Distributors v Nyabochwa (Civil Appeal E057 of 2024)
[2025] KEHC 3310 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3310 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CIVIL APPEAL E057 OF 2024

DKN MAGARE, J

MARCH 6, 2025

BETWEEN

GETEMBE PRIME DISTRIBUTORS ..... APPELLANT

AND

MORACHA NYABOCHWA ..... RESPONDENT

JUDGMENT

1. This appeal arises from the Judgment and decree of subordinate court delivered by Hon. P.K. Mutai (PM) on 4.12.2023 in Kisii CMCC No. E604 of 2021.

2. The Appellant lodged the Memorandum of Appeal dated 27.3.2024 raising grounds that the learned magistrate erred in awarding inordinately high general damages and liability of 100% against the Respondent.

3. In the Plaint amended on 4.3.2022, the Respondent claimed damages for an accident pleaded to have occurred on 3.4.2021 when the Respondent was driving motor vehicle registration No. KCJ 845R along Kisii-Migori road at Riana area when the Appellant's motor vehicle registration No. KCC 306L was so negligently driven that it collided with the Respondent's motor vehicle causing the Respondent injuries.

4. The Respondent set forth particulars of negligence and injuries and pleaded special damages. The injuries were pleaded as follows:

    i. Whiplash neck injuries

    ii. Abdominal contusion with resultant epigastric hernia

    iii. Dislocation of the right shoulder joint

    iv. Dislocation of the right hip joint

v. Fracture of the right fibula bone

5. The special damages were also pleaded as follows:

Police abstract Ksh. 200/=

Medical report Ksh. 5,000/=

Motor vehicle search Ksh. 500/=

Treatment expenses Ksh. 17,300/=

6. The Appellant filed its defence dated 15.9.2022. They denied the particulars of negligence as pleaded by the Respondent and blamed the Respondent for the accident.

7. The lower court considered the matter and awarded reliefs as follows:

a. Liability agreed at 100% for the Respondent

b. Special damages Ksh 17,300/=

c. General damages Ksh. 500,000/=

Evidence

8. PW1 was No. 87122, Corporal Inter Saoke of Gesonso Police Station. He testified that the accident occurred at a junction of a feeder road. KCJ 845R slowed down to accommodate a motorcycle entering the road, and it was hit by another motor vehicle coming from behind. It is KCC 306L that caused the accident. On cross-examination, he testified that the matatu was hit from behind.

9. PW2 was Dr. Daniel Nyameino. He relied on his medical report dated 14.4.2021 and testified that the Respondent suffered the injuries as pleaded. On cross examination, he stated that he examined the Respondent 6 days after the accident. He stated that the Respondent suffered one fracture. Permanent disability was 6%. Fracture healing was a long process.

10. PW3 was the Respondent. He reiterated his witness statement dated 3.6.2021. He testified that he was involved in the accident and suffered the injuries. On cross-examination, he stated that he was driving KCJ 845R. It was not clear as it was raining. He was hit from behind.

11. The Appellant closed their case without calling a witness.

Analysis

12. This being a first appeal, this court is under a duty to reevaluate and assess the evidence and make its own conclusions. It must, however, remember that a subordinate court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence firsthand.

13. This Court will not interfere with an inferior court's exercise of judicial discretion unless it is satisfied that its decision is clearly wrong. In the case of Mbogo and Another vs. Shah [1968] EA 93 the court stated:

> "...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

14. The duty of the first appellate court was set out in the case of Selle and another Vs Associated Motor Board Company and Others [1968]EA 123, where the judges in their usual gusto, held as follows;-

> " .. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-subordinate and the Court of Appeal is not bound to follow the subordinate Court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally."

15. The Court is to remember that it has neither seen nor heard the witnesses. It is the subordinate court that has observed the demeanor and truthfulness of those witnesses. However, the documents still speak for themselves. The observation of documents is the same as that of the lower court, as parties cannot read into those documents matters extrinsic to them.

16. This court's jurisdiction to review the evidence should be exercised with caution. In the cases of Peters vs Sunday Post Limited [1958] EA 424, the court therein rendered itself as follows:-

> " It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion..."

17. This court does not have the advantage of seeing and hearing the witnesses as did the lower court, this court must reconsider the evidence, evaluate it itself, and draw its own conclusions. In Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, this principle was enunciated thus:

> " ...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

18. The Appellant urged the court to find that the lower court erred in finding 100% liability against the Appellant. On the other hand, the Respondents' case is that the judgment of the lower court was correct on both quantum and liability and should not be disturbed.

19. The court is asked to establish whether the lower court erred in finding, on a balance of probabilities, that the Appellant was 100% liable for the accident. The legal burden of proof lies upon the party who invokes the aid of the law and asserts an issue based thereon. In Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, the Court of Appeal held that:

> " As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act."

20. It follows that the initial burden of proof lies on the Plaintiff, but the same may shift to the Defendant, depending on the circumstances of the case. In Evans Nyakwana –vs- Cleophas Bwana Ongaro [2015] eKLR it was held that:

> " As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side."

21. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in William Kabogo Gitau –vs- George Thuo & 2 Others [2010] 1 KLE 526 stated that:

> " In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely that not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred."

22. The balance of probabilities is also about what is likely to have happened than the other. Lord Nicholls of Birkenhead in Re H and Others (Minors) [1996] AC 563, 586 held that;

> " The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the even was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriated in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability....."

23. The standard of proof in civil cases must carry a reasonable degree of probability, but not so high as is required in a criminal case for such standard is based on a preponderance of probabilities. In Palace Investment Ltd –vs- Geoffrey Kariuki Mwenda & Another [2015] eKLR, the Judges of Appeal held that:

> " Denning J, in Miller –vs- Minister of Pensions [1947] 2 All ER 372 discussing the burden of proof had this to say;-
>
> "That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.
>
> This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained."

24. In re-evaluating the evidence, the clear evidence of the Respondent, as corroborated by the police officer who testified for the Respondent, was that the Respondent's KCJ 845R was hit from

behind. The Appellant did not adduce any evidence in court to contradict the Respondent's version of pleadings and evidence. The Respondents' evidence of the accident's occurrence was largely uncontroverted. In the case of Janet Kaphiphe Ouma & Another –vs- Maries Stopes International (Kenya), Kisumu HCCC No. 68 of 2007, Ali Aroni, J citing the decision in Edward Muriga suing through *Stanley Muriga –vs- Nathaniel D. Schulter, Civil Appeal No. 23 of 1997* held that:

> "In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Sections 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same by way of evidence."

16. Guided by the above case, I find the statements in the defence filed on 10th December 2014 remain mere allegations having not been substantiated orally in court by the Appellant to controvert the Respondents testimony."

25. Therefore, the Appellant's defence in the lower court thus contained mere allegations that were not substantiated in evidence, and I so find. However, even if no defence was filed, the Respondent still retained the duty to prove his case on the balance of probabilities. The Court of Appeal's position in Daniel Toroitich Arap Moi –vs- Mwangi Stephen Muriithi & Another [2014] eKLR espouses the correct legal position that:

> "It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of rebuttal by the other side."

26. Having found that the Respondent proved his case to the required standard, and in the absence of any explanation from the Appellant, there is no basis to disturb the lower court's finding on liability. In a courtroom situation, we deal with empirical evidence on what is more probable than the other. In the case of Embu Road Services V Riimi (1968) EA 22, the courts held inter alia as doth; -

> "Where the circumstances of the accident gave rise to the inference of negligence, the defendant, in order to escape liability, has to show that there was a probable cause of the accident, which does not create negligence or that the explanation for the accident was consistent only with absence of negligence. The essential point in this case, therefore is a question of fact, that is whether the explanation given by the Respondent shows that the probable cause of the accident was not due to his negligence or that it was consistent only with absence of negligence". See also Odungas Digest on Civil case law and Procedure 3rd Edition Vol 7 page 5789 at paragraph (D).

27. The Respondent proved the duty of care on the part of the Appellants, a breach of the duty, a causal connection between the breach and the damage, and foreseeability of the particular type of damage caused as against the Appellants. In the case of Caparo Industries PLC v Dickman {1990} 1 ALL ER

568 and Chun Pui v Lee Chuen Tal {1988} RTR 298 the determinants of negligence were stated as follows:

> " The requirements of the tort of negligence are, as Mr. Batts submitted, fourfold, that is, the existence of a duty of care, a breach of the duty, a causal connection between the breach and the damage and foreseeability of the particular type of damage caused."
>
> In Caparo case (supra) the Court stated:
>
> "What emerges is that, in addition to the foreseeability of the damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterized by the Law as one of proximity or neighborhood, and that the situation should be one in which the Court considers it fair, just and reasonable that the Law should influence a duty of a given scope upon the one party for the benefit of the other. As regards the question of proof of a breach of the duty of care, there is equally no question that the onus of proof on a balance of probabilities, that the defendant has been careless falls upon the claimant throughout the case."

28. Without the proper defence of contributory negligence, the court could not determine whether the act or acts of negligence that caused the damage were caused by the negligent acts of different persons so as to assess the degree of their respective responsibility and blame-worthiness and apportion liability between or among them accordingly. The Appellant failed in this duty. The lower court was correct in its finding on liability, which is upheld. In Masembe vs. Sugar Corporation and Another [2002] 2 EA 434, it was held that:

> " Negligence is not actionable per se but is only actionable where it has caused damage and in that regard the primary task of the court in a trial of a negligence suit is to consider whether the act or acts of negligence caused the damage was caused by the negligent acts of different persons to assess the degree of their respective responsibility and blame-worthiness, and apportion liability between or among them accordingly... There is no act or omission that has static blameworthiness and therefore each case must be assessed on its own circumstances and the apportionment ought to be a result of comparing the negligent conduct of the tortfeasor, to determine the degree to which each one was in fault, both in regard to causation of the wrong and unreasonableness of conduct."

29. On quantum, the lower court awarded Kshs. 500,000/- in general damages. I have to establish whether the award was excessive. The lower court based its award on Jitan Nagra v Abednego Nyandusi Oigo (2018) eKLR. In the said case, the injuries were stated as deep cuts to the back and right knee, blunt trauma to the chest, bruises to the elbow, compound fracture of the right tibia and fibula, and distal fracture of the femur. In this case, the only medical report produced was one by Daniel Nyameino and which confirmed the injuries sustained by the Respondent herein as follows:

i. Whiplash neck injuries

ii. Abdominal contusion with resultant epigastric hernia

iii. Dislocation of the right shoulder joint

iv. Dislocation of the right hip joint

v. Fracture of the right fibula bone

30. The court must assess the injuries' effect on the Respondent. In my reevaluation, I have no reason to doubt the evidence of the medical doctor obtained in the medical report. Viewed in line with the finding of the lower court, I equally, in the absence of any contrary medical evidence, find no reason to fault the lower court's finding and, therefore, uphold the injuries suffered as the injuries pleaded and proved on evidence.

31. Therefore, this court has to establish similar fact scenarios, though bearing in mind that no two cases are precisely the same and that it is inevitable that there will be disparity in awards made by different courts for similar injuries as established in Southern Engineering Company Ltd. vs. Musingi Mutia Civil Appeal No 46 of 1983 [1985]eKLR. However, the Court of Appeal in Odinga Jacktone Ouma V Moureen Achieng Odera [2016] eKLR stated that "comparable injuries should attract comparable awards."

32. The principle on the award of damages is settled. In Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -

    a. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.

    b. The award should be commensurable with the injuries sustained.

    c. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

    d. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

    e. The awards should not be inordinately low or high.

33. Circumstances in which an Appellate court will interfere with the quantum of damages awarded by a trial court were clearly laid out in the case of Kenya Bus Services Limited vs. Jane Karambu Gituma Civil Appeal Case No. 241 of 2000 where the Court of Appeal stated as follows:

> " ...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages."

34. The Court of Appeal pronounced itself succinctly on the principles of disturbing awards of damages in Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2) [1985] eKLR as follows:

> The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

35. The foregoing statement had been ably elucidated by Sir Kenneth O'Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Council, that is, Nance v British Columbia Electric Co Ltd, in the decision of Henry Hilanga v Manyoka 1961, 705, 713 at paragraph c, where the learned Judge ably pronounced himself as doth regarding disturbing quantum of damages:

> 'The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance.'
>
> We find the words of Lord Denning in the West (H) & Son Ltd (1964) A.C. 326 at page 341 on excessive awards on damages important to replicate herein thus:

> " I may add, too, that if these sums get too large, we are in danger of injuring the body politic, just as medical malpractice cases have done in the United States of America. As large sums are awarded, premiums for insurance rise higher and higher, and they are passed to the public in the shape of higher and higher fees for medical attention. By contrast we have a National Health Service. But the health authorities cannot stand huge sums without impending their service to the community. The funds available come out of the pockets of the taxpayers. They have to be carefully husbanded and spent on essential services. They should not be dissipated in paying more than fair compensation."

36. The words of Lord Denning were reiterated by Nyarangi, JA. in Kigaragari v Aya [1985] eKLR thus:

> " I would express firmly the opinion that awards made in this type of cases or in any other similar ones must be seen not only to be within the limits set by decided cases but also to be within what Kenya can afford. That must bear heavily upon the court. The largest application should be given to that approach. As large amounts are awarded, they are passed on to members of the public, the vast majority of whom cannot just afford the burden, in the form of increased costs for insurance cover (in the case of accident cases) or increased fees."

37. The principles are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. In the case of Kilda Osbourne v George Barned and Metropolitan Management Transport Holdings Ltd & another Claim No. 2005 HCV 294 being guided by the principles enunciated by both Lord Morris and Lord Devlin in H. West & Sons Ltd v Shephard {1963} 2 ALL ER 625 Sykes J stated as follows:

> " The principles are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will have to live with this injury for quite sometime is part of the subjective portion of the assessment. The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant."

38. It is common reasoning that astronomical awards may lead to increased insurance premiums thus hurting the insurance industry as well as the economy. See the case of H. West and Son Ltd v. Shepherd [1964] AC.326 (supra) where it was stated that:

> ...but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation.
>
> In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional....."

39. With the above guide, if the award is inordinately high, then I will have to set it aside. If, however, it is just high but not inordinately high, I will not do so. For the appellate court to interfere with the award, it is not enough to show that the award is high or had I handled the case in the subordinate court I would have awarded a different figure.

40. In *Kiama v Mutiso (Civil Appeal 40 of 2023*) [2024] KEHC 5135 (KLR) (13 May 2024) (Judgment) the Plaintiff suffered a fracture of the upper 1/3 of the left tibia bone and related soft tissue injuries. The High Court reduced an award of Ksh. 700,000/= to Ksh. 400,000/=.

41. In Gladys Lyaka Mwombe v Francis Namatsi and 2 Others [2019] eKLR the court sustained an award of Kshs. 300,000/= for the claimant who had suffered a cut wound on the anterior part of the scalp, a head injury, spinal cord injury, neck injury, fracture of the lower tibia and fibula.

42. In the case of Daniel Otieno Owino & another v Elizabeth Atieno Owuor [2020] eKLR where the Respondent had suffered a fracture of tibia and fibula bones of the right leg, deep cut wound and tissue damage of the right leg, head injury with cut wound on the nose, blunt chest injuries and soft tissue injury on the lower left leg, the High Court set aside the award of Kshs. 600,000/= and replaced the same with Kshs 400,000/=.

43. In, Ndwiga & another v Mukimba (Civil Appeal E006 of 2022) [2022] KEHC 11793 (KLR) (13 July 2022) (Judgment) the Respondent who suffered the following injuries was awarded Ksh. 1,200,000/= which was reduced to Ksh. 500,000/= on appeal.

    a. Tenderness and swelling of the left leg

    b. Fracture of tibia and fibula left leg

44. Based on the authorities, I find the award by the lower court of Ksh. 500,000/= cannot be said to be inordinately high as the injuries only involved a fracture of the tibia. I find no merit in the appeal. The appeal on quantum s thus dismissed.

45. On special damages, the pleadings and evidence show that the Appellant pleaded and proved Ksh. 17,300/= which the lower court granted. The Appellant did not challenge this award, and I uphold it.

46. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

> " It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously

meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

47. The issue of costs is governed by Section 27 of the *Civil Procedure Act*, which provides as follows:

    1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

    2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

48. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

> "(18) It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

49. Consequently, the appeal lacks merit and is dismissed with costs to the Respondent.

Determination

50. In the upshot, I make the following orders:

    a. Appeal is dismissed in its entirety for lack of merit.

    b. The Respondent shall have costs of Ksh. 85,000/=.

    c. 30 days stay of execution.

    d. 14 days right of appeal.

    e. File is closed.

DELIVERED, DATED, AND SIGNED AT NYERI ON THIS 6TH DAY OF MARCH, 2025.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kipyegon for the Appellant

No appearance for the Respondent

Court Assistant – Michael