



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 480 OF 2014

NICHOLAS WILLIAM BENTLEY-BUCKLE.....1ST PLAINTIFF

DEBORAH MARY BENTLEY-BUCKLE.....2ND PLAINTIFF

-VERSUS-

CUSTODY & REGISTRARS SERVICES LIMITED.....1ST DEFENDANT

SUNTRA INVESTMENT BANK LIMITED.....2ND DEFENDANT

AMENDED JUDGMENT

1. **Nicholas William Bentley – Buckle** and **Deborah Mary Bentley - Buckle**, the Plaintiffs, are brother and sister respectively. They bring this action on behalf of **The Estate of their late father, Anthony William Bentley – Buckle (deceased)**.

2. **Custody & Registrars Services Limited**, the 1st Defendant and **Suntra Investment Bank Limited**, the 1st and 2nd Defendants respectively, are Limited Liability Companies registered under the Companies Act.

3. The Plaintiffs seek judgment against both Defendants, jointly and severally for:

a) Restitution of the 99,100 East Africa Breweries Limited ordinary shares fraudulently immobilized by the Defendants and subsequently sold.

b) Payment of unpaid dividends of 99,100 East African Breweries Limited ordinary shares.

c) Special damages for breach of contract being the current value of 99,100. East African Breweries Limited ordinary shares at Nairobi securities exchange.

d) Special damages for breach of trust and/or fiduciary duty being the current value of 99,000 East African Breweries Limited ordinary shares at the Nairobi securities Exchange.

e) General damages for breach of trust and fiduciary duty.

4. The Plaintiff's claim is denied by the Defendants.

5. The 1st Defendant is the Shares Registrar of East African Breweries Limited (EABL). The 2nd Defendant is Central Depository Agent (CDA).

BACKGROUND

6. Anthony William Bentley – Buckle (deceased) (herein after referred to as the deceased) from or about 1977 was a holder of shares of EABL. Those shares were Share Certificate.No.170423 and 168653 for the account No. 56650. It is not denied that on or about 1998 EABL requested through a notice in the press for all its shareholders to return the old share certificates, such as those of the deceased, in order for them to be issued with new Share Certificates.

7. The new Share Certificates for the deceased were between May and June 2007 immobilized. Immobilized security is defined in the

Central Depositories Act No. 4 of 2000, to mean “a security where the underlying physical certificates have been deposited with are held by Central Depository. Immobilization.” In other words it is a procedure under which the paper/physical Share Certificates are converted into electronic shares for which Central Depository Settlement Corporation (CDSC) maintains and issues regular account statements. Once those Share Certificates are immobilized a Central Depository account is opened for the shareholder.

8. It is not denied that the deceased shares of EABL were immobilized through the 2nd Defendant. The 2nd Defendants did so acting as Central Depository agent. It is also not denied that the said immobilization of the deceased EABL shares was after the 1st Defendant, as the Share Registrar of EABL, confirmed the authenticity of the Share Certificate presented for such authentication by the 2nd Defendant.

9. The Plaintiffs by their claim averred that the immobilization and eventual sale of the deceased’s share was negligent and/or fraudulent. They allege that the said sale was due to the negligence and fraud on the part of both Defendants.

PLAINTIFF’S CASE

10. The lead evidence on Plaintiffs’ case was by Nicholas William Benkley – Buckle, the 1st Plaintiff.

11. The 1st Plaintiff works and resides in the United Kingdom. On passing away of his, and his sister’s, father, the deceased, the 1st Plaintiff began the process of identifying assets of the deceased. On perusing the deceased’s documents he and his sister (his co-executor of the will) found out that the deceased was an owner of EABL shares, amongst others. On establishing that the Share Registrar of EABL was the 1st Defendant he communicated with the 1st Defendant, with a view to knowing how to deal with those shares. He was informed by the 1st Defendant that the deceased shares with EABL had been immobilized and subsequently sold in 2007. Since he was unable to get satisfactory or further information from the 1st Defendant he and his sister filed this suit against both Defendants.

12. The 1st Plaintiff stated that the two paper Share Certificate issued to his father in 1977 were in his custody as the executor. He therefore said those shares could not have been sold as alleged by the 1st Defendant. He further stated that his late father did not undertake the process of opening a CDs account with the 2nd Defendant and neither did he sell his shares.

13. The reasons he gave for stating that his father did not immobilize or sell those EABL shares was because the deceased, his father, who was born in 1921, was as at when those shares were immobilized and sold, of old age and frail. The 1st Plaintiff stated that it was he and his sister who took care of the deceased’s financial affairs. That the deceased who worked and resided in Mombasa, Kenya, left Kenya in 1975 and relocated to UK. That the deceased only visited Kenya in 1980s but after that and because of his frailty he did not travel again.

14. 1st Plaintiff referred to the 2nd Defendant’s documents which the second Defendant relied upon to immobilize the deceased’s shares and their eventual sale. He said the Kenyan passport then used, which was in the name of Anthony William Bentley Buckle (notice the lack of hyphen between Bentley and Buckle) was a forgery. This is because it did not belong to his deceased father. The deceased was a citizen of UK and 1st Plaintiff produced a copy of the deceased’s UK passport which bares the name Anthony William Bentley-Buckle. He further stated that the Kenyan passport reflected the deceased’s date of birth as 10th October 1947 but that the correct date of birth of the deceased, reflected in the UK passport was 13th August 1921. He further said that the address reflected in the forms used to immobilize the deceased’s shares was not the deceased’s address.

15. That evidence of the 1st Plaintiff was reiterated and supported by the 2nd Plaintiff. The 2nd Plaintiff also confirmed that the deceased left Kenya in the late 1970 and only returned to visit in 1980. That otherwise he resided in UK and he was unable to handle his affairs because of ill health.

1ST DEFENDANT’S EVIDENCE

16. Kerry – Ann Makatiani, the Executive Director of the 1st Defendant gave evidence in respect to this claim.

17. She stated that the 1st Defendant is the Share Registrar for EABL having taken over that responsibility from Barclays Advisory and Registrars services in 2008.

18. On 3rd February 2012 the 1st Defendant received an email from the 1st Plaintiff who was inquiring about the deceased’s EABL shares. On checking their records 1st Defendant found that shares held by the deceased had been immobilized and sold.

19. The 1st Defendant on obtaining the deceased’s passport, from the 1st Plaintiff made comparison with the Kenyan passport, used to immobilize the shares, and this is what the 1st Defendant’s witness said in evidence:

“The person who immobilized the shares bears the same name as the deceased shareholder, namely, Anthony William Bentley – Buckle. The person who immobilized the shares used a forged passport of the deceased shareholder. There are several discrepancies between the deceased shareholder’s passport forwarded to us by the 1st Plaintiff and the forged passport forwarded by the person who immobilized the shares as demonstrated below:

Item	Details of passport forwarded by 1st Plaintiff	Details of forged passport
Name	Anthony William Bentley-Buckle	Anthony William Bentley-Buckle
Nationality	British Citizen	Kenyan citizen
Passport No.	03540911	A898013
Place of birth	Knockle	Nairobi
Date of Issue	20 th May 1999	15 th December 2004
Date of Expiry	20 th May 2009	15 th December 2009”

20. The witness further stated that the Share Certificates in the name of the deceased, presented to the 1st Defendant by the 1st Plaintiff were invalidated by EABL on or about 1988 when an announcement was made, by the then EABL Share Registrar, requesting all EABL shareholders, who had Share Certificates issued prior to 1988, to surrender them and be issued with one consolidated Share Certificate.

21. The deceased consolidated Share Certificate, amongst others that were not collected were posted to the addresses given to EABL, by those shareholders, at the time of acquiring the shares. In the case of the deceased his Share Certificate was sent to the address “C/O. EABL Shares Department, P. O. Box 30161 Nairobi.”

22. 1st Defendant’s witness stated in evidences;

“It appears that the person who fraudulently immobilized the deceased’s shares got access to the original new Share Certificate which he then presented to the 2nd Defendant for immobilization of the shares held by the deceased shareholder in EABL.”

23. 1st Defendant however said that the deceased was negligent for failing to collect his new consolidated Share Certificate, as advised in the newspaper announcement; for being indolent in respect to his said shares; and for failing to notify the 1st Defendant of non receipt of the consolidated Share Certificate and/or of its loss.

24. The 1st Defendant denied colluding with the 2nd Defendant to immobilize the deceased’s shares on 30th April 2007. The witness set out the role the 1st Defendant plays in immobilization of the shares.

25. That under the Central Depositories Act 2000 the 1st Defendant, as the Share Registrar, plays no role in the immobilization of the share and played no role in the opening of the deceased’s CDs account. That a CDS account is opened when a depositor completes and signs securities account opening form called CDI. That the 2nd Defendant, as a DCA, is obligated under Section 80 of the Capital (Licensing Requirements) (General) Regulations, to obtain and maintain client’s identification information which should be retained for reference. The information the 2nd Defendant is obligated to obtain is the client’s information, verified copies of identification documents (identity card or passport), most recent passport size photograph, contact address, email and telephone number and sample signature.

26. The 1st Defendant’s witness faulted the 2nd Defendant for failing to confirm authenticity of the Kenyan passport presented to it when CDSC account was opened fraudulently and deceased’s shares were deposited therein and subsequently sold through 2nd Defendant.

27. That the 1st Defendant’s role in immobilization process is to confirm whether the records of the person identified by CDA matches the records held by the 1st Defendant and whether the Share Certificate being immobilized is genuine or whether it has encumbrance. That in this case the 2nd Defendant (CDA) grossly failed in the verification of the identity of the person who immobilized the deceased’s EABL shares.

2ND DEFENDANT’S EVIDENCE

28. Mark Kariuki Maina is the Head of Customer Care/Agents Co-ordination of the 2nd Defendant. In his evidence he began by stating that when a client walks into the 2nd Defendant office, the 2nd Defendant first establishes whether that client has a CDSC account. If such a client has that account the 2nd Defendant checks the details in the system.

29. In the year 2007 a client by the name of the deceased went to the 2nd Defendant, and since he did not have a CDSC account, he submitted two original Share Certificates Nos. 170423 and 168653 of EABL. He gave his address as P. O. Box 4214 -00200 Nairobi. That person completed CDS 2 form at the 2nd Defendant’s office. That person also submitted his passport. The CDS 2 form was sent to the 1st Defendant for verification and authentication of the documents as per the share register. The 1st Defendant confirmed to CDSC that the transaction was genuine which paved the way for immobilization.

30. The witness stated that the 2nd Defendant as Central Depository Agent (CDA) has no record and/or has no capacity to authenticate the

information provided by the Shareholder that the 2nd Defendant forwarded all the relevant document, of the person who presented himself as the deceased, to the 1st Defendant, since the 1st Defendant acts as the custodian of clients' shares, and that the 1st Defendant confirmed that the person the 2nd Defendant was dealing with was the actual owner of the deceased's shares. That the 1st Defendant's confirmation was the basis upon which the 2nd Defendant proceeded with the transaction of the deceased.

31. The witness of the 2nd Defendant stated that in view of the verification by 1st Defendant the 2nd Defendant had no doubt that the person who appeared before them was the legal owner of the EABL shares. That it is the 1st Defendant who had the power to stop the immobilization process.

32. On being further examined the 2nd Defendant's witness stated that the 2nd Defendant had no reason to suspect the passport was invalid.

ANALYSIS AND DETERMINATION

33. I have considered the parties pleadings, evidence, submissions, authorities and issues. Having done so I am of the view that there are three issue for determination in this matter. They are:

- a) *In the immobilization of the deceased's EABL shares did the 1st Defendant and/or the 2nd Defendant act negligently, fraudulently and or in to breach of trust and fiduciary duty;*
- b) *Was the deceased and/or the Plaintiffs negligent in respect to deceased's EABL shares;*
- c) *Who will bear the costs.*

ISSUE (a)

34. The process of immobilization of 'paper' shares into digital form was explained by both Defendants. When a client approaches a CDA, such as the 2nd Defendant, they are expected to fill CD1 Form. That form requires information of the person seeking immobilization, that is to give his/her name, address, date of birth, telephone number, email address, nationality and identity card number or passport number. The person is also expected to sign that form. The form requires the CDA to witness the filling and signing of the form by the client.

35. In this case that process was followed and overseen by the 2nd Defendant. The person who presented himself before the 2nd Defendant and requested to immobilize the deceased's EABL shares gave the following details:

Surname: Buckle

Other names: Anthony William Bentley

Address: 42014 – 00200

Date of birth: 10/10/1947

Telephone number: 0726-862949

Email address: buckle@hotmail.com

Nationality: Kenyan

ID/Passport No: A898013

36. That form was signed by the person who gave the above information and was witnessed and verified by the 2nd Defendant's M.D's secretary. The request to immobilize was authorized by 2nd Defendant's M.D

37. The client also filled another form, CD 2, which was forwarded together with the passport (it is not clear whether it was the original or copy of the passport that was forwarded to the 1st Defendant, as the Share Registrar of EABL shares. The purpose was for the 1st Defendant to verify information on that form. The 1st Defendant's witness, Kerry-Ann Makatiani, in evidence stated that in the verification of the shareholder the 1st Defendant undertakes to confirm:

- a) *Name*
- b) *Address*
- c) *Share Certificate issued to the shareholder*
- d) *Number of shares*

e) When the shareholder entered the register

That these would be accompanied with the immobilization form.

38. I need to state that I received the parties' evidence in this matter. In doing so I had the opportunity to observe the witnesses as they testified. I found the evidence of both of the Plaintiffs to be reliable honest and credible. I believed their evidence. The 1st Plaintiff's evidence was more detailed, perhaps because from the time he discovered that his deceased's father's EABL shares had been sold by someone else other than his deceased's father, he embarked on inquiring how the sale occurred.

39. The Plaintiff's evidence was that their deceased father worked in Mombasa up to the late 1970s. The fact that the deceased resided in Mombasa is supported by the address reflected on the 'paper' EABL Share Certificates of the deceased. The address of deceased on those Share Certificates is reflected as P. O .Box 90102 Mombasa. The 1st Defendant also by its letter dated 29th May 2012, addressed to AON Minet Insurance Broker Ltd (page 9 – 10 of 1st Defendant's document), shows that the 1st Defendant was in possession of the deceased Bank account statements of deceased's account with Standard Chartered Bank Kilindini Branch Mombasa.

40. The Plaintiffs also stated, and on this I believed their testimony, that the deceased was of frail health on his return to UK on late 1970s and did not return to Kenya, except for a visit in the 1980s. It would follow that the person who presented himself before the 2nd Defendant in the year 2007 was not the deceased. He was an imposter/fraudster. That person found system failure in both of the Defendant's offices and exploited them.

41. The 2nd Defendant was the one the imposter went to, physically. That imposter filled a form giving information that were very obviously false. Granted that since the 2nd Defendant had no prior knowledge of the deceased it may not have known on face value that that evidence presented by that fraudster was entirely false. What however I would have expected is for the 2nd Defendant to bring a witness that would narrate the internal system it uses when approached by a client seeking to immobilize and to open a CDSC account. The witness who appeared for the 2nd Defendant gave general evidence. It would have assisted the Court to hear from the secretary of 2nd Defendant's M.D. who signed the form CD1 confirming that the imposter filled the form in her presence. That evidence was missing. The other missing evidence is of the imposter's photograph which ought to have been affixed to the CD1 form. In this case it was not. It does also seem that form CD1 provides for a person, such the imposter, to be subjected to test questions, I presume to confirm their veracity, but again there is no evidence the 2nd Defendant asked the imposter those test questions. It does look like that the 2nd Defendant did not exercise any amount of care in dealing with the imposter, the 2nd Defendant dealt with him as a matter of routine.

42. The 2nd Defendant, and indeed the 1st Defendant, did not tell the Court whether they sighted the original passport of the imposter or whether they dealt with a one page photo copy which is before Court. Indeed the loud silence on this would lead the Court to find that the Defendants dealt with a photo copy. No wonder then the 2nd Defendant could not confirm that the passport was not that of the deceased. In all probability it was a forged passport. Kerry-Ann Makatiani said as much in her evidence in chief and repeatedly, that the imposter's passport was forged.

43. If indeed the 2nd Defendant sighted the original passport of the imposter why did it fail to inquire on whether it was genuine. At most the 2nd Defendant could have written to immigration to make inquiries as it awaited verification of the imposter's details by the 1st Defendant. If the 2nd Defendant did not make that rudimentary inquiry it then makes a mockery the words in the form the 2nd Defendant signed (entitled '*individual information card*') at page 4 of 1st Defendant's documents, which state:

“WE CERTIFY THAT THE NAME ID NO. AND SPECIMEN SIGNATURE GIVEN BY YOUR ABOVE CUSTOMER ARE ACCURATE AND TALLY WITH INFORMATION HELD BY US.”

44. The above words are in capital letters in that form and below those words there is a signature of 2nd Defendants. Again the signing below those words by the 2nd Defendant seemed to have been treated as a matter of routine. How else can it be explained now that it has turned out that the deceased was not within Kenya but was in UK and was old and ailing and did not appear before the 2nd Defendant.

45. On that form where those words appear is an empty area with the words "*COLOUR PHOTO.*" The photograph of the imposter was not affixed on that form, by the 2nd Defendant.

46. On receiving the forged passport of the imposter and CD 1 and CD 2 forms, the 2nd Defendant forwarded the Share Certificate, the passport (it's not clear whether it was the original passport or photocopy of one page), and CD 2 to the 1st Defendant. The 1st Defendant is the Share Registrar of EABL. I have set out above what the 1st Defendant stated was to be verified by it. The first to be verified is the shareholder's name. The shareholder's name reflected in the forms filled by the imposter and his forged passport are not exactly the names of the deceased, which are the names the 1st Defendant should have had in its register. The imposter's form and the forged passport reflected the names as follows:

Surname: Buckle

Other names: Anthony William Bentley

47. The 1st Plaintiff in his evidence, and he was emphatic about this, stated that the family's surname was not Buckle but was Bentley-Buckle, with a hyphen between the names. The imposter it would seem in creating his forgery missed that fine detail.

48. The 1st Defendant, as the Share Registrar of EABL failed to note that anomaly. The deceased's surname with a hyphen in between is reflected in the 'paper' EABL Share Certificates issued to the deceased as far back as November 1977. Why would the 1st Defendant then fail to note that the imposters forged passport and form CD 2 bore the wrong name. And those 'paper' Share Certificates issued to the deceased in 1977 reflect the deceased's address as P. O. Box 90102 Mombasa Kenya. The imposter gave the address as 42014 – 00200. Why did the 1st Defendant not inquire when that change of address of the deceased if at all, occurred and yet it was not reflected in its register.

49. I need to state that the 1st Defendant failed to produce before this Court an extract of its register so that this Court could know what it was verifying about the imposter's details. It was also a concern that the 1st Defendant failed to produce before Court form CD2, the one filled by the imposter and which was forwarded to it by the 2nd Defendant. Although the 1st Defendant's witness confirmed that the 1st Defendant has a fraud policy it does seem, and the witness did indeed confirm, that that fraud policy failed to work in the case of the deceased's shares.

50. The 1st Defendant as the shares registrar failed on two occasions, to send the deceased's Share Certificate to deceased's correct address. Those two occasions were when EABL consolidated the shareholder's Share Certificate into one, that was in 1998, when the shareholders were required through a newspaper advert to collect the consolidated Share Certificate. The deceased, who by then was residing in UK, did not and could not, even though the 1st Defendant submitted otherwise, have been expected to see that advert which was in a newspaper in Nairobi. The 1st Defendant instead of retaining that Share Certificate when it was not collected it sent it to an amorphous address, that is C/o EABL shares Department P. O. Box 30160 Nairobi. No one was called, as a witness, from EABL shares Department to confirm receipt of that certificate. Indeed there was no evidence, before Court, of such postage. The second occasion the 1st Defendant failed was when EABL issued its shareholders with bonus shares. The 1st Defendant stated, although no evidence was produced, that that bonus share of the deceased was sent again to the EABL shares Department.

51. The 1st Defendant, who as the EABL Share Registrar, would pay the dividends to EABL's shareholders, confirmed through a letter, mentioned before addressed to AON Minet, that the dividends of deceased were sent to his bank account in Mombasa. If only the 1st Defendant had put in a little effort it could have obtained the address of the deceased from his banker in order to ensure to send the deceased's Share Certificates to the correct address of the deceased.

52. It does seem failure to send those Share Certificates to the deceased by the 1st Defendant was what led to those Share Certificates ending up in the hand of the imposter who subsequently through the 2nd Defendant immobilized them and sold them to the detriment of the deceased's estate.

53. Equally had the 2nd Defendant verified the passport was genuine and confirmed that the imposter filled and signed CD1 and CD2 forms in the presence of the 2nd Defendant's Officer, the deceased's estate may not have lost the shares which were immobilized by the imposter and sold by him.

54. As it will be seen above, my finding is that both Defendants were negligent in the immobilization and eventual sale of deceased's EABL shares. On this I find support in a case cited by Court of Appeal in **FRED BEN OKOTH – V- EQUATOR BOTTLERS LIMITED (2015) eKLR** as follows:

“I addressing the question where the evidence is that A and B must have caused the injury Clerk & Lindsell on Tort 20th Edition, page 85 had this to say,

In Cook vs Lewis (1951) SCR 830, A and B were out shooting. Both fired in the direction of C who was injured but his injury resulted from a single bullet. He could not prove from which gun the bullet came. The Supreme Court of Canada suggested that where the claimant was unable to prove which of them caused his injury, the onus of disproving liability is thrown on each of the Defendants. If both fail to disprove causation, both will be found liable.”

55. Did the Defendants owe the deceased's estate a duty of care. I would resoundingly answer that question in the affirmative. In my assessment it is fair, just and reasonable that they be found, as I find here, that they owed the deceased's estate a duty of care not to act negligently as they did. Lord At kin when discussing duty of care in the case **DONOGLUE – V- STEVENSON (1932) A.C. 56** stated in part:

“The liability for negligence, whether you style it such or treat it as in other systems as a species of ‘Culpa’ is no doubt based upon a general public sentiment of moral wrong doing for which the offender must pay ... the rule that you are to love your neighbor becomes in law, you must not injure your neighbor and the lawyer's question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then, in law is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the act or omission which are called in question.”

56. That classical statement of Lord Atkins is applicable to this case. The acts and omissions of both Defendants affected the deceased's estate. The Defendants, both of them, owed the deceased's estate a duty of care, the evidence before me is clear on that.

57. I find the Defendants liability towards the deceased's estate to be equal.

58. I agree with the submissions made by the 1st Defendant that the Plaintiffs failed to prove breach of trust and breach of fiduciary duty on the part of the Defendants. There was also no proof that the two Defendants colluded to defraud the deceased's estate. What was however

proved is that the Defendants by their acts or omissions acted negligently in the immobilization and eventual sale of the deceased's EABL shares.

ISSUE (b)

59. The 1st Defendant pleaded that the deceased was negligent in not collecting his consolidated Share Certificate. The 1st Defendant relied on the newspaper advert which requested the EABL shareholders to collect their consolidated Share Certificate. The evidence before Court was that the deceased was by then residing in UK and was of frail health. As I stated above in this judgment if the deceased failed to collect his Share Certificate that should have put the 1st Defendant on notice to inquire of the deceased's current address. In any case in the Share Certificate EABL issued to the deceased in 1977, the deceased's address is reflected to be in Mombasa. The 1st Defendant instead of doing any of the above sent the Share Certificate to EABL shares Department.

60. In my view there is no evidence to prove the deceased or even the Plaintiffs were negligent in respect to the deceased's EABL shares. The Plaintiff's executor's duties only came to being on the death of the deceased. It is after his death and as the Plaintiffs began to collect the deceased's assets that it was realized the deceased owned EABL shares. There is no negligence that can be attributed to the Plaintiffs or even the deceased in respect of these shares. This issue (b) is found in the negative.

CONCLUSION

61. The Plaintiffs in their prayers sought restitution of the shares sold. I find that the Defendants will equally restore those shares to the deceased's estate because their liability is equal.

62. The Plaintiffs failed to prove their claim for the unpaid dividends on the 99,100 deceased's shares. This is because that is a special damages claim which needed to be specifically claimed and proved. See the case: **CAPITAL FISH KENYA LIMITED V THE KENYA POWER & LIGHTING COMPANY LIMITED (2016) eKLR** where the Court of Appeal stated:

“Starting with the first issue, it is trite law that special damages must not only be specifically pleaded, they must also be strictly proved with as much particularity as circumstances permit. See National Social Security Fund Board of Trustees vs Sifa Internatinal Limited (2016) eKLR, Macharia & Waiguru vs Muranga Municipal Council & another (2014) eKLR and Provincial Insurance Co. EA Ltd vs MORdekai Mwanga Nandwa, KSM CACA 179 of 1995 (ur). In the latter case this Court was emphatic that

“...It is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead. It is equally clear that no general damages may be awarded for breach of contract...”

63. The Plaintiffs sought general damages. General damages, it needs to be said are not recoverable for breach contract. The Plaintiff has prayed as a separate prayer for general damages. I am of the view the Plaintiff can recover general damages from both the Defendants for their wrongful acts and omissions of selling the deceased's shares. They are liable in damages for their negligent acts and omissions. In my view it is fair and just for the Defendants, each one of them, to pay the Plaintiffs ~~Kshs. 4 million~~ **Kshs 10 million**.

64. The Plaintiffs having prevailed in their claim, as provided under Section 27 of the Civil Procedure Act, costs will follow the event. The costs will be awarded to the Plaintiff to be paid equally by both Defendants.

65. **In conclusion there shall be Judgment for the Plaintiffs as follows:**

- a) **The 1st and 2nd Defendants shall equally restore to the Plaintiffs the 99,100. East African Breweries Limited Shares of Anthony William Bentley-Buckle (deceased) within 90 days from the date of this Judgment.**
- b) **The 1st and 2nd Defendants shall each pay the Plaintiffs general damages of Kshs. 10 (ten) million with interest at Court rate from the date of filing suit until payment in full.**
- c) **The 1st and 2nd Defendants shall equally pay the Plaintiffs costs of this suit with each Defendant paying half of such taxed costs.**

AMENDED, DATED and SIGNED at NAIROBI this 17TH day of DECEMBER, 2019.

MARY KASANGO

JUDGE

Amended Judgment Read in Open Court in the presence of:

Sophie..... COURT ASSISTANT

.....FOR THE 1ST PLAINTIFF

.....FOR THE 2ND PLAINTIFF

.....FOR THE 1ST DEFENDANT

.....FOR THE 2ND DEFENDANT

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J U D G M E N T

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PLAINTIFF'S CASE

10. The lead evidence on Plaintiffs' case was by Nicholas William Benkley – Buckle, the 1st Plaintiff.

11. The 1st Plaintiff works and resides in the United Kingdom. On passing away of his, and his sister's, father, the deceased, the 1st Plaintiff began the process of identifying assets of the deceased. On perusing the deceased's documents he and his sister (his co-executor of the will) found out that the deceased was an owner of EABL shares, amongst others. On establishing that the Share Registrar of EABL was the 1st Defendant he communicated with the 1st Defendant, with a view to knowing how to deal with those shares. He was informed by the 1st Defendant that the deceased shares with EABL had been immobilized and subsequently sold in 2007. Since he was unable to get satisfactory or further information from the 1st Defendant he and his sister filed this suit against both Defendants.

12. The 1st Plaintiff stated that the two paper Share Certificate issued to his father in 1977 were in his custody as the executor. He therefore said those shares could not have been sold as alleged by the 1st Defendant. He further stated that his late father did not undertake the process of opening a CDs account with the 2nd Defendant and neither did he sell his shares.

13. The reasons he gave for stating that his father did not immobilize or sell those EABL shares was because the deceased, his father, who was born in 1921, was as at when those shares were immobilized and sold, of old age and frail. The 1st Plaintiff stated that it was he and his sister who took care of the deceased's financial affairs. That the deceased who worked and resided in Mombasa, Kenya, left Kenya in 1975 and relocated to UK. That the deceased only visited Kenya in 1980s but after that and because of his frailty he did not travel again.

14. 1st Plaintiff referred to the 2nd Defendant's documents which the second Defendant relied upon to immobilize the deceased's shares and their eventual sale. He said the Kenyan passport then used, which was in the name of Anthony William Bentley Buckle (notice the lack of hyphen between Bentley and Buckle) was a forgery. This is because it did not belong to his deceased father. The deceased was a citizen of UK and 1st Plaintiff produced a copy of the deceased's UK passport which bares the name Anthony William Bentley-Buckle. He further stated that the Kenyan passport reflected the deceased's date of birth as 10th October 1947 but that the correct date of birth of the deceased, reflected in the UK passport was 13th August 1921. He further said that the address reflected in the forms used to immobilize the deceased's shares was not the deceased's address.

15. That evidence of the 1st Plaintiff was reiterated and supported by the 2nd Plaintiff. The 2nd Plaintiff also confirmed that the deceased left Kenya in the late 1970 and only returned to visit in 1980. That otherwise he resided in UK and he was unable to handle his affairs because of ill health.

1ST DEFENDANT'S EVIDENCE

16. Kerry – Ann Makatiani, the Executive Director of the 1st Defendant gave evidence in respect to this claim.

17. She stated that the 1st Defendant is the Share Registrar for EABL having taken over that responsibility from Barclays Advisory and Registrars services in 2008.

18. On 3rd February 2012 the 1st Defendant received an email from the 1st Plaintiff who was inquiring about the deceased's EABL shares. On checking their records 1st Defendant found that shares held by the deceased had been immobilized and sold.

19. The 1st Defendant on obtaining the deceased's passport, from the 1st Plaintiff made comparison with the Kenyan passport, used to immobilize the shares, and this is what the 1st Defendant's witness said in evidence:

“The person who immobilized the shares bears the same name as the deceased shareholder, namely, Anthony William Bentley – Buckle. The person who immobilized the shares used a forged passport of the deceased shareholder. There are several discrepancies between the deceased shareholder's passport forwarded to us by the 1st Plaintiff and the forged passport forwarded by the person who immobilized the shares as demonstrated below:

Item	Details of passport forwarded by 1st Plaintiff	Details of forged passport
Name	Anthony William Bentley-Buckle	Anthony William Bentley-Buckle
Nationality	British Citizen	Kenyan citizen

Passport No.	03540911	A898013
Place of birth	Knockle	Nairobi
Date of Issue	20 th May 1999	15 th December 2004
Date of Expiry	20 th May 2009	15 th December 2009”

20. The witness further stated that the Share Certificates in the name of the deceased, presented to the 1st Defendant by the 1st Plaintiff were invalidated by EABL on or about 1988 when an announcement was made, by the then EABL Share Registrar, requesting all EABL shareholders, who had Share Certificates issued prior to 1988, to surrender them and be issued with one consolidated Share Certificate.

21. The deceased consolidated Share Certificate, amongst others that were not collected were posted to the addresses given to EABL, by those shareholders, at the time of acquiring the shares. In the case of the deceased his Share Certificate was sent to the address “C/O. EABL Shares Department, P. O. Box 30161 Nairobi.”

22. 1st Defendant’s witness stated in evidences;

“It appears that the person who fraudulently immobilized the deceased’s shares got access to the original new Share Certificate which he then presented to the 2nd Defendant for immobilization of the shares held by the deceased shareholder in EABL.”

23. 1st Defendant however said that the deceased was negligent for failing to collect his new consolidated Share Certificate, as advised in the newspaper announcement; for being indolent in respect to his said shares; and for failing to notify the 1st Defendant of non receipt of the consolidated Share Certificate and/or of its loss.

24. The 1st Defendant denied colluding with the 2nd Defendant to immobilize the deceased’s shares on 30th April 2007. The witness set out the role the 1st Defendant plays in immobilization of the shares.

25. That under the Central Depositories Act 2000 the 1st Defendant, as the Share Registrar, plays no role in the immobilization of the share and played no role in the opening of the deceased’s CDs account. That a CDS account is opened when a depositor completes and signs securities account opening form called CDI. That the 2nd Defendant, as a DCA, is obligated under Section 80 of the Capital (Licensing Requirements) (General) Regulations, to obtain and maintain client’s identification information which should be retained for reference. The information the 2nd Defendant is obligated to obtain is the client’s information, verified copies of identification documents (identity card or passport), most recent passport size photograph, contact address, email and telephone number and sample signature.

26. The 1st Defendant’s witness faulted the 2nd Defendant for failing to confirm authenticity of the Kenyan passport presented to it when CDSC account was opened fraudulently and deceased’s shares were deposited therein and subsequently sold through 2nd Defendant.

27. That the 1st Defendant’s role in immobilization process is to confirm whether the records of the person identified by CDA matches the records held by the 1st Defendant and whether the Share Certificate being immobilized is genuine or whether it has encumbrance. That in this case the 2nd Defendant (CDA) grossly failed in the verification of the identity of the person who immobilized the deceased’s EABL shares.

2ND DEFENDANT’S EVIDENCE

28. Mark Kariuki Maina is the Head of Customer Care/Agents Co-ordination of the 2nd Defendant. In his evidence he began by stating that when a client walks into the 2nd Defendant office, the 2nd Defendant first establishes whether that client has a CDSC account. If such a client has that account the 2nd Defendant checks the details in the system.

29. In the year 2007 a client by the name of the deceased went to the 2nd Defendant, and since he did not have a CDSC account, he submitted two original Share Certificates Nos. 170423 and 168653 of EABL. He gave his address as P. O. Box 4214 -00200 Nairobi. That person completed CDS 2 form at the 2nd Defendant’s office. That person also submitted his passport. The CDS 2 form was sent to the 1st Defendant for verification and authentication of the documents as per the share register. The 1st Defendant confirmed to CDSC that the transaction was genuine which paved the way for immobilization.

30. The witness stated that the 2nd Defendant as Central Depository Agent (CDA) has no record and/or has no capacity to authenticate the information provided by the Shareholder that the 2nd Defendant forwarded all the relevant document, of the person who presented himself as the deceased, to the 1st Defendant, since the 1st Defendant acts as the custodian of clients’ shares, and that the 1st Defendant confirmed that the person the 2nd Defendant was dealing with was the actual owner of the deceased’s shares. That the 1st Defendant’s confirmation was the basis upon which the 2nd Defendant proceeded with the transaction of the deceased.

31. The witness of the 2nd Defendant stated that in view of the verification by 1st Defendant the 2nd Defendant had no doubt that the person who appeared before them was the legal owner of the EABL shares. That it is the 1st Defendant who had the power to stop the immobilization process.

32. On being further examined the 2nd Defendant's witness stated that the 2nd Defendant had no reason to suspect the passport was invalid.

ANALYSIS AND DETERMINATION

33. I have considered the parties pleadings, evidence, submissions, authorities and issues. Having done so I am of the view that there are three issues for determination in this matter. They are:

- a) *In the immobilization of the deceased's EABL shares did the 1st Defendant and/or the 2nd Defendant act negligently, fraudulently and or in to breach of trust and fiduciary duty;*
- b) *Was the deceased and/or the Plaintiffs negligent in respect to deceased's EABL shares;*
- c) *Who will bear the costs.*

ISSUE (a)

34. The process of immobilization of 'paper' shares into digital form was explained by both Defendants. When a client approaches a CDA, such as the 2nd Defendant, they are expected to fill CD1 Form. That form requires information of the person seeking immobilization, that is to give his/her name, address, date of birth, telephone number, email address, nationality and identity card number or passport number. The person is also expected to sign that form. The form requires the CDA to witness the filling and signing of the form by the client.

35. In this case that process was followed and overseen by the 2nd Defendant. The person who presented himself before the 2nd Defendant and requested to immobilize the deceased's EABL shares gave the following details:

<i>Surname:</i>	<i>Buckle</i>
<i>Other names:</i>	<i>Anthony William Bentley</i>
<i>Address:</i>	<i>4xxxx – 0xxxx</i>
<i>Date of birth:</i>	<i>10/10/1947</i>
<i>Telephone number:</i>	<i>07xx-xxxxxx</i>
<i>Email address:</i>	<i>buckle@hotmail.com</i>
<i>Nationality:</i>	<i>Kenyan</i>
<i>ID/Passport No:</i>	<i>xxxxxxx</i>

36. That form was signed by the person who gave the above information and was witnessed and verified by the 2nd Defendant's M.D's secretary. The request to immobilize was authorized by 2nd Defendant's M.D

37. The client also filled another form, CD 2, which was forwarded together with the passport (it is not clear whether it was the original or copy of the passport that was forwarded to the 1st Defendant, as the Share Registrar of EABL shares. The purpose was for the 1st Defendant to verify information on that form. The 1st Defendant's witness, Kerry-Ann Makatiani, in evidence stated that in the verification of the shareholder the 1st Defendant undertakes to confirm:

- a) *Name*
- b) *Address*
- c) *Share Certificate issued to the shareholder*
- d) *Number of shares*
- e) *When the shareholder entered the register*

That these would be accompanied with the immobilization form.

38. I need to state that I received the parties' evidence in this matter. In doing so I had the opportunity to observe the witnesses as they testified. I found the evidence of both of the Plaintiffs to be reliable honest and credible. I believed their evidence. The 1st Plaintiff's evidence was more detailed, perhaps because from the time he discovered that his deceased's father's EABL shares had been sold by someone else other than his deceased's father, he embarked on inquiring how the sale occurred.

39. The Plaintiff's evidence was that their deceased father worked in Mombasa up to the late 1970s. The fact that the deceased resided in Mombasa is supported by the address reflected on the 'paper' EABL Share Certificates of the deceased. The address of deceased on those Share Certificates is reflected as P. O .Box 90102 Mombasa. The 1st Defendant also by its letter dated 29th May 2012, addressed to AON Minet Insurance Broker Ltd (page 9 – 10 of 1st Defendant's document), shows that the 1st Defendant was in possession of the deceased Bank account statements of deceased's account with Standard Chartered Bank Kilindini Branch Mombasa.

40. The Plaintiffs also stated, and on this I believed their testimony, that the deceased was of frail health on his return to UK on late 1970s and did not return to Kenya, except for a visit in the 1980s. It would follow that the person who presented himself before the 2nd Defendant in the year 2007 was not the deceased. He was an imposter/fraudster. That person found system failure in both of the Defendant's offices and exploited them.

41. The 2nd Defendant was the one the imposter went to, physically. That imposter filled a form giving information that were very obviously false. Granted that since the 2nd Defendant had no prior knowledge of the deceased it may not have known on face value that that evidence presented by that fraudster was entirely false. What however I would have expected is for the 2nd Defendant to bring a witness that would narrate the internal system it uses when approached by a client seeking to immobilize and to open a CDSC account. The witness who appeared for the 2nd Defendant gave general evidence. It would have assisted the Court to hear from the secretary of 2nd Defendant's M.D. who signed the form CD1 confirming that the imposter filled the form in her presence. That evidence was missing. The other missing evidence is of the imposter's photograph which ought to have been affixed to the CD1 form. In this case it was not. It does also seem that form CD1 provides for a person, such the imposter, to be subjected to test questions, I presume to confirm their veracity, but again there is no evidence the 2nd Defendant asked the imposter those test questions. It does look like that the 2nd Defendant did not exercise any amount of care in dealing with the imposter, the 2nd Defendant dealt with him as a matter of routine.

42. The 2nd Defendant, and indeed the 1st Defendant, did not tell the Court whether they sighted the original passport of the imposter or whether they dealt with a one page photo copy which is before Court. Indeed the loud silence on this would lead the Court to find that the Defendants dealt with a photo copy. No wonder then the 2nd Defendant could not confirm that the passport was not that of the deceased. In all probability it was a forged passport. Kerry-Ann Makatiani said as much in her evidence in chief and repeatedly, that the imposter's passport was forged.

43. If indeed the 2nd Defendant sighted the original passport of the imposter why did it fail to inquire on whether it was genuine. At most the 2nd Defendant could have written to immigration to make inquiries as it awaited verification of the imposter's details by the 1st Defendant. If the 2nd Defendant did not make that rudimentary inquiry it then makes a mockery the words in the form the 2nd Defendant signed (entitled 'individual information card') at page 4 of 1st Defendant's documents, which state:

“WE CERTIFY THAT THE NAME ID NO. AND SPECIMEN SIGNATURE GIVEN BY YOUR ABOVE CUSTOMER ARE ACCURATE AND TALLY WITH INFORMATION HELD BY US.”

44. The above words are in capital letters in that form and below those words there is a signature of 2nd Defendants. Again the signing below those words by the 2nd Defendant seemed to have been treated as a matter of routine. How else can it be explained now that it has turned out that the deceased was not within Kenya but was in UK and was old and ailing and did not appear before the 2nd Defendant.

45. On that form where those words appear is an empty area with the words "COLOUR PHOTO." The photograph of the imposter was not affixed on that form, by the 2nd Defendant.

46. On receiving the forged passport of the imposter and CD 1 and CD 2 forms, the 2nd Defendant forwarded the Share Certificate, the passport (it's not clear whether it was the original passport or photocopy of one page), and CD 2 to the 1st Defendant. The 1st Defendant is the Share Registrar of EABL. I have set out above what the 1st Defendant stated was to be verified by it. The first to be verified is the shareholder's name. The shareholder's name reflected in the forms filled by the imposter and his forged passport are not exactly the names of the deceased, which are the names the 1st Defendant should have had in its register. The imposter's form and the forged passport reflected the names as follows:

Surname: Buckle

Other names: Anthony William Bentley

47. The 1st Plaintiff in his evidence, and he was emphatic about this, stated that the family's surname was not Buckle but was Bentley-Buckle, with a hyphen between the names. The imposter it would seem in creating his forgery missed that fine detail.

48. The 1st Defendant, as the Share Registrar of EABL failed to note that anomaly. The deceased's surname with a hyphen in between is reflected in the 'paper' EABL Share Certificates issued to the deceased as far back as November 1977. Why would the 1st Defendant then fail to note that the imposters forged passport and form CD 2 bore the wrong name. And those 'paper' Share Certificates issued to the deceased in 1977 reflect the deceased's address as P. O. Box 90102 Mombasa Kenya. The imposter gave the address as 42014 – 00200. Why did the 1st Defendant not inquire when that change of address of the deceased if at all, occurred and yet it was not reflected in its register.

49. I need to state that the 1st Defendant failed to produce before this Court an extract of its register so that this Court could know what it

was verifying about the imposter's details. It was also a concern that the 1st Defendant failed to produce before Court form CD2, the one filled by the imposter and which was forwarded to it by the 2nd Defendant. Although the 1st Defendant's witness confirmed that the 1st Defendant has a fraud policy it does seem, and the witness did indeed confirm, that that fraud policy failed to work in the case of the deceased's shares.

50. The 1st Defendant as the shares registrar failed on two occasions, to send the deceased's Share Certificate to deceased's correct address. Those two occasions were when EABL consolidated the shareholder's Share Certificate into one, that was in 1998, when the shareholders were required through a newspaper advert to collect the consolidated Share Certificate. The deceased, who by then was residing in UK, did not and could not, even though the 1st Defendant submitted otherwise, have been expected to see that advert which was in a newspaper in Nairobi. The 1st Defendant instead of retaining that Share Certificate when it was not collected it sent it to an amorphous address, that is C/o EABL shares Department P. O. Box 30160 Nairobi. No one was called, as a witness, from EABL shares Department to confirm receipt of that certificate. Indeed there was no evidence, before Court, of such postage. The second occasion the 1st Defendant failed was when EABL issued its shareholders with bonus shares. The 1st Defendant stated, although no evidence was produced, that that bonus share of the deceased was sent again to the EABL shares Department.

51. The 1st Defendant, who as the EABL Share Registrar, would pay the dividends to EABL's shareholders, confirmed through a letter, mentioned before addressed to AON Minet, that the dividends of deceased were sent to his bank account in Mombasa. If only the 1st Defendant had put in a little effort it could have obtained the address of the deceased from his banker in order to ensure to send the deceased's Share Certificates to the correct address of the deceased.

52. It does seem failure to send those Share Certificates to the deceased by the 1st Defendant was what led to those Share Certificates ending up in the hand of the imposter who subsequently through the 2nd Defendant immobilized them and sold them to the detriment of the deceased's estate.

53. Equally had the 2nd Defendant verified the passport was genuine and confirmed that the imposter filled and signed CD1 and CD2 forms in the presence of the 2nd Defendant's Officer, the deceased's estate may not have lost the shares which were immobilized by the imposter and sold by him.

54. As it will be seen above, my finding is that both Defendants were negligent in the immobilization and eventual sale of deceased's EABL shares. On this I find support in a case cited by Court of Appeal in **FRED BEN OKOTH -V- EQUATOR BOTTLERS LIMITED (2015) eKLR** as follows:

“I addressing the question where the evidence is that A and B must have caused the injury Clerk & Lindsell on Tort 20th Edition, page 85 had this to say,

In Cook vs Lewis (1951) SCR 830, A and B were out shooting. Both fired in the direction of C who was injured but his injury resulted from a single bullet. He could not prove from which gun the bullet came. The Supreme Court of Canada suggested that where the claimant was unable to prove which of them caused his injury, the onus of disproving liability is thrown on each of the Defendants. If both fail to disprove causation, both will be found liable.”

55. Did the Defendants owe the deceased's estate a duty of care. I would resoundingly answer that question in the affirmative. In my assessment it is fair, just and reasonable that they be found, as I find here, that they owed the deceased's estate a duty of care not to act negligently as they did. Lord At kin when discussing duty of care in the case **DONOGLUE – V- STEVENSON (1932) A.C. 56** stated in part:

“The liability for negligence, whether you style it such or treat it as in other systems as a species of ‘Culpa’ is no doubt based upon a general public sentiment of moral wrong doing for which the offender must pay ... the rule that you are to love your neighbor becomes in law, you must not injure your neighbor and the lawyer's question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then, in law is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the act or omission which are called in question.”

56. That classical statement of Lord Atkins is applicable to this case. The acts and omissions of both Defendants affected the deceased's estate. The Defendants, both of them, owed the deceased's estate a duty of care, the evidence before me is clear on that.

57. I find the Defendants liability towards the deceased's estate to be equal.

58. I agree with the submissions made by the 1st Defendant that the Plaintiffs failed to prove breach of trust and breach of fiduciary duty on the part of the Defendants. There was also no proof that the two Defendants colluded to defraud the deceased's estate. What was however proved is that the Defendants by their acts or omissions acted negligently in the immobilization and eventual sale of the deceased's EABL shares.

ISSUE (b)

59. The 1st Defendant pleaded that the deceased was negligent in not collecting his consolidated Share Certificate. The 1st Defendant relied on the newspaper advert which requested the EABL shareholders to collect their consolidated Share Certificate. The evidence before Court

was that the deceased was by then residing in UK and was of frail health. As I stated above in this judgment if the deceased failed to collect his Share Certificate that should have put the 1st Defendant on notice to inquire of the deceased's current address. In any case in the Share Certificate EABL issued to the deceased in 1977, the deceased's address is reflected to be in Mombasa. The 1st Defendant instead of doing any of the above sent the Share Certificate to EABL shares Department.

60. In my view there is no evidence to prove the deceased or even the Plaintiffs were negligent in respect to the deceased's EABL shares. The Plaintiff's executor's duties only came to being on the death of the deceased. It is after his death and as the Plaintiffs began to collect the deceased's assets that it was realized the deceased owned EABL shares. There is no negligence that can be attributed to the Plaintiffs or even the deceased in respect of these shares. This issue (b) is found in the negative.

CONCLUSION

61. The Plaintiffs in their prayers sought restitution of the shares sold. I find that the Defendants will equally restore those shares to the deceased's estate because their liability is equal.

62. The Plaintiffs failed to prove their claim for the unpaid dividends on the 99,100 deceased's shares. This is because that is a special damages claim which needed to be specifically claimed and proved. See the case: **CAPITAL FISH KENYA LIMITED V THE KENYA POWER & LIGHTING COMPANY LIMITED (2016) eKLR** where the Court of Appeal stated:

“Starting with the first issue, it is trite law that special damages must not only be specifically pleaded, they must also be strictly proved with as much particularity as circumstances permit. See National Social Security Fund Board of Trustees vs Sifa Internatinal Limited (2016) eKLR, Macharia & Waiguru vs Muranga Municipal Council & another (2014) eKLR and Provincial Insurance Co. EA Ltd vs MORdekai Mwangi Nandwa, KSM CACA 179 of 1995 (ur). In the latter case this Court was emphatic that

“...It is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead. It is equally clear that no general damages may be awarded for breach of contract...”

63. The Plaintiffs sought general damages. General damages, it needs to be said are not recoverable for breach contract. The Plaintiff has prayed as a separate prayer for general damages. I am of the view the Plaintiff can recover general damages from both the Defendants for their wrongful acts and omissions of selling the deceased's shares. They are liable in damages for their negligent acts and omissions. In my view it is fair and just for the Defendants, each one of them, to pay the Plaintiffs Kshs. 4 million.

64. The Plaintiffs having prevailed in their claim, as provided under Section 27 of the Civil Procedure Act, costs will follow the event. The costs will be awarded to the Plaintiff to be paid equally by both Defendants.

65. In conclusion there shall be judgment for the Plaintiffs as follows:

- a) **The 1st and 2nd Defendants shall equally restore to the Plaintiffs the 99,100. East African Breweries Limited Shares of Anthony William Bentley-Buckle (deceased) within 90 days from the date of this judgment.**
- b) **The 1st and 2nd Defendants shall each pay the Plaintiffs general damages of Kshs. 10 (ten) million with interest at Court rate from the date of filing suit until payment in full.**
- c) **The 1st and 2nd Defendants shall equally pay the Plaintiffs costs of this suit with each Defendant paying half of such taxed costs.**

DATED, SIGNED and DELIVERED at NAIROBI this 30TH day of MAY, 2019.

MARY KASANGO

JUDGE

Judgment Read and Delivered in Open Court in the presence of:

Sophie..... **COURT ASSISTANT**

..... **FOR THE 1ST PLAINTIFF**

..... **FOR THE 2ND PLAINTIFF**

..... **FOR THE 1ST DEFENDANT**

..... **FOR THE 2ND DEFENDANT**

