



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 105 OF 2006**

**DOSHI IRON MONGERS LIMITED.....PLAINTIFF**

**VERSUS**

**1. KENYA REVENUE AUTHORITY**

**2. THE ATTORNEY GENERAL.....DEFENDANTS**

**J U D G M E N T**

**Outline**

1. By a plaint dated the 16/5/2006 and subsequently amended on the 13/7/2016, the plaintiff sought an order for the recovery of the sum of Kshs.13,422,150/= together with damages for detention and conversion as well costs and interests.

2. The facts pleaded to give rise to the suit are that on the 3<sup>rd</sup> and 4<sup>th</sup> October 2001 and again 23<sup>rd</sup> of August 2002, the defendants' agents while acting through the commissioner of the Kenya Revenue Authority, unlawfully seized and thereafter detained assorted boxes of biro pens and other merchandise of the plaintiff on alleged failure to pay taxes and failure to meet standards. That seizure and detention was contested by the plaintiff in Nairobi Misc. Application 1206/2004 (JR) in which the court declared the same to have been unlawfully undertaken beyond the statutory powers of the defendant. The decision was rendered in February 2006. However despite the declaration by the court the goods were never restituted till sometimes in May 2006 after this suit had been filed. By the time the same were returned the same had expired and lost value hence the claim.

3. Upon service, the 1<sup>st</sup> defendant filed a statement of defence in which the pleading's ownership and seizure and detention at paragraph 4,5 & 6 were all denied and a contention made that the goods were merely deposited in a customs warehouse pending verification on the propriety of the importation of the said goods. All other paragraphs of the amended plaint, 7 – 11, were all denied with an explanation that the goods subject matter of this suit were never the subject of the Misc. Application No. 1206 of 2004 and therefore the judgment in the former suit is of no practical application in this suit. It was then pleaded by the 1<sup>st</sup> defendant that the suit herein is bad for failure to comply with the provisions of both Cap 40 and Cap 469 Laws of Kenya, that the suit was statutorily time barred and the 1<sup>st</sup> defendant then reserved the right to have the same dismissed on account of the two said points. The defence was amended on 12/5/2009 but nothing of substance was introduced.

4. For the 2<sup>nd</sup> defendant a statement of defence was filed on 17/7/2008 which essentially and generally traversed the pleading in the amended plaint with only substantial pleading being that the suit was incompetent and bad in law for being in breach and violation of Section 13A Cap 40 and Section 3(1) Cap 39. That statement of defence was then amended to plead that the seizure of the goods was as a consequence of a complaint of an influx of counterfeit goods, however the value of the goods, the allegations of unlawful detainer and failure to fully release the goods wholly were denied with an addition that the facts pleaded herein are similar to those in Nairobi HCC Misc. Application No. 678 of 2004 which had been determined. The challenge to the competence of the suit were repeated with a plea that the suit be dismissed with costs.

5. On 22/3/2012 the court gave directions that parties file and exchange witness statements and bundles of documents. Pursuant to those orders the plaintiff and 1<sup>st</sup> defendant did comply but not the 2<sup>nd</sup> defendant. On 8/2/2018 when the matter came up for hearing the 2<sup>nd</sup> defendant sought leave to file witness statements and bundles of documents while the 1<sup>st</sup> defendant sought leave to substitute the witness statements because the persons who had made same had since left employment and could not attend court to give evidence.

6. The two applications were not opposed by the plaintiff hence the court by consent granted the leave sought, set timelines and directed that documents filed outside the timelines given would not be taken into account at trial.

7. When the matter resumed for hearing on 19/4/2018, the 2<sup>nd</sup> defendant had filed neither witness statement nor documents but its counsel all the same intimated readiness to proceed with the hearing.

8. At trial the plaintiff called one witness who produced the documents filed and had the case closed. The 1<sup>st</sup> defendant called two witnesses while the 2<sup>nd</sup> defendant did not call any witness nor lead any evidence to rebut the plaintiff's case.

### **Evidence by the plaintiff**

9. PW 1, ASHOK DOSHI gave evidence by adopting his statement dated 18/5/2012 as evidence in chief then produced the bundle of document filed on 13/4/2012. About the documents being copies, the witness said he could only exhibit copies because the originals were equally seized by the 1<sup>st</sup> defendant and had not been returned and was being litigated in Petition No. 49 of 2012. Being aware that he had no original documents the witness testified that a Notice to produce was filed dated 29/5/2012 and duly served upon the defendants. The witness then relied on two decisions of the High Court in HC Misc. No. 206 of 204 and 678 of 2004 in which it was said the court had declared the seizures to have been unlawful.

10. HCC No. 678 of 2004 concerned the seizure by weights and measures department of the Ministry of Trade in which the said dependent was ordered to return the good but by the time the same were returned, the witness contended, the same had been destroyed and expired and had no value. For that reason, the plaintiff considered the value of the goods wholly lost and prayed for a sum of Kshs.6,296,140.00 in compensation for the loss. To prove the destruction and expiry of the pens, the plaintiff produced a letter dated 26/5/2006 by which the provincial weights and measures officer, coast province, which said the pens had expired and had to be destroyed.

11. For the suit against the 1<sup>st</sup> defendant, the plaintiff relied in the decision in Nairobi Miscellaneous Application No. 206 of 2004 in which it was held that the defendant had acted unlawfully and unconstitutionally by the seizure and detention of the goods. The witness added that despite the court's decision, the 1<sup>st</sup> defendant had up to the date of giving evidence, not returned the goods hence their entire value had been lost. The list and copies of documents were all produced as exhibits without any objection, save for the letter dated 26/5/2006 to which Miss Waswa objected but the objection was overruled. The produced documents included notices evidencing seizure of the goods by the defendants and invoices showing the value of the goods as well as a judgment in Court of Appeal Civil Appeal NO. 162 OF 2006 by which the decision in HC Misc. 206 of 2004 was upheld but the compensation order for detainer had not been made in that previous suit.

12. On cross examination by Miss Odundo, the witness confirmed that there were 3 seizure notices all dated 2001 but the Misc. Application No. 206/2006 makes reference to another on 28/8/2003 and that the seizures in the previous Suit and this suit are distinct. When shown notice no. 064997 the witness confirmed that it demanded the good be cleared within 2 month to which the witness said they availed documents. When showed invoice at page 6 of his documents the witness said the document showed the company dealt on the goods for which the plaintiff was invoiced.

13. On the damages awarded in Misc. 206/2006 the witness said the same were deposited into court but that the special damages claimed in the sum of Kshs.176,000,000/= were never awarded.

14. When cross examined by Miss Waswa for the 2<sup>nd</sup> defendant, the witness confirmed that after the goods were released in expired status he kept same to date as exhibits in the case. He also confirmed that the plaintiff did not file a reply to the defence filed by the 2<sup>nd</sup> defendant and that he could not remember the exact date the goods were released. In re-examination, the witness maintained that the invoices from Simran Ltd confirmed that he purchased the goods from them and that he knew them to deal in ball pens and that the goods were properly described in the notices of seizure. On notice before action, the witness said same was made but he 1<sup>st</sup> defendant did not respond. That extent marked the close of the plaintiff's case.

### **Evidence by the 1<sup>st</sup> defendant**

15. The 1<sup>st</sup> defendant called the witness, Samuel Kariuki Githigi. DW 1 and Pius Mbovu, DW2. DW1 was the Chief Manager, policy division, Customs Department, who had worked with the 1<sup>st</sup> defendant for a period spanning over 30 years. He did not handle the matter at the time but relied on records and made a statement dated 13/4/2018 after the two officers who had been identified as witnesses became unavailable on account of retirement and death.

16. His evidence was that the goods were seized upon information that the same were unaccustomed and counterfeit and that the intention of the 1<sup>st</sup> defendants officers was to establish if the goods had been properly imported into Kenya and due taxes paid. To do that the first defendant's officers took the goods into customs warehouse for the owner thereof to prove that the due taxes had been paid.

17. To him the notices given demanded that the owner had a period of 60 days to have the goods cleared or the same be forfeited to the state for disposal and that the 1<sup>st</sup> defendant only learnt that requisite documents had been filed in the Nairobi court file. He was however unable to confirm how the goods were dealt with. He insisted that the goods subject matter in Miscellaneous 206 of 2004 were different from those in the instant suit. The witness maintained that the document availed and exhibited by the plaintiff including customs declarations and payment for entries had inconsistencies and could not be relied upon by the court. The other consistency pointed out in the documents was the use of cartons as opposed to cases and dozens.

18. On cross examination by Mr. Hamisi Advocate, the witness said that it is not the duty of the 1<sup>st</sup> defendant to establish the standards of good entering the Kenyan Market. He was however adamant that having not participated in the operation, he did not know how the operation was carried out because he had never seen the goods and could not confirm if the officers carried away the goods. He however confirmed that a raid was carried out but could not deny if the plaintiff had followed up by letter to have the goods released. Even though he said he believed the invoice from SIMRAN was fake he was not aware if any complaint had been made to the police for example.

19. On cross-examination by Ms. Waswa, the witness confirmed that KRA was a party in HCC No. 1206 of 2004 and that weights and measures departments name was struck out but KRA was found to be blame from the actions of Mr. Kiraitu. In re-examination, the witness said the plaintiff did come forward to demand the release of the goods.

20. DW 2, Pius Mbovu, was a revenue collector with the 1<sup>st</sup> defendant based at Kisii who also did not handle the case at the time but made and had a statement dated 17/5/2012 filed in court which he adopted as his evidence in chief. His involvement was about the inquiry about a company called SIMRAN based in Mombasa.

21. He said that he checked their system for the pin number given and his search revealed that the same belonged to a company called Tropical Brands Company Ltd. He then referred to pages 127 and 128 of the 1<sup>st</sup> defendant's bundle of documents for the true and correct PIN and V.A.T Number of SIMRAN LTD. For those reasons, he dismissed the invoice for SIMRAN as not genuine.

22. On cross examination by the plaintiffs' counsel, witness said that the inquiry was conducted in the year 2012. He expressed lack of knowledge that one would change his business name but confirmed that there is no obligation that one confirms the accuracy of a PIN certificate on a purchaser of goods. However after finding out that the invoice was suspect they did not pursue the matter any further. He concluded that once one pays V.A.T. that the recipient facts to remit same does not make the prayer liable.

23. On cross examination by the counsel from the 2<sup>nd</sup> defendant, the witness said that when they visited SIMRAN they were given an invoice with correct PIN Number. With that evidence the 1<sup>st</sup> defendant case was closed and since the 2<sup>nd</sup> defendant had neither filed a witness statement nor document, even its case was equally closed. Parties then sought time to file written submissions which were then followed by oral highlights. The plaintiff submissions were filed on 9/8/2018 those by 1<sup>st</sup> defendant were dated 1/10/2018 while those by the 2<sup>nd</sup> defendant were dated 25/10/2018.

### **Submissions by the plaintiff**

24. The thrust of the plaintiffs submission are that there having been a seizure which was finally determined by the court to have been unlawful and ultra vires the defendants statutory mandates, the plaintiff was in law entitled to the return of the goods and or their fair value and that the defendants having failed to do so, this suit was the ultimate venue through which to get recompense. The plaintiff stressed the fact that the total value of the goods seized in the two raids was Kshs.13,422,150.00, the submissions were then aligned to what the plaintiff considered and isolated the issues for determination.

25. On whether or not there was seizure and the legality thereof, the plaintiff recalled the pleadings and evidence on record to confirm that indeed there was seizure and when that seizure was questioned in the judicial review application the court declared the same unlawful and the declaration was confirmed by the Court of Appeal.

26. To the plaintiff there was a positive finding by the court in the previous suit to the effect that the notices served in the previous suit, which are the same as those in the current suit, were totally defective having been declared as goods deposited in a customs warehouse (Form 8a) as opposed from C53 which would concern unaccustomed goods. The other reason the court held the form 8a to have been void was the fact that the statute makes it mandatory that the forms be signed by a designated person which in this case none of the 1<sup>st</sup> defendant's witnesses would identify the persons who signed the concerned forms. The plaintiff takes the view that the decision in the previous suit, NAIROBI JR No. 206 of 2004 conclusively declared the actions by the defendant to have been void and thus unlawful and that the said decision having been upheld by the Court of Appeal, this court needs to be so guided as that fact stand finally determined.

27. On the relationship between the seizure of goods in this suit and the previous suit, the plaintiff made submissions that the raids complained about in the two matters were conducted between the years 1996 and 2004 and in particular isolated the raid of 23/8/2002 which is expressly mention in the previous suit and were the goods ordered to be returned to the plaintiff by the 1<sup>st</sup> defendant but that order was never complied with. It was then added that the goods being the same was expressly admitted by the 2<sup>nd</sup> defendant at paragraph 8 of the statement of defence dated 22/4/2019 and the letter dated 26/5/2006 (Exhibit P3). An alternative and without prejudice submissions were offered and made to the effect that even if the goods could have being seized on different dates and involved different goods from those litigated over in the previous suit, the raids were all essentially conducted in similar manner and the basis was one and the same in all the raids.

28. On the defence that the plaintiff did not demand the return of the goods, it was submitted that there were demands made and served, dated 28/3/2006, as confirmed when there was a partial release of the goods as evidenced by the letter produced as **Pexh 3** which confirm that some of the goods were indeed returned but that by the time of partial returns the goods had expired.

29. On those submissions when applied to the pleadings and evidence availed, the plaintiff contends in the submissions that it is entitled to the remedies sought in the amended plaint once again underscoring the fact that the fact of seizure is admitted and the evidence of unlawful conduct by the defendants not controverted. The fact that not only the goods but also documents were taken was stressed together with the fact that a suit was filed from the release and there was never release of the documents and the suit remains to be determined. On the evidence availed the plaintiff contend that it has proved its case prima facie hence the evidential burden shifted upon the defendants who then failed to discharge the shifted burden.

30. To the plaintiff, it having proved seizure and default to return the goods, the duty of the defendant was then to disprove the seizure and evidence contradicting the plaintiffs particulars of the goods cost. To the plaintiff, the two witnesses called by the 1<sup>st</sup> defence did little to discharge the burden in that PW 1 said he did not have first- hand personal knowledge of the happenings and wholly relied on the records and explanations given to him because he was not there when the actions took place. Of importance was the admission that the goods were indeed seized and later destroyed by the 1<sup>st</sup> defendant. His evidence was thus termed an attempt to deny knowledge or feign ignorance to the facts hence not credible piece of evidence from reliance upon by the court.

31. On the standards of pleading and proof of special damages, the plaintiff cited to court the decision in *Pelican Haulage Contractors Ltd vs Joel Kinyanjui [2016] eKLR* and *Mohamed Ali vs Sagoo Radicators Ltd [2013] eKLR* in which the courts observed and held that circumstances of the case must be taken regard of and that to insist on more proof than proof of the damages amount to vainest pedantry.

#### **Submissions by the 1<sup>st</sup> Defendant**

32. For the 1<sup>st</sup> defendant, the pleadings and evidence led by PW 1 & DW 2 were recapped and the fact underscored that the Kenyan taxation system and legal region is based on self-assessment which then demands full disclosure and good faith on tax payers when making tax related declarations. It was pointed out that the goods upon seizure were deposited at a customs warehouse pending confirmation and verification of the importation status and confirmation of quality by the Kenya Bureau of Standards. The verification was due based on the documents to be provided by the plaintiff but the plaintiff did not avail the needed documents. Instead the documents provided were contradictory, ingenuine and unreliable to prove importation, payment of duty and purchase from one SIMRAN LIMITED.

33. That the goods in the previous suit were not the same as those in the present suit was amplified with addition that the 1<sup>st</sup> defendant did not take part in the seizure of 23/8/2002. On the invoice from SIMRAN LTD, the evidence of PW 2 was stressed and relied upon to show that the said documents were not genuine and thus unreliable. The 1<sup>st</sup> defendant then sought to make a distinction between the goods seized on 3/10/2001 and those seized on 23/10/2001 to have been by the two defendants separately and that the later seizure should not be connected with the 1<sup>st</sup> defendant.

34. Having conceded to have seized the good on 4/10/2001, the 1<sup>st</sup> defendant took the position that the said goods were seized pursuant to Section 196(c), customs and Excise Act which it contends permitted the forfeiture of the prohibited goods, restricted good and uncustomed goods. The decision in High Court Petition No. 5 of 2016 was cited, in which the court held that on reasonable grounds the 1<sup>st</sup> defendant is entitled to seize the goods and that failure by a tax payer to avail documents present a reasonable ground for forfeiture.

35. On declaration of the defendant's actions to have been unlawful by the Court in Miscellaneous 206 of 2004, the defendant reiterated the position that the goods in this suit are different and distinct from those subject of the previous suit.

36. On whether or not the plaintiff ever demand the release of the goods the 1<sup>st</sup> defendant took the view that this is not a material consideration because the goods were in fact forfeited after failure by the plaintiff to avail documents and that even the question whether there was partial release thus does not arise because the goods remain forfeited in law. The same argument was advanced to answer the question whether the good had since expired.

37. On the entitlement of the plaintiff to the reliefs sought, the 1<sup>st</sup> defendant asserted that the plaintiff is on a mission to confuse the court on relationship between the goods subject matter in the suit as compared with those in the previous suit and that on the 3<sup>rd</sup> & 4<sup>th</sup> October 2001 only the goods and not documents were detained. It was then reiterated that under the law, Section 208 of the Customs & Excise Act the burden was upon the plaintiff to prove payment of duty as well as the place of origin of the goods and subsequent dealing over the same. The decision in *Crywan Enterprises Ltd vs KRA [2013] eKLR* was cited to buttress the position that the 1<sup>st</sup> defendant is entitled in law to keep the goods within its reach to enable collection of duty. The 1<sup>st</sup> defendant sought further reliance upon the same decision on the import of Section 232 (a) of East African Community Customs Management Act to permit the Commissioner to give Notice of seizure.

#### **Submissions by the 2<sup>nd</sup> Defendant**

38. For this defendant, the submission were clear that it was only defending the claim over the goods seized on 23/8/2001 and valued at Kshs.6,296,140. The defendant's position was that the goods were indeed seized on the date and manner pleaded but that the same were indeed released pursuant to a letter dated 26/5/2006 which however it contested to have emanated from itself. The defendant's position is that the letter having been challenged to have come for them, the author thereof ought to have been given a chance to comment on the letter. Reference was then made to the decision in *African Line Transport Company vs Sylvester Keitany [2017] eKLR* on what amount to evidence of payment for goods purchased. It was then pointed out that in Misc. No. 206 of 2004 the claim against the 2<sup>nd</sup> defendant was struck out hence there is no finding against it by that court.

#### **Issues for determination**

39. Even though the parties had several opportunities to agree on and file a set of agreed issues, none was filed but plaintiff and 1<sup>st</sup> defendant filed separate issues on 16/4/2012 and 16/5/2012 respectively. Having read the pleadings and evidence tendered as well as the separate issues, I do identify and isolate the following issues as standing out for determination by the court:-

- i. Was the admitted seizure of the plaintiff goods by the two defendants lawfully done?
- ii. Has there been a determination as to the propriety or legality of the defendant's actions?
- iii. Were the goods subject of litigation in Nairobi Misc. No. 206 of 2004 the same as those in this suit?
- iv. Is the plaintiff entitled to the remedies sought?
- v. What orders should be made as to costs?

#### **Legality of the seizure by the defendant**

40. That the 1<sup>st</sup> defendant did seize goods from the plaintiffs premises on the 3<sup>rd</sup> and 4<sup>th</sup> October 2001 and had the same removed to a customs warehouse pursuant to Forms (F89) No. 106510 and 106511 both dated 3/10/2001 and 4/10/2001, respectively, is not disputed but common place from the pleadings on record. To those pleadings the parties are bound and none is free to depart from same either by evidence or submissions.

41. The dispute is the legality or legal propriety of the seizure. To help determine that question one has no analyses the documents availed to court in light of the pleadings on record. The plaintiff has attacked the documents used to evidence seizure of the goods on grounds that the same were never signed by a disclosed authorized officer pursuant to Section 34 of the Customs and Excise Act, and further that the documents are not the ones designed for seizure but for voluntarily deposit by the owner of the goods.

42. One may ask when a customs and excise officer may issue a notice of Deposit in Customs Warehouse (F89) and whether the same serves the same purpose as Form C53 Notice of seizure. Having read the customs and excise Act and the subsidiary legislation made thereunder, I find the question to lie in the provisions of Section 200 of the Act as read with Rule 267 of the Customs and exercise Regulations and Section 34 of the Act.

43. My reading of those provisions is that deposit into customs warehouse is to enable the importer pay the duty due while a seizure occurs where the goods are subject to forfeiture pursuant to Section 196. Deposit into a customs warehouse as envisaged under Section 34 occurs from the period the goods are discharged at the port of entry. I consider the need for deposit into a customs warehouse to avail the goods at the disposal of the Revenue authority for purposes of assessment, levy and collection of duty payable. In my view all goods imported into the county must pass by the customs warehouse as a clearance and forwarding stage and the notice of disposal is thus a notice by the customs warehouse to acknowledge that the goods have been so deposited.

44. On the other hand seizure occurs where the importer or owner of the goods is reasonably suspected to have made his goods subject to forfeiture pending determination by the Commissioner whether an offence has been committed to merit prosecution. Where the goods are so seized, the same are taken into a customs warehouse or such other place considered appropriate by the proper officer.

45. Accordingly, in this matter if the contention by the defendants was that the goods had been dealt with in a manner to raise reasonable suspicion of an offence having been committed then the proper procedure was to invoke the provisions of Sections 199 and 200 of the Act. That was never done and it thus follows that the subsequent forfeiture allegedly done by the 1<sup>st</sup> Defendant was unlawful and thus null and must be corrected.

46. Still on the process, the documents served, Notices of Goods Deposited In Customs Warehouse did say that the goods were so deposited pending confirmation of quality by KEBSA as well as verification and confirmation of importation status. The only other notice given is that the goods be cleared within two months or be disposed of as deemed fit by the commissioner. On the face of the documents there is nothing to support the 1<sup>st</sup> defendant's contention that the plaintiff was asked to provide the documents which it failed to provide. On account of the procedure and the forms employed by the defendant I do find, as Osieno J found in NAIROBI H.C. MISC. NO. 1206 OF 2004, that employment of F89 as opposed to C53 was fatal to the action by the 1<sup>st</sup> Defendant and it follows that all actions flowing therefore were null and of no effect. That being my finding, the actions of the 1<sup>st</sup> defendant were thus unlawful and wrongful. I do therefore declare that the alleged forfeiture, which was never proved, was itself wrong and unlawful and thus tortious.

47. Having found the actions by the defendants to have been tortious the next question is whether the plaintiff is entitled to any of the remedies sought. The amended plaint seeks not only the value of the goods at Kshs.13,422, 150/= but also general damages for detention and conversion together with costs and interests.

48. Having found that the defendants unlawfully took and detained the plaintiff goods the question to answer is to what extent is each of the defendants liable to the plaintiff. As between the plaintiff and the 1<sup>st</sup> defendant, the evidence by both is that the 1<sup>st</sup> defendant indeed took the goods and never restituted the same to-date. The same is true for the second defendant save that that defendant having failed to lead any evidence made a very strange submission by seeking to rely on the plaintiff's document to prove release while at the same time questioning the authenticity of the same document. To this court, the letter dated 26/5/2006 was produced as an exhibit and no evidence was led to cast doubt on its authenticity. In any event once the 2<sup>nd</sup> defendant seeks reliance on the document it cannot on the same breath contest its validity. For this determination I do find that the document says unequivocally that the good when released had expired and subject to destruction. For that reason their value was lost and for the loss the plaintiff is entitled to compensation.

49. The value of the goods as tabulated at paragraph 5 of the amended plaint and proved by the evidence of PW 1 including the documents produced as exhibits P1 & P2. I have had regard of the said documents in particular the invoices and import declaration forms and I do find that the plaintiff has suffered the loss of the goods which loss I find to have been occasioned by the two defendants severally.

50. Accordingly I do enter judgment for the plaintiff against the two defendants in the sum of Kshs.7,126,010.00 and Kshs.6,296,140.00 respectively. The first defendant is liable for payment of Kshs.7,126, 010/= while the 2<sup>nd</sup> defendant is liable in the sum of Kshs.6,296,140/=

51. On general damages, having found that the seizure of the goods was unlawful and wrongful, I do consider it that the actions by the defendants were high-handed, oppressive and arbitrary. Having taken the goods as they did and deprived the plaintiff of possession and title thereof I do award to the plaintiff general damages for conversion in the sum of Kshs.300,000/= against each of the defendant.

52. The upshot is that Judgment is entered against the two defendants as follows:-

**1<sup>st</sup> defendant**

**General damages Kshs.7,126, 010.00**

**General damages Kshs. 300,000.00**

**2<sup>nd</sup> defendant**

**Special damages Kshs.6, 296, 140.00**

**General damages Kshs. 300,000.00**

53. I award to the plaintiff interest at court rates. Special damages attract interest from the date of the suit while general damages do attract interest from the date of this judgment.

54. I also award to the plaintiff the costs of the suit.

**Dated and delivered at Mombasa this 23rd day of July 2019.**

**P.J.O. OTIENO**

**JUDGE**