Makambi (Suing as Legal Representative of the Estate of Albert Otoro Nyakegita – Deceased) v Ombati (Civil Appeal 76 of 2022) [2024] KEHC 1169 (KLR) (7 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1169 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CIVIL APPEAL 76 OF 2022

DKN MAGARE, J

FEBRUARY 7, 2024

BETWEEN

KENNEDY NYAKEGITA MAKAMBI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF ALBERT OTORO NYAKEGITA – DECEASED) ..... APPELLANT

AND

ELIJAH MAKONO OMBATI ..... RESPONDENT

JUDGMENT

1. This is an appeal from the judgment and Decree given on 31/8/2022 by the Honourable P.K. Mutai, SRM on 31/8/2022. The Appellant was the plaintiff in the suit.

2. The appellant raised a whooping 10 grounds of Appeal. The grounds were prolixious, unseemly, repetitive and as such the court shall not repeat the same herein. Though the Appeal is from the judgment and decree, there is an indication that it is from a judgment and order. This is an oxymoron as a judgment cannot yield an order but a decree.

3. I need to state that precision is the hallmark of a good Appeal. It conveys the meaning and the grounds challenging the decision. Order 42 Rule 1 provides are doth: -

> " 1.Form of appeal –
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> (1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading. (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

4. The Court of Appeal had this to say in regard to rule of the Court of Appeal Rules (which is pari material to order 42 Rule 1). In the case of Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat [2020] eKLR: -

> " We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See Abdi Ali Dere v. Firoz Hussein Tundal & 2 Others [2013] eKLR) and Nasri Ibrahim v. IEBC & 2 Others [2018] eKLR. In the latter case, this Court lamented:
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> "We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs." The 18 grounds of appeal presented by the appellant, Robinson Kiplagat Tuwei against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues..."

5. Further in Kenya Ports Authority v Threeways Shipping Services (K) Limited [2019] eKLR, the court of appeal observed that: -

> " Our first observation is that the memorandum of appeal in this matter sets out repetitive grounds of appeal. The singular issue in this appeal is whether Section 62 of the *Kenya Ports Authority Act* ousts the jurisdiction of the High Court. We abhor repetitiveness of grounds of appeal which tend to cloud the key issue in dispute for determination by the Court. In William Koross V. Hezekiah Kiptoo Kimue & 4 others, Civil Appeal No. 223 of 2013, this Court stated:
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> "The memorandum of appeal contains some thirty-two grounds of appeal, too many by any measure and serving only to repeat and obscure. We have said it before and will repeat that memoranda of appeal need to be more carefully and efficiently crafted by counsel. In this regard, precise, concise and brief is wiser and better."

6. There are only two issues in this matter. These are quantum and liability. The rest of the issues are ancillary, repetitive, prolixious and a waste of judicial time.

7. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

8. In the case of Mbogo and Another vs. Shah [1968] EA 93 where 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."

9. The duty of the first appellate Court was in the locus Classicus case of Selle and another Vs Associated Motor Board Company and Others [1968] EA 123, addressed by Clement De Lestang, VP, Duffus and Law JJA, where the law Lords in their usual gusto, held by 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-trial and the Court of Appeal is not bound to follow the trial 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."

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

11. In the case of Peters vs Sunday Post Limited [1958] EA 424, 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..."

12. In Nyambati Nyaswabu Erick Vs Toyota Kenya Ltd & 2 Others (2019) eKLR, Justice D.S Majanja held as doth:

> " General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same."

13. The duty of the court regarding damages is settled that the state of the Kenya economy and the people generally and the welfare of the insured and injury public must be at the back of the mind of the trial Court.

14. Finally, in deciding whether to disturb quantum given by the Lower Court, the Court should be aware of its limits. Being exercise of discretion the exercise should be done Judiciously conclusively are circumstances to ensure that the award is not too high or too low as to be an erroneous estimate of damages.

15. The Court of Appeal, pronounced itself succinctly on these principles in Kemfro Africa Ltd Vs Meru Express Service Vs. A.M Lubia & Another 1957 KLR 27 as follows: -

> " The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.

16. The foregoing statement had been ably elucidated by Sir Kenneth 'Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Counsel, that is Nance vs British Columbia Electric Co Ltd, in the decision of Henry Hilanga vs 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..."

17. Therefore, for me 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.

18. So my duty as the appellate court is threefold regarding quantum of damages: -

    a. To ascertain whether the Court applied irrelevant factors or left out relevant factors.

    b. To ascertain whether the award is too high as to amount to an erroneously assessment of damages.

    c. The award is simply not justified from evidence.

19. To be able to do this, I need to consider similar injuries, take into consideration inflation and other comparable awards.

20. Similarly, in the duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in Pandya -vs- Republic [1957] EA 336 is as follows: -

> " On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different.

21. For the appellate court, to interfere with the award it is not enough to show that the award is high or low or even that had I handled the case in the subordinate court, I would have awarded a different figure.

Pleading

22. The plaint was filed on 17/2/2020, seeking damages from the Respondent as the proprietor of Nyambari Chachee B/B Boburia 3546.

23. The Appellant pleaded that on 11/10/2017 he was lawfully walking along an adjacent house for a house was being built. The defendant's house collapsed, and as a result, the deceased suffered fatal injuries.

24. They pleaded various aspects, if damages, particulars of negligence and special damages.

25. The defendant denied being the Actual owner of the said house. They also pleaded particulars of negligence on part of the deceased. This is those kind of defence the court of Appeal had in mind in the case of The case of Raghbir Singh Chatte v National Bank of Kenya Limited [1996] eKLR, where the court of Appeal stated as doth: -

> " The main object of this rule and r.14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M. R. in Thorp v Holdworth (1876) 3 Ch. D. 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him. Thus, in an action for a debt or liquidated demand in money, a mere denial of the debt is wholly inadmissible.
>
> I will also add that the crucial deficiency of a general denial which I have already described, also applies to the evasive, inconsistent and contradictory alternative general traverse in the appellant's defence. This was that if the respondent had extended any overdraft facilities without stating the amount involved, to the appellant which was moreover, denied, then the same and here again, without stating how and when, had been paid. Such a spurious pleading in the alternative cannot give any merit to the defence and so also makes it one which discloses no reasonable defence for all purposes including that of 0 6 r 13(1)(a)."

26. A witness statement was said to have been filed by Elijah Makono Ombati. I am yet to see a copy annexed. As usual in controversial cases, the case file got lost and a skeleton file was reconstructed. Thee mater proceeded ex parte. The court went into deconstructing evidence on who the owner could be. As a result placed a herculean task on the Appellant to prove that which was not his duty to do. The burden of proof is set out in Sections 107 – 109 of the *evidence Act*. They provide as follows: -

Burden of proof.

(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. Incidence of burden.
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> 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.
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> 109. Proof of particular fact.
>
> 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.

27. In the case of MS (Suing through father and next of kin) SSB v Francis Kalama Mulewa [2019] eKLR, the court D. O. CHEPKWONY stated as doth: -

> " Similarly, in the case of Susan Mumbi Waititu –vs- Kefala Greedhin, NRB HCC 3321 of 1993, the Court stated that: -

"The question of the court presuming adverse evidence does not arise in civil cases. The position in civil cases is that he who alleges has to prove. It's for the Plaintiff to prove her case on the balance of probability and the fact that the Defendant doesn't adduce any evidence is immaterial".

28. In the case of Mary Wambui Kabugu –vs- Kenya Bus Services Ltd, Civil Appeal No.195 of 1995, Bosire JA expressed himself as hereunder: -

" The age long principle of law is that he who alleges must prove. The appellant's case in the court below was that her husband was seriously injured in a road traffic accident due to negligence on the part of the respondent's driver. She did not, however, adduce evidence to establish that fact or any blame on the respondent. Her evidence on the accident was simply found him admitted at Kenyatta National Hospital with multiple injuries and in critical condition. She did not, of her own knowledge, know how he had sustained those injuries. The nurses who told her about the accident which gave rise to this suit were not called to testify. Nor did the appellant call any eye witness or witnesses to the accident to testify on it. She did not also call any other evidence from which some inference could be drawn as to the cause of the accident. In those circumstances the learned trial Judge was bound to come to the conclusion he did that the appellant did not on a balance of probabilities prove her case. On that ground alone the appeal would be dismissed".

On the other hand, if some credible evidence is tendered and the defendant does not rebut the same, the court is entitled to make a negative inference if not evidence is tendered in rebuttal. In the case of in the case of Nesco Services Limited v CM Construction [EA] Limited [2021] eKLR, justice G V Odunga as then he was stated as doth:

" In my view, the fact that the document in question was authored by the Appellant's agent and was produced by consent of the parties themselves entitled the learned trial magistrate to rely on it. The Court of Appeal in Ephantus Mwangi and Another vs. Duncan Mwangi Civil Appeal No. 77 of 1982 [1982-1988] 1KAR 278 had this to say on the issue:

"Where documents are put in by consent, as for example an agreed bundle of correspondence, the usual agreement is that they are admitted to be what they purport to be (so as to save the necessity for formal proof of each document)."

41. Since the said author was for reasons unknown to the Court not called to testify and dispute its authenticity, adverse inference could be made thereon. In Kenya Akiba Micro Financing Limited vs. Ezekiel Chebii & 14 others [2012] eKLR the court stated as follows:

"Section 112 of the *Evidence Act* Chapter 80 of the laws of Kenya provides:

'In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proofing of disproving that fact is upon him.'

Where a party has custody or is in control of evidence which that party fails or refuses to tender or produce, the court is entitled to make adverse inference that if such evidence was produced, it would be adverse to such a party. In the case of Kimotho –vs- KCB (2003) 1 EA 108 the court held that adverse inference should be drawn upon a party who fails to call evidence in his possession."

29. There is no burden of proof placed specifically on the plaintiff. The burden of proof is on whoever alleges. The Appellant set to prove through the green card that the defendant is the owner. This

particular averment was not denied. What the Respondent denied was that he was not the Actual owner. This was an evasive defence that did not explain what kind of ownership other than Actual did the respondent have. Is he a trustee, an occupier, aa trespasser what does actual owner mean. There is only one perosn in the position to explain. Since it was in his special knowledge, the defendant. Unfortunately, the defendant opted to be evasive contrary to the tenets of Order 2 Rule 4 which provides as doth: -

> " 4. Matters which must be specifically pleaded [Order 2, rule 4.] (1) A party shall in any pleading subsequent to a plaint plead specifically any matter, for example performance, release, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality—

a. which he alleges makes any claim or defence of the opposite party not maintainable;

which, if not specifically pleaded, might take the opposite party by surprise; or which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to subrule (1), a defendant to an action for the recovery of land shall plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant shall not be sufficient.

(3) In this "land" includes land covered with water, all things growing on land, and buildings and other things permanently affixed to land.

30. Secondly this was not a claim of ownership of the suit land. It was a claim over a collapsed building the defendant was building. He did not deny in his pleadings that he was not building. He only set out particulars of negligence of the Appellant.

31. The Respondent did not testify to displace the particulars of negligence pleaded. It is important to note that building is an unlawful use of land. Therefore, collapse of a building attracts strictly liability in the level of Rylands –Vs- Fletcher (1866) exc.2016 as affirmed in (1868) L.R.3 H.L.

32. Ordinarily, it is not normal for a building to collapse. The passersby cannot know whether the same was properly build. They will never know the ration of ballast cement and sand applied, beams and other technical issues. Expecting someone to know who is not in the employee of the home owner is unusual. Land ordinarily is for growing grass and other crops. If one decides to cut grass and build a highrise building it is incumbent upon such a person to ensure that debris do not escape and hit others who are going on doing their business.

33. The establish decisions referred above was beautifully captured in the case of Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited [2018] eKLR as follows: -

> (43) In the celebrated case of Rylands v. Fletcher, (1868) UKHL 1, the House of Lords upheld the decision of the trial Court as well as that of the Court of Appeal. In summary the facts of that case were that the Fletcher who owned land which was neighbouring Rylands' land engaged an independent contractor to construct a water reservoir on his land. Due to the negligence of the independent contractor when the reservoir was filled with water it flowed through some underground mine shafts, unknown to both the independent contractor as well as Fletcher, and flooded Rylands' mines causing damage. At trial Blackburn J. held:
>
> "We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is

the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

(44) The House of Lords augmented the trial Court's decision through the addition of the element of "non-natural use" and held that:

" ... if the Defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water either above or below ground in quantities and in a manner not the result of any work or operation on or under the land, - and if in consequence of their doing so, or in consequence of any imperfection in the mode 'of their doing so, the water came to escape and to pass off into the close of the Plaintiff, then it appears to me that that which the Defendants were doing they were doing at their own peril; and, if in the course of their doing it, the evil arose to which I have referred, the evil, namely, of the escape of the water and its passing away to the close of the Plaintiff and injuring the Plaintiff, then for the consequence of that, in my opinion, the Defendants would be liable ..."

34. In expressing the same concept in a different way, Justice Fred Ochieng, J as then he was, stated as doth in the case of Anvi Emporium Limited v Mohinder Singh Sagoo & another [2021] eKLR: -

" In principle, when the Plaintiff fails to prove his claim against the Defendant, the court has no option but to dismiss the said claim.

"However, when the alleged negligence was not proved, but the evidence provided showed that the damage caused to the Plaintiff's property was attributable to the Defendant, I find that it would be inconsistent with justice to deprive the Plaintiff his entitlement to compensation.

Therefore, on the strength of the evidence tendered by the parties, I find that the Appellant was correctly held liable for the damage caused to the Respondents' property.

Accordingly, the appeal against the finding on liability is dismissed."

35. It was thus incumbent upon the Respondents to lead evidence that the collapse had nothing to do with their actions. The deceased's estate had absolutely no knowledge why a building will collapse. However, a building properly built cannot collapse, unless a natural and an unexpected ceramic of cataclysmal proportion occurs. They was a duty for the Respondent to displace. He did not. The particulars of contributing negligence became useless without testimony.

36. This does not mean that in the absence of the defence evidence, the court is simply to enter judgment. The plaintiff always bears the initial burden of laying down their case. In the case of ZOS & COA (suing as the legal representatives of the Estate of SAO (deceased) v Omollo Stephen [2019] eKLR, Aburili J posited as doth: -

" 42. I have cited the Court of Appeal decision in which is clear that even if the case proceeds by way of formal proof, the plaintiff is under legal duty to prove negligence and liability of the defendant as particularized in the plaint. Liability is not like special damages. In the latter case, judgment would be final where there is no defence as opposed to the former and hence

the requirement for formal proof to prove negligence or liability of the defendant and the general damages suffered as a result of the alleged acts of negligence."

37. The question as to what amounts to proof on a balance of probabilities was discussed by Kimaru, J in William Kabogo Gitau vs. George Thuo & 2 Others [2010] 1 KLR 526 as follows:

> " 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."

38. 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 the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a 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."

39. The end result is that I am satisfied that the court below went on a frolic of its own and as a result placed upon the Appellant an onerous burden of proof. I find and hold that the Appellant had proved their case on a balance of probabilities. I set aside the order dismissing the suit and in lieu thereof find the Respondent 100% liable for the accident that caused the demise of the Deceased.

40. There is no proper appeal on quantum. The same relates to no award. I need to disabuse the Appellant that the court is under duty to assess damages even where the suit is dismissed. In the case of Joseph Muthuri v Nicholas Kinoti Kibera [2022] eKLR, Justice P J O Otieno stated as hereunder: -

> " Regarding assessment of damages due, the trial court did not assess any damages, for the reason that it had dismissed the suit. That was manifestly erroneous on the face of binding decision in Frida Agwanda & Ezekiel Onduru Okech v Titus Kagichu Mbugua [2015] eKLR, where the court held that:-
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> "Indeed even when the learned trial magistrate dismissed the claim, in such a case, he should have assessed damages, notwithstanding the dismissal. That now will be done by this court, for convenience, instead of returning the file to the lower court for assessment."
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> Similarly, in Lei Masaku versus Kalpama Builders Ltd [2014] eKLR, it was observed thus:
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> " It has been held time and again by the Court of Appeal that the court of first instance assess damages even if it finds that liability has not been established. To have casually dismissed the suit and failed to address that issue of damages in this case is a serious indictment on the part of the trial court. Both the trial court and this court must assess damages as they are not courts of last resort. Their decisions are appealable and the appellate court needs to know

the view by the Court of first instance on the issue of quantum. To the extent that the trial court failed to assess damages, its judgment was a serious flaw and cannot stand. It therefore behooves this court to assess quantum."

41. I therefore dismiss ground 8 of Appeal.

Damages

42. Damages follow the event. In this case the court found Kshs. 100,000/= for pain and suffering. I find the same proved and proper. The deceased was awarded Kshs. 100,000/= under loss of expectation of life. This amount is proper.

43. Under loss of dependency was awarded at a sum Ksh. 1,800,000/= there is no appeal on the same. I award the same.

44. On special damages though the court awarded 105,000/=. However a sum of sum of 120,000/= had been pleaded. There is no appeal on the same is therefore an award the same.

Determination

45. In the circumstances I make the following determination: -

    a. I allow the Appeal in the following terms: -

        i. The finding on liability is wholly set aside in lieu thereof, I substitute a finding of 100% liability in favour of the appellant against the Respondent.

        ii. I award damages as follows: -

            a. Loss of expectation of life ..... Ksh 100,000

            b. Pain and suffering ..... Ksh. 100,0000

            c. Funeral expenses and special ..... Ksh 105,000

            b. Fatal Accident Act

            a. Loss of dependency . .....Kshs. 1,800,000/=

            Total 2,105,000

            b. The Appellant shall have costs of Kshs. 105,000/= for the Appeal.

            c. The appellant shall have costs of the suit in the court below

            i. 30 days stay of execution

            ii. The Respondent be notified

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 7TH DAY OF FEBRUARY, 2024. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mageto for the Appellant

No appearance for the Respondent

Court Assistant - Brian