REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NO. 16 OF 2019.

RIZIKI FRESH LIMITED.....1ST APPELLANT

TITUS NZOYA MBALUKA.....2ND APPELLANT

=VERSUS=

JKM (suing next of kin and on behalf of the

dependants and the estate of JNK-Deceased).....RESPONDENT

(Being an appeal from judgment dated 14.01.2019 delivered by Hon Y.Shikanda (Mr).Senior Resident Magistrate Court in Machakos CM'S Court Civil Suit No.269 of 2018.)

=BETWEEN=

JKM (Suing as next of kin and on behalf of the

dependants of the estate of JNK-DECEASED.....PLAINTIFF

=VERSUS=

RIZIKI FRESH LIMITED.....1ST DEFENDANT

TITUS NZOYA MBALUKA.....2ND DEFENDANT

JUDGEMENT

1. The Respondent herein, **JKM,** in his capaciy as the next of kin and on behalf of the dependants and the estate of **JNK**-Deceased, instituted civil proceedings against the appellants herein seeking general damages, special damages and costs. The suit was premised on a road traffic accident which occurred on 6th January, 2016 along Mwala-Matuu Road. It was pleaded that on that day the deceased was travelling as a lawful passenger aboard motor vehicle reg. no. KCF 010A, Toyota Pick-up which was registered in the name of the 1st Appellant but beneficially owned by the 2nd Appellant. According to the Respondent, due to the negligence of the 2nd Appellant, the same was permitted to ram into motor vehicle registration no. KCF 892V as a result of which the deceased sustained fatal injuries to which he succumbed. The particulars of negligence and statutory particulars and particulars of special damages were pleaded and the Respondent claimed special damages in the sum of Kshs 25,000/-, General Damages and Costs of the suit. It was pleaded that the deceased minor was a form two student at [Particulars Withheld] Secondary School and was looking forward to a bright future. The Plaintiffs had confidence in his ability to excess in academics and success in life and also hoped to receive financial support from him once he secured employment.

2. On 22nd November, 2018, a consent judgement on liability was entered in which judgement was entered for the Respondent against the Appellant in the ratio of 80:20 and it was directed that the matter proceeds to assessment of damages.

3. PW1, **JKM,** testified that the deceased was his last born son and was a form two student of [Particulars Withheld] Secondary School also known as [Particulars Withheld] where he was a day scholar. According to him, the deceased did well at school and exceled in his studies and he had high expectations. The deceased, PW1 testified, wanted to be a Civil Engineer and he expected the deceased to take care of him

in old age since though he had other children, they were not employed.

4. In his evidence, PW1 confirmed that he obtained a grant of representation as well as a police Abstract and his Advocate issued a demand letter to the Defendants. He exhibited the grant, the letter from school, the burial permit, a copy of records and the receipt therefor, a copy of the certificate of death and the demand letters and prayed for orders for compensation and costs of the suit.

5. He however admitted in cross –examination that the deceased was an average student but insisted that he had expectations and becoming a Civil Engineer. He could not however be certain that the deceased would have attained those dreams. At the time of his death, the deceased was 15 years old and was in Form tw0 and agreed that he would have taken about 6 or 7 years to be employed. According to PW1, he was born in 1958 in July and was at the time of his testimony, aged 61 years old.

6. At the end of his testimony, the Plaintiff close his case and it was directed that parties file submissions.

7. In his judgement, the Learned Trial Magistrate found that since it was not clear whether the deceased died on the spot or later in the day, the same day, he would award Kshs 15,000.00 being damages for pain and suffering. As regards damages for loss of expectation of life, he awarded Kshs 120,000.00. As for loss of dependency, the Learned Trial Magistrate appreciated that there were conflicting decisions on the principles guiding such awards and adopting the global award approach, he awarded Kshs 1,500,000/-. He however declined to make any awards for funeral and related expenses as well as special damages. In conclusion the trial court declined to deduct the awards made under the Law Reform Act from that made under the ***Fatal Accidents Act*** but awarded interests and costs.

8. Aggrieved by the said decision the Appellants have has appealed against the same citing the following grounds:

1). The Learned Trial Magistrate erred in law and fact and misdirected himself by awarding a manifestly excessive quantum.

2). The Learned Trial Magistrate erred in law and fact and misdirected himself by disregarding the defendants' submissions.

3). The Learned Trial Magistrate erred in law and fact and misdirected himself by failing to consider the applicable case law availed by the defendants.

9. The Appellants therefore seek the following orders:

(a). THAT the judgment delivered on 14.01.2019 and all subsequent orders be set aside and/or quashed.

(b). THAT the court does determine the issue of quantum as between the appellants and respondent.

(c). THAT the costs of this appeal and application be borne by the respondent in any event.

(d). Any other or further relief the court deems fit.

10. On behalf of the Appellants, it is submitted that the trial court has disregarded and /or failed to consider their submissions on quantum plus the cited authorities. As a result of the said default, the trial court has arrived at a judgment that is against the law since it is in breach of Order 21 rule 4 of the ***Civil Procedure Rules***.

11. The Appellants then set out the principles that guide an appellate court in deciding whether or not to interfere with the damages as awarded by the trial court as stated in **Kemfro Africa Limited T/A Meru Express Services (1976) & Another vs. Lubia & Another**, and **Mariga vs. Musila (1984) KLR 251** and submitted that under the award for pain and suffering, the trial court disregarded the authorities cited by the Appellants whereby the court awarded Ksh.10,000/= as an award of pain and suffering and proceeded to award damages for pain and suffering as pleaded by the plaintiff without giving proper reasons. According to the Appellants, had the trial court considered the appellant's proposal, he would not have arrived at the amount awarded. In this case it was submitted that from the proceedings dated 04.05.2016, it is quite evident that the deceased died on the spot and did not most likely suffer any pain prior to his death, the award of Ksh.15, 000/= was inordinately high and an award of Ksh.10, 000 would therefore be appropriate as cited in the above recent cases since no reasons were given for a higher award.

12. As for damages for loss of expectation of life, it was submitted that in his judgment, the trial magistrate stated that since the Respondent asked for Ksh.120, 000/= he would award that. This is an indication that he did not consider the Appellant's submissions in reaching his conclusion. The Appellant had proposed that a conventional sum of Kshs. 100,000/= would suffice. The trial magistrate misdirected himself in relying on a precedent that involved a minor whose age varied greatly with the minor in question and awarding a totally different amount all together without even considering the appellant's proposal. In support of these submissions the Appellants relied on **Peter M. Kariuki vs. Attorney General CA Civil Appeal No. 79 of 2012 [2014] eKLR and Bashir Ahmed Butt vs. Uwais Ahmed Khan [1982-88] KAR** a where a minor aged 14 years was awarded Kshs. 80,000/= for loss of expectation of life. It was submitted that the case herein an award of Ksh.100, 000/= would suffice under this head.

13. Regarding the award for loss of dependency, it was submitted that the principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency was dealt with by **Ringera, J** (as he then was) **in Grace Kanini vs. Kenya Bus Services Nairobi.** In this case, it was submitted that the deceased was a minor aged 15 years and the documents (report cards) produced did not show his academic ability hence the trial court should have awarded a lump sum based on comparable awards. In support of the submissions, the Appellants relied on **Simon Kibet Langat & Anor. vs. Miriam Wairimu Ngugi (Suing as the Administrator of the Estate of Daniel Mwiruti Ngugi [2016] eKLR.**

14. According to the Appellants, though damages must be within limits set by decided cases and also within limits the Kenyan economy can afford, the trial court failed to compare the case in question with decided precedents set out by the Appellants or previous cases and misdirected itself into reaching an inordinately high figure in giving an award under this head. The Court was therefore urged to reduce the sum of Ksh.1, 500,000/= to an award between Ksh.200, 000/= and Ksh.600, 000/= based on the case of **Board of Governors Friends School Kamusinga & Another vs. M. N S, Peter M. Kariuki vs. Attorney General Civil Appeal No. 79 of 2012 [2014] eKLR** and **Bashir Ahmed Butt vs. Uwais Ahmed Khan [1982-88] KAR.**

15. **In opposing the appeal, it was submitted on behalf of the Respondent that** the trial Court did not err or misdirect itself in reaching the conclusion it did on the quantum of damages awardable to the Respondent and that the trial Court was alive to the principles applicable in the circumstances of the matter as stated by the Court of Appeal in **Bashir Ahmed Butt- vs- Uwais Ahmed Khan (1982-1988) KAR.**

16. According to the Respondent, in the present appeal, there is no material placed before the Court to suggest that the Learned Trial Magistrate was not alive to the principles enunciated in the afore cited authority. In fact, the trial Court was so thorough in its approach to the issue of assessment of damages that it even went a notch higher by seeking reinforcement from a plethora of authorities all of which appear in his judgement. According to the Respondent, the Learned Trial Magistrate took into account all the relevant factors before arriving at the quantum under attack.

17. It was submitted that the award given to the Respondent was not inordinately high as to represent an erroneous estimate. There was no misapprehension of the evidence in any manner howsoever by the trial Court. According to the Respondent, the Appellants' appeal is misconceived, an afterthought, incompetent and unmeritorious and should be dismissed with costs.

Determinations

18. I have considered the submissions made by the parties herein. The Appellants have taken issue with the fact that their submissions were never considered and that ground is based on Order 21 rule 4 of the ***Civil Procedure Rules*** which states that:

> ***Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.***

19. With due respect that provision does not state that the Court must decide the case in accordance with the submissions. The role of submissions was clarified by the Court of Appeal in **Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR** as hereunder:

> **"Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "*marketing language*", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented."**

20. Similarly, in **Ngang'a & Another vs. Owiti & Another [2008] 1 KLR (EP) 749**, the Court held that:

> **"As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."**

21. As was held by **Mwera, J** (as he then was) in **Erastus Wade Opande vs. Kenya Revenue Authority & Another Kisumu HCCA No. 46 of 2007**:

> **"Submissions simply concretise and focus on each side's case with a view to win the court's decision that way. Submissions are not evidence on which a case is decided."**

22. The same Judge in **Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi Nairobi HCCC No. 36 of 1993** expressed himself as follows:

> **"Indeed and strictly speaking submissions are not part of the evidence in a case. Submissions, to this court's view, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So submissions are not necessarily the case."**

23. In other words, a court is not bound to decide a matter in accordance with the submissions cited before it by the parties. A court of law, in my view, is obliged to carry out its research and study in the area under litigation and ought not to swallow the material placed before it, line, hook and sinker as it were.

24. In this appeal, the Appellant is challenging quantum of damages.

25. The Court of Appeal in **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55** set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

> **"It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate."**

26. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency was dealt with by **Ringera, J** (as he then was) in **Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989** where it was held that:

> **"The court must find out as a fact what the annual loss of dependency is and in doing so, it must bear in mind that the relevant income of the deceased is not the gross earnings but the net earnings. There is no conventional fractions to be applied, as each case must depend on its own facts. When a court adopts any fraction that must be taken as its finding of fact in the particular case and in considering the reasonable figure, commonly known as the multiplier, regard must be considered in the personal circumstances of both the deceased and the defendant such as the deceased's age, his expectation of working years, the ages of the dependants and the length of the dependant's expectation of dependency. The chances of life of the deceased and the dependants should also be borne in mind. The capital sum arrived at after applying the annual multiplicand to the multiplier should then be discounted by a reasonable figure to allow for legitimate concerns such as the widow's probable remarriage and the fact that the award will be received in a lump sum and if otherwise invested, good returns can be expected."**

27. The same Judge in **Beatrice Wangui Thairu –vs- Hon. Ezekiel Barngetuny & Another – Nairobi HCCC. No.1638 of 1988 (unreported)**, held at page 248 that:

> **"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 annual 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 then multiply the multiplicand by a reasonable figure representing so many years purchases. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the 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."**

28. In this case, the appellants have taken issue with the dependency ratio. In this case the deceased was aged 15 years. The principles which ought to guide a court in awarding damages for lost years were set out succinctly by the Court of Appeal in **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others Civil Appeal No. 123 of 1983 [1986] KLR 457; [1982-1988] 1 KAR 946; [1986-1989] EA 137** as:

> **(1). Parents cannot insure the life of their children;**
>
> **(2). The death of a victim of negligence does not increase or reduce the award for lost years;**
>
> **(3). The sum to be awarded is never a conventional one but compensation for pecuniary loss;**
>
> **(4). It must be assessed justly with moderation;**
>
> **(5). Complaints of insurance companies at the awards should be ignored;**
>
> **(6). Disregard remote inscrutable speculative claims;**
>
> **(7). Deduct the victim's living expenses during the "lost years" for that would not be part of the estate;**
>
> **(8). A young child's present or future earning would be nil;**
>
> **(9). An adolescent's would real, assessable and small;**
>
> **(10). The amount would vary from case to case as it depends on the facts of each case including the victim's station in life;**
>
> **(11). Calculate the annual gross loss;**
>
> **(12). Apply the multiplier (the estimate number of the lost years accepted as reasonable in each case;**
>
> **(13). Deduct the victim's probable living expenses of reasonably satisfying enjoyable life for him or her; and**

(14). Living expenses reasonable costs of housing, heating, food, clothing, insurance, travelling, holiday, social and so forth.

29. That is my understanding of the holding of the Court of Appeal in **Kenya Breweries Ltd vs. Saro [1991] KLR 408** that;

> "**…in the assessment of damages to be awarded in this sort of action, the age of the deceased child is a relevant factor to be taken into account so that in the case of say a thirteen year old boy already in school and doing well in his studies, the damages to be awarded would naturally be higher than those in awardable in the case of a four year old one who has not been to school and whose abilities are not yet ascertained. That, we think, is a question of common sense rather than the law. But the issue of some damages being payable in both cases is no longer an open question in Kenya. This is because in the Kenyan society, at least as regards Africans and Asians, the mere presence in a family of a child of whatever age and of whatever ability is itself a valuable asset which the parent are proud of and are entitled to keep intact. It is an accepted fact of life in Kenya that even young children do help in the family, say by looking after cattle or caring for younger followers, and once the children become adults they are expected to and invariably take care of their aged parents."**

30. **Githinji, J** (as he then was) in **William Juma vs. Kenya Breweries Ltd. Nairobi HCCC NO. 3514 of 1985** however appreciated that:

> **"In this country, the courts have taken into account the nature of our society and have correctly held that parents expect financial help from their children when they grow up. It is recognised that in our society children render useful services in the house or in the shamba, which relieves parents from financial expenditure on, say an employed worker. Those free services can be converted into money. The courts therefore have been awarding a lumpsum figure to compensate parents of young children for pecuniary loss they have suffered or expect to suffer."**

31. In ***DMM (Suing as the Administrator and Legal Representative of the Estate of LKM vs. Stephen Johana Njue & Another [2016] eKLR*** the court expressed itself as hereunder:

> ***"In the circumstances, the sum of Kshs. 700,000/= was a product of, and was an erroneous estimate of damages. Taking all factors into account, a 16 year old in school and doing well would receive a compensation of between Kshs. 1,000,000/= to Kshs. 1,500,000/=. In my discretion, I find the sum of Kshs. 1,200,000/= to be adequate compensation for loss of dependency. Accordingly, I set aside the award of Kshs. 700,000/= awarded by the trial court for loss of dependency and in its place I award the sum of Kshs. 1,200,000/= for loss of dependency."***

32. I agree with **Ringera, J** in **Marko Mwenda vs. Bernard Mugambi & Another Nairobi HCCC No. 2343 of 1993** that:

> "In adopting a multiplier the Court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased… The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."

33. Based on the aforesaid decisions, I cannot see any warrant for interfering with the Learned Trial Magistrate's decision to base his award on a lump sum. What she ought to have done was to award a lump sum based on comparable awards. I associate myself with the decision of **Mulwa J** in **Simon Kibet Langat & Anor. vs. Miriam Wairimu Ngugi (Suing as the Administrator of the estate of Daniel Mwiruti Ngugi [2016] eKLR** where she stated that:

> "**For young minors, it is not clear how a child may turn out to be when they mature despite good grades in school and high expectations of parents. Further, minors cannot be said to strictly have dependants. All children from all walks of life, given equal opportunities could become anything in future. It is not predictable**."

34. In **Chen Wembo & 2 Others vs. IKK & Another (suing as the legal representatives and Administrators of the estate of CRK (deceased) (2017) eKLR** the court awarded Kshs 600,000.00 as lost years for a child who was aged 8 years. In this case, the deceased was an adolescent hence the award could not have been the same as that of a young child. In the premises I cannot hold that the award under this heard was manifestly excessive as to warrant interference. It may well be that this court sitting as the trial court might have arrived at a different figure. That however is not the basis for interfering with an award. As was held by the Court of Appeal in **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457**:

> **"The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect…A member of an appellate court when naturally and reasonably says to himself "what figure would I have made?" and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other Judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own…"**

35. Similarly, in **Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47**, the Court of Appeal held that:

"In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."

36. As was held in **Mariga vs. Musila (1984) KLR 251:**

"The assessment of damages is more like an exercise of discretion and the appellate court is slow to reverse a lower court's decision on the question of the amount of damages unless it is satisfied that the judge acted on a wrong principle of law or has for this or other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court judge acted on wrong principles."

37. As regards the double award, as stated in **Marko Mwenda vs. Bernard Mugambi & Another** (supra) the capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased. Similarly, the Court of Appeal in **Eliphas Mutegi Njeri & Another vs. Stanley M'mwari M'atiri Civil Appeal No. 237 of 2004** held that:

"As regards the failure of the Superior Court to take into consideration the award under the Fatal Accidents Act when arriving at the award under the Law Reform Act the principle is that the award under the Fatal Accidents Act has to be taken into account when considering awards under the Law Reform Act for the simple reason that the dependants under the Law Reform Act are the same beneficiaries of the estate of the deceased in the latter Act. Although section 2(5) of the Law Reform Act states that the damages under this Act are in addition to those made under the Fatal Accidents Act the fact that the same parties benefit from awards under both Acts cannot be ignored. If this is not done then there is a danger of duplication of awards…Accordingly, the award of Kshs 890,000/- reduced by Kshs 100,000/- to Kshs 790,000/-."

38. The Court of Appeal (**Waki, Nambuye** and **Kiage JJA**) in the case of **Mombasa Maize Millers Limited vs. Chrispine Asoyo (Suing as Personal Representative/ Administrator of the Estate of Martina Asoyo Akinyi) [2018] eKLR** similarly stated that:

"…this court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased's estate are the same, and consequently the claim for lost years and dependency will go to the same person. It does not mean that a claimant under the Fatal Accidents Act should be denied damages for pain and suffering and loss of expectation life as these are only awarded under the Law Reform Act, hence the issue of duplication does not arise… The words "to be taken into account" and "to be deducted" are two different things. The words in Section 4 (2) of the Fatal Accidents Act are "taken into account". This section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the Fatal Accidents Act the trial judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction."

39. What is required of the court is therefore not to deduct one award from the other but to take into account the possibility of double compensation. In this case the Learned Trial Magistrate was clearly alive to that principle and correctly addressed his mind to the same.

40. Accordingly, I find no merit in this appeal which I hereby dismiss with costs.

41. It is so ordered.

Read, signed and delivered in open Court at Machakos this 19th day of November, 2020

G V ODUNGA

JUDGE

In the Presence of:

Mr Ngolya for the Respondent

Mr Muumbi for Mr Mulei for the Appellant

CA Geoffrey