries as enumerated by **Dr. S.I. Aluda**. The 1st respondent was admitted from 28/12/2013 until the 14/2/2014 when he was discharged to continue with follow up treatment as an outpatient. At the time of trial, the 1st respondent was still attending the hospital as an outpatient. He produced the discharge summary as PExh 1 A and a P3 form was also produced which classified the degree of injury as grievous harm. Upon consideration of the nature of the injuries the trial magistrate made an award of Kshs 1,200,000/= as general damages.

40. The appellant suggests that a sum of Kshs 300,000/- is adequate compensation, citing the case of **Gladys Lyaka Mwombe v Francis Namatsi & 2 Others [2019] eKLR** where other decisions involving fractures and soft tissue injuries were considered. In that case the injuries included a fracture of the lower tibia and fibula plus soft tissue injuries, including a cut wound to the face and scalp. The judge upheld an award of Kshs 300,000/.

41. The medical report prepared by Dr. S.I. Aluda contained the details of all the injuries sustained by the 1st respondent. I take note of the holes being poked by the appellant with regard to the discharge summary, and I concur with the respondent's submissions that it as the name suggests is a summary of the main injury sustained by the patient. It is therefore not correct to state that the 1st respondent sustained a fracture of the right femur only. It would be myopic of me to fail to take note that **Dr. Paul Kipkorir** from the hospital where the patient was attended confirmed that the patient was treated for other injuries other than the double fracture of the right femur.

In support of the foregoing position the respondents rely on the following decision on the damages: **Machakos HCCA No. 176 of 2012, Stephen Matuku –vs- Peninah Kilili Ivongo alias Peninah Mburu Kilili (Minor Suing through father and next friend Daniel Kilili Ivonga** where Ogola (J) upheld an award of Kshs 1,021,495/= for comparable injuries, and that this decision was considered by the trial court.

42. Civil Appeals No 43 and 51 of 2018

Counsel points out that according to the medical report prepared by Dr. S.I. Aluda the respondents sustained the following injuries:

Blunt trauma to the face which was tender

Blunt trauma to the nose which was tender and nose bleeding.

Blunt trauma to the left shoulder and left arm which were tender

Blunt trauma to the left hip and left thigh which were tender.

Bruises on both legs which were tender.

The P3 form produced classified the injuries as harm, and basically these were soft tissue injuries.

43. Upon consideration of the injuries the trial court awarded the sum of Kshs 200,000/- as general damages. The appellant suggests general damages of Kshs 100,000/- citing the case of **Hasssan Farid and Anor v Sataiya Ene Mepukori & 6 Others [2018] eKLR**

44. It is the respondent's submission that the trial magistrate was guided by relevant factors including the injuries sustained as captured in the medical report which showed they were multiple soft tissue injuries and previous court decisions to make the award of Kshs 200,000/-, and it cannot be said to be so high as to amount to an erroneous estimate of the damages payable as to warrant interference by this court.

45. The respondents rely on **Angeline Akinyi Odhiambo Vs Teresia Mbaiko Kanyo & Another [2016] eKLR** where an appeal against an award of Kshs 200,000/= general damages for similar injuries was dismissed on appeal.

In a nutshell the respondents 'position is that the appeals filed by the appellants on both liability and on quantum ought to be dismissed with costs for the reasons stated above.

CONCLUSION

46. It is well settled in law that an appellate court will not disturb an award of general damages unless the same is so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended the law.

47. I take into account the principles which ought to guide an appellate court when interfering with an award of a trial court as set out

in **Kemfro Africa Limited t/a Meru Express Services & Another vs A.M. Lubia and Another (infra)** to the extent **that the assessment of general damages is at the discretion of the trial court and an appellate court cannot substituting a figure of its own for that awarded by the lower court, simply because it would have awarded a different figure if it had tried the case at first instance.**

48. It must clearly be understood that money can never really compensate a person who has sustained any injuries. No amount of money can remove the pain that a person goes through no matter how small an injury may appear to be. It is certainly not easy to say with certainty that a particular amount of money would be commensurate with the injuries that a person has sustained. It is merely an assessment of what a court would find to be reasonable in the circumstances to assuage a person who has suffered an injury, using recognized guidelines in judicial precedents, and also taking into account the prevailing economic trends.

49. In assessing general damages, courts must have presence of mind to ascertain the sum of general damages that other courts and especially appellate courts would ordinarily award in respect of a particular injury.

50. I have duly considered the arguments put forth, both to maintain the sum awarded, and to scale it down and the past decided cases cited, some of which I allude to here. In the case of **Florence Joke Mwangi vs Chege Mbitiru [2014] eKLR**, on appeal, Wakiaga J allowed a sum of Kshs 700,000/= general damages where a plaintiff had sustained fractures of femurs bilaterally, two degloving injuries of the right knee and the right ankle and concluded that she will need money to remove k-nails and screwsor.

51. In the case of **Joseph Musee Mua vs Julius Mbogo Mugi & 3 others [2013] eKLR**, the plaintiff therein suffered a fracture of left tibia and fibula, two (2) broken upper jaw teeth, chest and shoulder injuries. His nerves were also affected. He had shortening of the left leg and as a result, he suffered 5 % disability. The Court awarded Kshs1,300,000/= general damages.

52. In my view the decisions cited by the respondent dealt with far more severe injuries which were not only extensive but the residual effects led to significant disability. This is a relevant factor which the trial court did not take into consideration in making the award of Kshs 1.2 million. Having had due regard to the aforesaid cases, the evidence of the 1st Respondent and the Medical report prepared by Dr Aluda, the award of Kshs1200,000/= was inordinately high and it is reasonable to interfere with it, by setting it aside and substituting it with a sum of Kshs 500,000/- (Five hundred thousands only)

53. As regards to HCCA 43 and 51 of 2018, the medical reports prepared by Dr. Aluda showed that the 1st respondent sustained soft tissue injuries which were healing with no permanent disability. *In the case of* ***Channan Agricultural Contractors Ltd v Fred Barasa Mutayo [2013] eKLR*** the High Court reviewed downwards an award of Kshs. 250,000/ to Kshs. 150,000/= for "*moderate soft tissue injuries that were expected to heal in eight months*" time.

54. In the case of ***George Kinyanjui T/A Climax Coaches & Anor. v Hussein Mahad Kuyale [2016] eKLR*** where the High Court reviewed downwards an award of Kshs. 650,000/= to Kshs. 109,890/= for soft tissue injuries.

55. Also, in the case of ***Dickson Ndungu Kirembe v Theresia Atieno & 4 Others [2014] eKLR*** the High Court reviewed downwards an award of Kshs. 255,000/= to Kshs. 127,500= for soft tissue injuries which produced no complications and finally in the case of ***Purity Wambui Muriithi v Highlands Mineral Water Company Ltd [2015] eKLR*** the Court of Appeal revised downwards an award by the High Court of Kshs. 700,000/= to Kshs. 150,000/= for injuries to the left elbow, pelvic region, lower back and left knee.

56. Given the factors considered by courts in awarding damages, comparable awards and comparable injuries must be taken in to account in revising quantum of damages. I find that the trial court did err and gave an award which was so high as to amount to an erroneous estimate of the damages to warrant interference by this court. In my view the sum of Kshs 200,000/- warrants being interfered with by setting it aside and substituting it with a sum of Kshs. 150,000/- as sufficient compensation in the case herein. It is to this extent that the appeal succeeds.

Each party shall bear its own costs of the appeal.

E-Delivered and dated this 17th day of June 2020

H.A. OMONDI

JUDGE