



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCA NO. 13 OF 2016

DIRECTLINE ASSURANCE COMPANY LIMITED.....APPELLANT

- VERSUS -

WILKINSON MWENDA ERASTUS & FRANKLINE NDIINGA KAMUNDI

(Suing as the Legal Representatives of the Estate of LYDIA KINYA

(DECEASED).....RESPONDENTS

CONSOLIDATED WITH

CIVIL APPEAL NO. 11 OF 2016

NYAGA MUGAMBI & MARTIN MUNYI NYAGA.....RESPONDENTS

AND

CIVIL APPEAL NO.12 OF 2016

LENTY KAGENDO KAUMBUTHU &

WILFRED MUGIKUU.....RESPONDENTS

AND

CIVIL APPEAL NO. 14 OF 2016

SATURINA GATAKAA & FEDIS WANJA NKONGE.....RESPONDENTS

(Being an appeal from the ruling and orders of Hon. A.G. Kibiru Senior Principal Magistrate at Chuka delivered on 27th April, 2016)

J U D G M E N T

1.This is a judgment on the above four appeals pursuant to an order made by this court on 5th October, 2016 whereby Appeal Number 13 of 2016 was made the head file. On or about 14th August, 2011, motor vehicle registration No. KAW 351 E ("*the said motor vehicle*") owned by one Peter Micheni (hereinafter "*the Insured*") was being driven along Chuka-Meru Road when it overturned and rolled severally. Several passengers aboard therein were injured and others perished. Amongst those who succumbed to their

injuries are the late Anne Kendi Nyaga, Jediel Kithinji, Lydia Kinya and Gloria Mwendu, respectively.

2. Pursuant thereto, on various dates, the estates of the deceased persons, through the Respondents herein, lodged claims before the Chuka Principal Magistrate's Court against the insured claiming compensation (hereinafter "*the Primary Suits*"). Those claims were successful and various judgments were made as follows:-

- a) the estate of Ann Kendi Nyaga - Kshs.1,940,000/-
- b) the estate of Jediel Kithinji -Kshs.1,355,000/-
- c) the estate of Lydia Kinya -Kshs.4,890,000/-
- d) the estate of Gloria Mwendu-Kshs.568,070/-

3. In pursuance thereof, in July, 2015, the Respondents, through the firm of Khan and Associates, commenced declaratory suits against the Appellant by virtue of the provisions of the Insurance (Motor Vehicles Third Party Risks) Act, Cap 405 Laws of Kenya (hereinafter "*the Act*"). In the said suits, the Respondents claimed that by dint of sections 4 and 5 of the Act, having insured Peter Micheni Miguongo the owner of the said vehicle vide Policy No.7001109, the Appellant was liable to satisfy the decree and costs in the primary suits.

4. The Appellant filed similar defences in the said suits to the effect that; it admitted having insured Peter Micheni Miguongo; that the said insured had failed to disclose material facts at the time of obtaining the said insurance whereby the insured was not entitled to any indemnity thereunder and that as a result, the Appellant had already commenced Chuka CMCC No. 51 of 2012 with a view to avoid liability under the said policy. In addition, the Appellant denied having received any demand or Notice of Intention to sue.

5. By a Motion on Notice, in all the suits, dated 11th September, 2015, respectively the Respondents applied for orders that judgment be entered on admission against the Appellant, in the alternative, they prayed that the defences in the said suits be struck out in limine and judgment be entered in their favour. The motion was objected to on various grounds including; that there were no admissions; that the motions breached Order 2 Rule 15 (2) of the Civil Procedure Rules and that the Affidavit in support of the Motion was irregular having been sworn by Counsel instead of the party. Since all the Motions were similar in all the four (4) suits, the parties agreed that one ruling be written and the outcome thereof do apply in all the suits. By a ruling delivered on 27th April, 2016, the trial court allowed the application struck out the defences and entered judgment against the Appellant in terms of the plaints.

6. Aggrieved by that decision, the Appellant has appealed to this court setting out nine (9) grounds which the Appellant properly summarised into three (3) as follows:-

- a) that the trial court erred in disregarding the provisions of the Civil Procedure Rules, the rules of evidence and equality of arms;
- b) that the trial court erred in relying on the Supporting Affidavit which was sworn to by an Advocate on controversial matters and should have been struck out;
- c) that the trial court failed to consider the provisions of the Insurance (Motor Vehicles Third Party Risks) (Amendment) (Act 2013) in arriving at its determination.

7. This being a first appeal; this court has re-evaluated the pleadings and evidence before the trial court in order to come to its own independent conclusions and findings (see **Selle .v. Associated Motor Boat Co. Ltd & Others [1968] EA 123**).

8. At the hearing, the parties filed submissions which were ably hi-lighted by learned counsel Mr. Kissinger, Learned Counsel for the Appellant, submitted that since the motions by the Respondents were

supported by an Affidavit, the same was in breach of Order 2 Rule 15 of the Civil Procedure Rules. Counsel cited the cases of **DT Dobie & Co. (K) Ltd .v. Muchina [1982] 1 KLR 1** and **Drum Publications (EA) Ltd & Anor .v. Media 24 Ltd & 4 Others [2005] eKLR** in support of this submission. That the trial court wrongly relied on additional evidence contained in the submissions by wrongly terming the same as a technicality under Article 159 of the Constitution. Counsel relied on the cases of **Mumo Matemo .v. Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR** and **Delta Haulage Services Ltd .v. Complast Industries Ltd & Anor [2015] eKLR** on the submission that, Article 159 of the Constitution is not a licence to ignore the rules of procedure and that evidence must be specifically produced in evidence. Counsel further submitted that the trial court erred in relying on the Supporting Affidavit of Don Z. Ogweno Advocate for the Respondent which contained controversial matters. He cited the cases of **Janet Osebe Gechuki .v. Commissioner of Customs & Excise & Anor [2000] eKLR** and **Abdalla Halima Al Amry .v. Swaleh S.A Bawazir MSA HCC No. 63 of 1995 (UR)** in support of that submission. On the final ground, Mr. Kissinger submitted that the trial court failed to consider the provisions of the Insurance (Motor Vehicle Third Party Risks) (Amendment) Act 2013 in that, it failed to consider that no notice in terms of that Act had been given. Counsel relied on the Case of **Blue Shield Insurance Co. Ltd .v. Joseph Mboya Oguttu [2009] eKLR** on the proposition that a dispute on issuance of a statutory notice is a triable issue. That since the Act had placed limits on the amounts of compensation, the amounts demanded were in excess of that specified in the Act, that was a triable issue and the case of **George Kibet Owino & Anor .v. Simon Muiya [2016] eKLR** was cited in support of that contention. Counsel urged that the appeal be allowed.

9. On his part, Mr. Ogweno learned counsel for the Respondent submitted that; judgment was properly entered; that vide the documents on record, viz, the plaint in Chuka PMCC No. 42 of 2012, the Appellant had admitted the issuance of the subject policy for the said motor vehicle and receipt of the demand and intention to institute proceedings. That having satisfied the requirements of section 10 of the Act, the Respondents were entitled to judgment on the strength of the decision in **Edwin Ogada Odongo .v. Phoeni of E.A Assurance Co. Ltd KSM HCC NO. 132 of 2003 (UR)**. Counsel urged that the appeal be dismissed.

10. Having considered the record, the submissions and the authorities relied on, this court makes the following observations before delving into the grounds of appeal. It is not in dispute that the Appellant did issue to the insured Motor Vehicle Insurance Policy No.7001109 on 9th March, 2011 for use of the said motor vehicle. It was also not disputed that an accident occurred on 14th August, 2011 involving the said motor vehicle whereby, amongst others, the four (4) persons whose estates are the Respondents herein perished. It was also not disputed that the primary suits against the insured had been concluded and various judgments entered in favour of the estates. It was also not in dispute that by a Plaint dated 5th March, 2012, **Chuka PMCC No. 42 of 2012 Directline Assurance Co. Ltd .v. Peter Micheni Muguongo**, the Appellant had sued the insured with a view to avoid the aforesaid policy on the ground of non-disclosure of material facts. That suit was pending when these appeals were canvassed before me. It is against this background that three (3) grounds of appeal will be considered.

11. The first ground was that the trial court erred in considering the evidence tendered by way of a Supporting Affidavit contrary to the provisions of Order 2 Rule 15(2) of the Civil Procedure Rules. That provision prohibits any adduction of evidence on an application to strike out a pleading under subrule 1(a) of Rule 15, that is, for disclosing "*no reasonable cause of action or defence in law*". Indeed in the cases relied on by the Appellant of **D.T. Dobie & Co. (K) Ltd .v. Muchina (supra)** and **Drum Publications (E.A) Ltd & Anor . v. Media 24 Ltd & 4 Others (supra)**, the courts held that no affidavit evidence is permissible in an application to strike out a pleading under the said provision of the law. Mr Ogweno for the Respondent submitted that the Motions before the trial court was not brought under Order 2 Rule 15 (1)(a) of the Civil Procedure Rules. That the application was brought under sections 4 and 5 of the Act and Order 2 Rule 15 for judgment on admission and for the striking out of the defence in limine. This court has considered the records.

12. The Motions before the trial court were clearly brought under sections 4 and 5 of the Insurance (Motor Vehicle Third Party Risks) Act and Order 2 Rule 15 of the Civil Procedure Rules. The Motions did not specify under what provision of Rule 15 (1) they were brought. That subrule has four grounds ie

(a) to (d). While under (a) no evidence is permitted, evidence is clearly permitted under subrule (1) (b), (c) and (d). In order to discern under which paragraph an application has been brought, it is imperative that one reads the prayer or the grounds in the motion. While citing sections 4, 5 and 10 of the Act and Order 2 Rule 15, the Motions sought two substantive prayers as follows:-

"1 .Judgment on admission be entered against the defendant.

2. In the alternative, the defendant's defence dated 11th August, 2015, be struck out in limine and judgment be entered in favour of the plaintiffs as prayed for the (sic) in the Plaint."

13. The grounds upon which the application were predicated upon were four; that the Appellant had admitted issuing the subject policy to the insured; that it admitted knowledge of the accident; that judgment had been obtained in the primary suits and the Appellant notified of the same and that by virtue of the provisions of the Insurance (Motor Vehicle Third Party Risks) Act, the Appellant was liable. In the Supporting Affidavit, the deponent referred to various documents that had been filed and then concluded in paragraph 6 that:-

"6. That the defence filed herein is in essence, spurious, vexatious and ought to be struck out in limine as lacking in merit candour or substance."

14. It is clear from the foregoing that, the Respondents were seeking judgment on admission as per prayer No. 1. All the four grounds set out in the Motions supported the prayer for judgment on alleged admissions. However, Order 13 Rule 2 of the Civil Procedure Rules which provides for applications for judgment on admission was not cited. Can it be said that the failure to cite that provision was fatal for being prejudicial to the Appellant? I do not think so. Prayer No. 1 was categorical and ground Nos. 1 to 3 of the Motions were clear as to what the alleged admissions being relied on were. These, in my view, were enough notice to the Appellant to meet the case it was facing. In any event, Order 51 Rule 10 of the Civil Procedure Rules provides that no application may be refused merely because the provision under which it was brought is not cited. In this regard, the prayer for judgment on admission could not be rejected if the alleged admissions were proved.

15. On Order 2 Rule 15, reading both the prayers in the Motions, the grounds for the Motion and the Supporting Affidavits, nowhere was it indicated that the defence was sought to be struck out for disclosing no reasonable defence. Indeed both prayer (2) and the grounds in the Motion did not set out any of the grounds in Order 2 Rule 15 (1) of the Civil Procedure Rules. The only place where the reasons why the Defence was sought to be struck out is to be found is in paragraph 6 of the Supporting Affidavits which grounds were that; the defence was spurious, vexatious and lack merit candour or substance. That cannot be read to mean "*no reasonable defence.*" Something spurious is that which is not reasonable, not real or sincere (**Macmillan English Dictionary Second Edn 2007 pg 1446**). Lacking candour or substance would mean. that which is not honest or sincere or that is pointless.

16. In view of the foregoing, it will not be in order to hold that the Respondents had applied to strike out the defence for disclosing no reasonable defence. The meaning of the words used in paragraph 6 of the Supporting Affidavit in my view will bring the application squarely under Order 2 Rule 15 (1) (b) that the defence was scandalous, frivolous and vexatious. That is the meaning which the words "*spurious, vexatious and..... lacking in candour or substance*" should be subscribed to. In this regard, while the application was unhappily worded, it can not be said to have been fatally defective. It spelt out clearly the grounds upon which it was being brought, that is, prayer 1 on the three (3) grounds in the Motions and prayer 2, under paragraph 6 of the Supporting Affidavits.

17. In this regard, since an application to strike out a pleading for being scandalous, frivolous and vexatious under Order 2 Rule 15 (1) (b) can be supported by affidavit evidence, I reject the ground that faults the trial court for accepting the Affidavit in Support of the Motion.

18. The other complaint under the first ground was that the trial court fell into error in admitting evidence that was produced by wayof submissions. I propose to deal with the aspect of ground one at the

end of this Judgment.

19. The second ground was that the trial court erred in relying on an Affidavit sworn by the an Advocate on controversial issues. It was submitted that the Appellant, through its defence and the Replying Affidavit of Sandra Nyakweba sworn on 25th February, 2016, had denied being served with a proper notice under section 10(4) of the Insurance (Motor Vehicle Third Party Risks) Act. Rule 8 of the Advocates (Practice) Rules, 1966 prohibits Advocates from making declarations on contentious matters. It is on this basis that the cases of **Janet Osebe Gechuki .v. Commissioner of Customs & Excises (supra), Abdalla Halman AL- Amry .v. Swaleh S.A Bawazir (supra) and Canceland Ltd .v. Dolphine Holdings Ltd [2000] eKLR** were made. Where Advocates have sworn Affidavits in controversial matters, Affidavits are either struck out or the paragraphs that refer to controversial matters are themselves struck out.

20. In the present matter, it is not in dispute that the Affidavits in Support of the motion were sworn by Mr. Don.Z Ogweno, Advocate. He deponed that; he was the Advocate having the conduct of the matter and had full custody of the records concerning the matter; that on instructions by the respondents to file suit, he had issued a demand and notice to the insured and the Appellant; that the Appellant had issued a notice to his firm intimating of its intention to seek redress against the insured and had filed Chuka PMCC No. 42 of 2012. That the Appellant had admitted issuing policy No.7001109 to the insured in relation to the said motor vehicle which had been involved in the accident of 14th August, 2011. Finally, Mr. Ogweno deponed that the Appellant had neither repudiated the said policy nor obtained any declaratory order absolving them from settling third party claims. He then produced as exhibits documents which he had stated were in his custody that sought to confirm what he had sworn to above.

21. According to Mr. Kissinger, Learned Counsel for the Appellant, the issue of notice was disputed and the Counsel for the Respondent was not competent to swear positively as to its issuance. The trial court found as a fact that all the matters sworn to by Mr. Don Z. Ogweno were matters which were on record and nothing was in contest.

22. On my part, I have reviewed the record and in particular the subject Affidavits. There is nothing that was sworn to by the deponent that can be said to be controversial or contested save for the issuance of notice. On that alleged notice, Mr. Ogweno stated that the same was issued by his law firm. Indeed looking at the notice dated 3rd January, 2012 the same was signed by him personally. As regards, the notices by the Appellant and its Advocates dated 18th January, 2015 and March 2012 respectively, they were addressed to Mr. Ogweno's law firm. To my mind, I see nothing controversial that would have prevented the deponent from swearing the subject affidavits. He swore to matters he was involved in and they have nothing to do with actions or dealings of the Respondents in their personal capacity. In this regard, I find the second ground also to be without merit and I reject the same.

23. The third and final ground is in two limbs; that the trial court failed to consider the effect of section 10 of the Insurance (Motor Vehicle Third Party Risks) Act and the second limb, that the trial court failed to consider that it was a triable issue as what the payable amounts should be under the said Act. It was submitted that the trial court wrongfully determined the dispute summarily without the benefit of a trial; that there was no proper statutory notice under section 10 (2) of the Act; that the averments as to non-service in the Replying Affidavit had not been controverted and that the court disregarded the holding in the case of **Blue Shield Insurance Vo. Ltd .v. Joseph Mboya Oguttu [2009] eKLR** as to the service of a proper statutory notice.

24. In its paragraph 6 of the defence, the Appellant had denied demand and notice of intention to sue. In paragraph 2 of the Supporting Affidavit, Don Z. Ogweno swore that on receiving instructions to institute compensation claims on behalf of the estates of the deceased and prior to institution of the suit, he issued a notice to the Appellant of the intention to sue. He thereafter instituted the primary suit. He produced, inter alia, the demand letter dated 3rd January, 2012 addressed to the Appellant and copied to his clients and the insured. In that demand produced as DZO 1(a), the same was shown to have been sent through Nation Courier. It named the insured, the date of the accident, the said motor vehicle and the passengers involved which included the four (4) Respondents herein. It also indicated that the Appellant had issued

policy No.7001109 to the insured and gave seven (7) days to negotiate the claim failing of which suits for compensation would be filed. In answer to that Affidavit, the Appellant filed a Replying Affidavit sworn by its claims Director, Sandra Nyakweba on 25th February, 2016 wherein she , inter alia denied receipt of the notice of intention to sue. In paragraph 18 of Sandra Nyakweba's Affidavit there is a denial of service of notice. Section 10(2) of the Act which provides for notices of proceedings to an Insurer does not provide the form of notice. It provides:

"10(2) No sum shall be payable by an insurer under the foregoing provisions of this section-

a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings"

25. From the foregoing, it will seem that what is required is only notice on the part of the insurer of the bringing of the proceedings. This is either before or fourteen (14) days after the institution of the suit. There is no specific form of notice that is required or specified by the Act.

26. At this juncture, I propose to revert to the issue raised by the Counsel for the Appellant regarding the documents produced through the submissions of the Respondent's Advocates. I say so because, once the Appellant denied having received the notice, the incidence of proof reverted to the Respondents to prove that they had served the requisite notice. The documents produced through the submissions if and when admitted would have the effect of knocking off the Appellants allegation that no notice of intention to sue was ever effected upon it.

27. I agree with the submissions of Mr. Kissinger that evidence cannot be adduced through submissions. Submissions of Counsel have never and will never constitute evidence in a case. Submissions are but a collation of the facts or evidence adduced as are relevant to the law applicable in the case. Mr. Kissinger rightly referred this court to the decision of **Douglas Odhiambo Apel & Anor .v. Telkom Kenya Ltd CA No.115 of 2006.** In that decision the Court of Appeal held:-

"..... a plaintiff is under a duty to present evidence to prove his claim. Such proof cannot be supplied by the pleadings or the submissions. Cases are decided on actual evidence that is tendered before court..... submissions, as he correctly observed, are not evidence."

28. I have looked at pages 134 to 144 of the Record of Appeal. These constitute the Respondents' submissions before the trial court. At pages 138 to 144 of CA No. 11 of 2016 are the following documents:-

- a)the Police Abstract;
- b)the Death Certificate;
- c)the Certificate of Insurance No.7001109;
- d)a seven (7) day Notice dated 3rd January, 2012;
- e)a letter dated 18/1/2012 by the Appellant;
- f)a Notice of Institution of suit dated 23rd March, 2012.

Mr. Ogwenko told the court that as indicated in the submissions before the trial court, the said documents were annexed to the submissions for clarity only as they constituted documents produced in the Affidavit in support of the motion as well as documents filed by both parties together with their pleadings pursuant to Order 7 of the Civil Procedure Rules. I have on my part carefully looked at the record and I have noted as follows:-

a)that some of the said documents were produced as exhibit "DZO 1" (a), 3(a) and 3(b) to the Supporting Affidavit of Don Z Ogweno sworn on 11th September, 2015;

b)some of the said documents are contained in the bundle of documents filed by both the Respondents accompanying the Plaintiff and the Appellant accompanying the defence by virtue of Orders 3 Rule 2 and 7 Rule 5 of the Civil Procedure Rules.

29. Mr Ogweno for the Respondents argued that the documents that accompany the respective party's pleadings constitute its or his/her evidence. One cannot rescind from his/her documents that he files together with his pleading. Counsel therefore argued that since the documents that were annexed to the Respondents' submissions were already on record, either produced through the Supporting Affidavit or the Plaintiff or Defence, it cannot be said that they were additional evidence. They were already part of the record.

30. I think the most important issue here is, how documentary evidence is to be produced before court in a litigation. During a trial, a witness must identify and refer to a document, testify on it then produce it. On production, the document is marked and it becomes evidence of the party producing it. In an application, evidence is usually produced through Affidavits. A deponent who wishes to produce a document, must refer to the document and mark it. It is only then that such a document becomes evidence. In **Delta Haulage Ltd .v. Complast Industries Ltd & Anor [2015] eKLR**, when faced with a situation where a party failed to refer to its documents and produce them, the court held that such documents were not evidence and the court declined to rely on them.

31. In the instant case, those documents that were annexed to the submissions could not and should not have been relied on by the trial court in its determination. Probably the trial court was influenced by the submission that they were part of the documents produced in the Affidavit. A close scrutiny of the record will show otherwise. Out of the seven documents annexed to the submissions of the Respondents and which went to prove the Respondent's case and therefore the application, one crucial document was missing from the documents exhibited in the Supporting Affidavit. The Appellant's letter dated 18th January, 2012 which goes to prove that the Appellant actually received the notice of institution of suit was never produced in the Supporting Affidavit. To my mind, the Appellant having denied receipt of notice in its Replying Affidavit; it was incumbent upon the Respondents to counter that assertion by way of producing that document through oath (by filing a further Affidavit) than just to sneak it through their submissions.

32. In this regard, I agree with Mr. Kissinger that the failure to have that letter produced in the Supporting Affidavit but introducing it through the submissions prejudiced the Appellant. The Appellant did not have an opportunity to either deny it or comment on it. Whilst it may look as being a mere technical objection curable under Article 159 of the Constitution as the trial court found out, it is not. It makes the whole difference. It goes to the very heart of the entire case of the Respondents, as to whether notice was served in terms of section 10 (1) of the Insurance (Motor Vehicle Third Party Risks) Act, and therefore substantive justice.

33. The holding of the Court of Appeal in **Mumo Matemu case** (supra) on this subject is apt. In that case, the court held:-

"In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that require reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp .v. Holdsworth (1876) 3 Ch.D. 637 at 639 holds true today.

The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules..... was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."

34. In view of the foregoing, the trial court erred in relying on the documents produced through the submissions. The introduction of that one document, the letter of 18th January, 2012, in my view, made the whole difference. It proved in an irregular manner, that the notice of 3rd January, 2012 had been received and thereby robbed the Appellant its defence. In this regard, the issue whether there was notice could not be determined at the application stage in the absence of that crucial document.

35. On the second limb of ground 3, it was submitted that it was triable whether the trial court could enter judgment for an amount in excess of Kshs.3 million fixed by section 5(b) of the Insurance (Motor Vehicle Third Party Risks) Act, Amendment, 2013. The case of George Kibet Owino & Anor .v. Simon Muiya (supra) and LSK .v. Attorney General & 3 Others [2016] eKLR were cited as authority for that argument. Mr. Ogweni for the Respondents submitted that the Act only prohibited payments in excess of Kshs.3 million but not court's entering judgments in excess of such sum. That the third parties are allowed to pursue the insured for the excess sums.

36. Looking at the Act, I see nothing triable. As held in the LSK .v. AG case (supra), it is clear who is to pay what and to who. The trial court only entered judgment for the subject sums. What the Respondents cannot do is to execute against the insurer for the amount in excess of the sums permitted by law. Indeed it should be noted that the judgments entered by the trial court did not specify the amounts payable, it only declared that the Appellant is liable to satisfy the various judgments entered in favour of the Respondents in the primary suits.

37. In the premises, I find the Appeals to be meritorious on the one ground, that the trial court erred in relying on documents produced through submissions and they are hereby allowed with costs.

It is so decreed.

DATED and delivered at Chuka this 13th day of December, 2016.

A. MABEYA

JUDGE

Judgment read and delivered in open court in the presence of all Counsels.

A.MABEYA

JUDGE