



Dynamic Financial and IT Research Consulting Limited v Kimanthe Communications Agencies Limited; County Government of Nyeri (Interested Party) (Civil Case E004 of 2022) [2025] KEHC 11919 (KLR) (28 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE E004 OF 2022
DKN MAGARE, J
JULY 28, 2025**

BETWEEN

DYNAMIC FINANCIAL AND IT RESEARCH CONSULTING LIMITED PLAINTIFF

AND

KIMANTHE COMMUNICATIONS AGENCIES LIMITED DEFENDANT

AND

COUNTY GOVERNMENT OF NYERI INTERESTED PARTY

JUDGMENT

1. On 15.03.2022, the plaintiff filed suit against the defendant and a third party whom they called, Interested Party. The said Interested Party has since been removed from the proceedings. The concept of an interested party is an interesting one in civil cases. The supreme court dealt with this concept in other proceedings in the case of Methodist Church in Kenya v Mohamed Fugicha & 3 Others [2019] eKLR
2. In the plaint, the plaintiff describes themselves as a systems development and management company. They are said to have entered into an agreement dated 27.05.2019, to deliver revenue management and collection system in respect of a contract awarded to the County Government of Nyeri. The plaintiff was to be paid a sum of Ksh 5,000,000/= upon presentation of the system ready for deployment but was only paid Ksh 3,000,000/=.
3. The Defendant was to pay 1% of total revenue collection on a monthly basis and 1% for day to day system support as commission of total revenue for system updating and future development requirements. They averred that out of the 2% revenue collection, the sum due stood at Ksh.



26,970,861/= as at 31.1.2022. This amount was said to accrue. It was not shown, the rate at which the same accrued.

4. The plaintiff proceeded that the defendant breached clauses 2.2.3, 2.2.4 and 2.2.5 of the agreement dated 27.05.2019. The plaintiff proceeded that they had to acquire services of a third party who developed the payment gateway, maintains it, hosts it and hosts the cloud servers and the plaintiff is under obligation to that third party.
5. They prayed for the following orders:
 - a. A sum of Ksh 2,000,000/=.
 - b. A sum of Ksh 26,970,861/= for services rendered under 2.2.3, 2.2.4 and 2.2.5 of the agreement dated 27.05.2019.
 - c. An order for the plaintiff to continue paying sums as they accrue under 2.2.3, 2.2.4 and 2.2.5 as per the agreement dated 27.05.2019 until the date of judgment.
 - d. An order of permanent injunction prohibiting the defendants and its agents and servants from utilizing Nyeripay Revenue System as developed by the plaintiff.
 - e. Damages for breach of contract.

Evidence

6. The sole witness testified and adopted the evidence. He produced the list of documents dated 14.03.2022. The certificate of incorporation and CR12 showed registration and directors and shareholding. They annexed the agreement dated 27.05.2025. The sale agreement was for 4 years with a possibility for renewal. Clause 2 provided for payment of consideration. A bank statement was attached in the name of DFIT Research and Consulting as exhibit 5.
7. A letter dated 1.07.2021 set out the demand for commission. The plaintiff enclosed a document indicated to be a report of periodical total revenue received, summary level 3. It indicated a total of 789,123,432/=. The next list has 53,850,662/=. It is not clear the source of these documents and their authenticity. The plaintiff simply threw figures to the court to ask them to award the damages.
8. There is also annexed a document from Hubloy. Its relevancy is not clear to the liability of the respondent. The defendant filed a notice of appointment on 08.04.2022 but did not enter appearance or file defence. The matter proceeded *ex parte*.

Analysis

9. The plaintiff claimed a liquidated sum alleged to have arisen from breach of contract. The plaintiff thus had to prove the existence of a contract, breach of the contract and the resultant loss. On the proof of the allegations of breach of contract, in *Raghibir Singh Chatte v National Bank of Kenya Limited* [1996] eKLR the Court of Appeal stated thus:

“When a party in any pleading denied an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum, or any part thereof, or else set out how much he received. And so, when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along those circumstances, but fair and substantial answer must be given.”...



...First of all a mere denial is not a sufficient defence in this type of case there must be some reason why the defendant does not owe the money. Either there was no contract or it was not carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient therefore simply to deny liability without some reason given.”

10. On this subject, Sections 107-109 of the *Evidence Act*, Cap 80 Laws of Kenya provides that:
 107. 1 Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
 108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
11. The initial evidentiary burden rested with the Plaintiff. 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 cast 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.”
12. The matter proceeded by way of formal proof. In the case of *Samson S. Maitai & Another -vs- African Safari Club Ltd & Another* [2010] eKLR, the High Court in trying to define Formal Proof stated thus:

“..... I have not seen judicial definition of the phrase "Formal Proof". "Formal" in its ordinary Dictionary meanings - refers to being "methodical" according to rules (of evidence). On the other hand according to Halsbury's Laws of England, Vol. 15, para, 260, "proof" is that which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry. Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption.”
13. 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 proposition 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.”

14. 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 than 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.”

15. The defendant did not call any witness to testify in court. I am alive to the fact that even without the defendant’s testimony, the plaintiff is obliged to prove his case on a balance of probabilities. In the case of Kerai Ghanshyam v James Wambua Muendo [2021] KEHC 9033 (KLR), the court stated as doth: -

I am alive to the Court of Appeal’s position in Daniel Toroitich Arap Moi –vs- Mwangi Stephen Muriithi & Another [2014] eKLR that 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.”

16. However, in the case of Janet Kaphiphe Ouma & Another –vs- Marie Stopes International (Kenya), Kisumu HCCC No. 68 of 2007, Ali Aroni, J citing the decision in Edward Muriga through Stanley Muriga –vs- Nathaniel D. Schulter, Civil Appeal No. 23 of 1997 stated 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.”

17. On my evaluation, it is clear that the defendant paid Ksh. 3,000,000/=. According to clause 2.2.3 of the contract dated 27.5.2019, the plaintiff was to be paid Ksh. 5,000,000/= on presentation of the system ready for deployment. The plaintiff indeed presented the Nyeri Pay Revenue System and so discharged his duty under contract. This allegation by the plaintiff was established on the balance of probability as per Lord Nicholls of Birkenhead in Re H and Others (Minors) [1996] AC 563, 586 thus;

“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 event 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.....”

18. I find no reason to deny the plaintiff the balance of Ksh. 2,000,000/= as claimed and which the plaintiff is entitled to. On a balance of probabilities, the plaintiff is entitled to Ksh. 2,000,000/= as the balance of the proved initial payment of Ksh. 5,000,000/= which the defendant paid only Ksh. 3,000,000/=. The degree of proof was addressed in the case of *Palace Investment Ltd –vs- Geoffrey Kariuki Mwenda & Another* [2015] eKLR, where 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 loose because the requisite standard will not have been attained.”

19. It was also the case of the Plaintiff that the cumulative outstanding fees owed by the Defendant was Ksh. 26,970,861/= as at 31.1.2022. This was described to have arisen in respect of 2% revenue collection and continued to accrue interest. According to the Plaintiff, the Defendant was required to pay 1% of total revenue collection as monthly commission for system updating and future developments. It is not the duty of the court to recreate the contract between parties. In the case of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR it was stated as follows: -

A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.

As was stated by Shah JA in the case of *Fina Bank Limited vs Spares & Industries Limited* (Civil Appeal No 51 of 2000) (unreported):

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain.

20. There was no proof of the baseline for which the court could base 2% or 1%. A party cannot just throw figures to the court. The court cannot rummage through to find damages. In the case of *David Bagine Vs Martin Bundi* [1997] eKLR, the Court of Appeal stated as follows: -

“It has been held time and again by this Court that special damages must be pleaded and strictly proved. We refer to the remarks by this Court in the case of *Mariam Maghema Ali v. Jackson M. Nyambu t/a sisera store*, Civil Appeal No. 5 of 1990 (unreported) and *Idi Ayub Sahbani v. City Council of Nairobi* (1982-88) IKAR 681 at page 684: “...special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard C.J. in *Bonham Carter vs. Hyde Park Hotel Limited* [1948] 64 TLR 177 thus:

“Plaintiffs must understand that if they bring actions for damages it is for them to prove damage, it is not enough to write down the particulars and, so to speak, throw them at the



head of the court, saying, 'this is what I have lost, I ask you to give me these damages.' They have to prove it"

21. Total revenue was not defined. It was not clear whether the revenue belonged to the client or the plaintiff. As the matter arose from breach of contract for the services alleged to be done, the extent of damage of loss needed to be established. In *Consolata Anyango Ouma vs. South Nyanza Sugar Co. Ltd* (2015) eKLR it was stated as follows:

The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This principle is encapsulated in the Latin phrase *restitution in integrum* (see *Kenya Industrial Estates Ltd v Lee Enterprises Ltd* NRB CA Civil Appeal No. 54 of 2004 [2009] eKLR, *Kenya Breweries Ltd v Natex Distributors Ltd Milimani* HCCC No. 704 of 2000 [2004] eKLR). The measure of damages is in accordance with the rule established in the case of *Hadley v Baxendale* (1854) 9. Exch. 341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see *Standard Chartered Bank Limited v Intercom Services Ltd & Others* NRB CA Civil Appeal No. 37 of 2003 [2004] eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see *Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others*, NRB CA Civil Appeal No. 192 of 92 (UR) and *Charles C. Sande v Kenya Co-operative Creameries Ltd*, NRB CA Civil Appeal No. 154 of 1992 (UR).

22. A sum of Ksh. 26,970,861/= was described to be owed as a result of the services provided at the rates defined under clause 2.2.4 and 2.2.5 of the agreement dated 127.5.2019. The said clauses were in respect of 10% commission on the system developers and managers total revenue for maintenance and day to day management of the program and 1% related commission as regards system updates and development of additional modules respectively.
23. In the circumstances the court finds that the amount of Ksh. 26,970,861/= was not proved to the required standard. The plaintiff failed to establish whether the 10% and 1% respectively as regards day to day management of the program and system updates and development of additional modules was achieved.
24. The court is thus uncertain that the contract was performed in this regard as anticipated under clause 2.2.4 and 2.2.5 of the agreement dated 127.5.2019. It is also the duty of the party pleading to have its case done and evidence gathered. This is in line with the *locus classicus* case of special damages, that is, the decision of *Coast Bus Services Limited v Sisco E. Murunga Denyi & 2 Others* C.A. No. 192 of 1992 (UR) where it was stated:

We would restate the position. Special damages must be pleaded with as much particularity as circumstances permit and in this connection it is not enough simply to aver in the plaint as was done in this case that the particulars of special damages were to be supplied at the time of trial. If at the time of filing the suit the special damages is not known with certainty then those particulars can only be supplied at the time of trial amending the plaint to include the particulars which were previously missing. It is only when the particulars of Special Damages



are pleaded in the plaint that a claimant will be allowed to proceed to the strict proof of those particulars.”

25. The Plaintiff also prayed for general damages for breach of contract. The principles under this head were established in the case of *Gideon Mutiso Mutua V Mega Wealth International Limited* [2012] eKLR. Odunga J (as he then was) opined thus;

“The principle guiding the award of general damages for breach of contract was restated in *Provincial Insurance Company of East Africa Ltd. vs. Mordekai Mwanga Nandwa Civil Appeal No. 179 of 1995* [1995-1998] 2 EA 289 in which the Court of appeal citing *Dharamshi vs. Karsan* [1974] EA 41, held that it is quite clear that no general damages may be granted for breach of contract (emphasis mine). In my view the Court of Appeal did not hold that general damages are not awardable for breach of contract.

That notwithstanding the general law of contract is that where two parties have made a contract which one of them has broken the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e. according to the usual course of things from such a breach of contract itself, or such as may be reasonably supposed to have been in contemplation of both parties at the time they made the contract, as the probable result of the breach of it. The plaintiff is to be paid compensation in money for the loss of that which he would have received had the contract been performed and no more. Loss has been defined to mean loss of a pecuniary kind, loss of property or of the use of property or the means of acquiring property, but it does not include damages for the disappointment of mind or vexation caused by hurtful or humiliating manner in which the defendant broke the contract. It may however exceptionally include compensation for physical discomfort or inconvenience or loss of time. Otherwise the damages which are recoverable in an action for breach of contract are either nominal damages, that is to say, where a party has proved breach of contract but not proved that he sustained any actual loss consequent to the breach; or substantial damages, that is to say, where a party has not only proved a breach of contract but has also proved that he sustained some actual loss as a result of the breach. See *Hadley vs. Baxendale* 156 ER 145; *Addis vs. Gramophone Company* (1990) AC 488; *Bailey vs. Bullock* (1950) 2 All ER 1167; *Sutton and Shammon on Contracts*, 7th Ed Page 399.” Emphasis mine.

26. The Plaintiff did not demonstrate the actual loss as a result of the failure of performance by the Defendant. It was not the evidence of the Plaintiff that any amount were paid to Hubloy Limited who are alleged to have been a third party that developed the payment gateway. The claim for Ksh. 26,970,861/= was also not anchored on proved performance of the contract. Consequently, the Plaintiff’s claim for general damages for breach of contract fails.
27. There can be no damages for breach of contract. In the case of *Kenya Women Microfinance Ltd v Martha Wangari Kamau* [2021] eKLR, E C Mwita, the court held as follows:

60. The trial court awarded general damages for breach of obligation in relation to the respondent’s loan account and duty of care when the motor vehicles were sold. The law is that general damages are not awardable for breach of contract or breach of contractual obligations. A contract for performance of specific duties or obligations, if breached, would lead to compensation for the specific loss suffered as a result of the breach, but not general damages....



62. In *Dharamshi v Karsan* [1974] EA 41, it was held that general damages are not awardable for breach of contract in addition to the quantified damages as it would amount to a duplication. And *Securicor Courier (K) Ltd v Benson David Onyango & another* [2008] eKLR, the Court of Appeal reiterated that general damages are not awardable for breach of contract. (See also *Provincial Insurance Co. EA Ltd v Mordechai Mwanga Nandwa*, (KSM Civil Appeal No 179 of 1995,)

28. In the case of *Micro-City Computers Limited & another v National Social Security Fund Board of Trustees & another* (Civil Appeal 49 & 59 of 2020 (Consolidated)) [2024] KECA 444 (KLR) (12 April 2024) (Judgment) (with dissent), it was held as follows:

6. Proof of claims for anticipated profits or consequential loss are by their nature hypothetical and their mode of proof are not to be treated on the same plane as claims for actual losses already incurred. As was appreciated by Toulson, LJ in *Parabola Investment Limited & Another v Browallia Cal Limited* (2011) QB 477 at 486: “Some claims for consequential loss are capable of being established with precision (for example, expenses incurred prior to the date of trial). Other forms of consequential loss are not capable of similarly precise calculation because they involve the attempted measurement of things which would or might have happened (or might not have happened) but for the defendant’s wrongful conduct, as distinct from things which have happened. In such a situation the law does not require a claimant to perform the impossible, nor does it apply the balance of probability test to the measurement of the loss.”

7. In determining such a loss, the court must necessarily proceed on the basis of estimates and in so doing attempt to evaluate all the chances, great or small, taking into account all significant factors. I therefore agree with the opinion of Leggatt J in *Yam Seng Pte Ltd vs International Trade Corp Ltd* (2013) 1 Lloyd’s Rep 526 [188] that: “The court is aided in this task by what may be called the principle of reasonable assumptions – namely, that it is fair to resolve uncertainties about what would have happened but for the defendant’s wrongdoing by making reasonable assumptions which err if anything on the side of generosity to the claimant where it is the defendant’s wrongdoing which has created those uncertainties.”

29. The plaintiff also prayed for a permanent order of injunction. Already an order for payment of the balance has been made. The plaintiff cannot approbate and reprobate. It is futile to ask for the balance of money at the same time seek for an injunction. The contract was not terminated at the plaintiff’s instance. It is still in situ. Having acquired proprietary rights, the defendant is entitled to full benefits of the contract between the parties. In the case of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR the High Court sitting on appeal held that:

“It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”



30. The permanent injunction was to prohibit the Defendant and its agents from further utilizing the NyeriPay Revenue System. The Plaintiff has not demonstrated the need for permanent restraint against the Defendant to prohibit the Defendant's commission of an act in order for the rights of the plaintiff to be protected. The life of the system is not certain, in the circumstances and I do not think a permanent injunction would serve any utility. Court orders cannot be issued in vain. In *B vs. Attorney General* [2004] 1 KLR 431, the court stated as follows:

The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.

31. The next question is on costs. 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.

32. 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.

33. Costs follow the event. The plaintiffs are entitled to costs. The Plaintiff shall have costs of the suit assessed at Ksh. 95,000/=.

Determination

34. The upshot of the foregoing is that I make the following orders: -



- a. Judgment is entered for the Plaintiff against the Defendant for a sum of Ksh. 2,000,000/=.
- b. The rest of the prayers are unmerited and are consequently dismissed.
- c. The amount of Ksh. 2,000,000/= shall attract interest at court rates from the date of filing the suit.
- d. The Plaintiff shall also have costs of the suit assessed at Ksh. 95,000/=.
- e. 30 days stay of execution.
- f. 14 days right of appeal.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 28TH DAY OF JULY, 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Ms. Wansoi for the Plaintiff

No appearance for the Defendant

Court Assistant – Michael

