



Beta Bakers Company Limited v Mutinda & another (Suing as Legal Representatives of the Estate of Charles Mutinda Kilui) (Civil Case E043 of 2021) [2024] KEHC 8574 (KLR) (17 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL CASE E043 OF 2021
FROO OLEL, J
JULY 17, 2024**

BETWEEN

BETA BAKERS COMPANY LIMITED APPELLANT

AND

FAITH MUTINDA 1ST RESPONDENT

PETER MWANDIKWA KILUI 2ND RESPONDENT

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF CHARLES
MUTINDA KILUI**

JUDGMENT

A. Introduction

1. The Appellant in this case was the Defendant before the Trial Court, where they was sued for general damages, special damages, costs of the suit and interest from the date of filing the said cause of action, which is said to have arisen on 14.09.2017. It was averred that on the said date, the deceased was lawfully riding motor cycle registration number KMDK 516Z (hereinafter referred to as the suit motor cycle) when motor vehicle registration number KBL 931M (hereinafter referred to as the suit motor vehicle) was so negligently, carelessly driven managed and/or controlled that it knocked down the deceased causing him fatal injuries.
2. The Defendant upon service, filed their statement of defence dated 19.03.2019 denying all the contents of the Plaintiff and in the alternative did contend that if the accident did occur, it was as a result of the negligence, carelessness and/or recklessness of the Deceased rider. The court was urged to dismiss the claim with costs.

B. The facts of the case



3. PW1 Faith Mutinda, the wife of the deceased stated that the deceased died on 14.09.2017 as a result of a road traffic accident which occurred, when he was knocked by the suit motor vehicle. She was informed of this accident by one Muneeni Mwinzi. After the accident the deceased was rushed to Kitui General Hospital where he was attended to and later referred to Kenyatta National Hospital but succumbed on his way to the said hospital. She said her husband was 32 years and was working as a mason/ contractor earning an average of kshs.45,000/= per month which he spent on maintaining her and their two children.
4. She further testified that they spent approximately kshs.100,000/= as burial expenses, and produced all her claim supporting document's. she blamed the Appellant's driver for causing this accident and sought compensation for loss suffered. Upon cross examination, she confirmed that She did not witness the accident and also had no documentary evidence to prove that the deceased used to earn Kshs.45,000/= per month and also had no receipts to show that they had expended Kshs.110,000/= for the funeral. she reiterated that the deceased was a mason and they were blessed with 2 children. She was a housewife and the appellant would take care of all household expenses. In re-examination PW1 confirmed that she did not witness the accident and also did not have receipts to confirm burial expenses.
5. PW2 Muneeni Mwinzi testified that on 14.09.2021, he saw the suit motor vehicle and suit motor cycle heading in the same directions. The deceased, who was riding his motor cycle started to overtake the suit motor vehicle when all of a sudden, the suit motor vehicle decided to turn right without indicating hence knocking down the deceased. At the time of the accident, PW2 stated that he was standing outside the shop where he believed the driver of the suit motor vehicle, wanted to turn and make some deliveries after he had seen the shopkeeper wave to him, to do so.
6. Immediately the accident occurred, he called PW1 and informed her of what had happened. They organized for the injured rider to be taken to Kitui General Hospital and were referred to Kenyatta National Hospital. While enroute to the said national hospital, the motorcyclist died at Wamuyu and they returned back and brought his body to Kitui General Hospital. Upon cross examination, PW2 confirmed that the deceased was his cousin. The accident occurred during day time and he was interrogated by police but did not know why his name was not indicated in the police abstract as a witness. He blamed the driver of the suit motor vehicle for the accident and was not aware if the said driver had been charged with any traffic offence. He had been standing outside a shop waiting for the deceased to pick him so that they go to work, and witnessed the accident as it occurred.
7. DW1, Fredrick Musyoka relied on his filed witness statement, where he stated that he was an experienced driver with over 15 years driving experience and had worked for the Appellant company over a long period of time delivering bread to various routes within Kitui county. On 14.09.2017, he commenced his duty at 04.30hrs and was driving the suit motor vehicle covering the route from Kithyoko to Kabati. At about 08.45am, he did reach Nduumoni shopping centre and purposed to branch to his right-hand side to deliver bread to their customer. Slightly before reaching his destination, he started to slow down, while indicating that he is turning right. In the process he also moved from his left lane to the right lane after confirming that there were no incoming vehicles from the front or from behind.
8. He had completely turn to his right and the front wheels of his motor vehicle were already off the road, on the soil, when he suddenly heard a loud noise/bang on his vehicle and on checking through the right-side mirror he saw that a boda boda had hit his vehicle at the fuel tank point and fallen off his motor cycle. The accident was witnessed by the shop owner one Mr Patrick Kiilu and Mr James Mulinge, who were standing outside the shop. The motorcyclist was coming from the same direction,



but was at a high speed. He blamed the motor cyclist for he was to keep to his lane and further overtake from the extreme left lane as he had already indicated that he was turning and left ample space for those behind him to manoeuvre.

9. As a result of the accident the cyclist sustained sever injuries and was bleeding profusely from the nose, mouth and also had head injuries. He was rushed to hospital and the police came and took over the accident scene and did investigations. Upon Cross examination, DW1 testified that he did not see the rider before the accident and had already indicated to show that he was turning to the right side of the road. The motor vehicle is about 14 ft long and the deceased hit it when it was stationary. He reiterated that he was not to blame for the said accident and was not charged with any traffic offence.
10. DW2, Richard Kimanzi adopted his witness statement, where he confirmed that he was employed as a security manager of the Appellant Company. On 14.09.2017, he was on his normal duty at Kwa vonza shopping centre along Kitui- Syongila-Machakos road, when he was called by DW1, their driver and informed of the accident that had occurred. He alerted the traffic police and dashed to the accident scene which was about 10 minutes away, where he found the victim still at the scene and was bleeding profusely. The accident had occurred after the suit motor vehicle had turned to its right to delivered bread to their customer, and the motor cyclist came from behind at high speed and rammed into the side of the suit motor vehicle. The accident occurred off the road and the motor cyclist was to blame for the same.
11. DW3 Anthony Njoroge testified that he worked at Invetech Loss Assessor and were contracted by the Appellants insurer, Jubilee Insurance company ltd to undertake investigation into the circumstance of this accident. They did so, compiled a report and handed it to jubilee Insurance Co Ltd. It was their finding that the deceased was negligent as he left the road and hit the suit motor vehicle off the road. He produced his report as an Exhibit. Upon cross examination, DW3 stated that the report was prepared by a different assessor, who was no longer an employee of the firm. The motor vehicle and the motor cyclist were moving the same direction and after 3 meters, the motor cyclist diverted to where the motor vehicle was stationery and hit the fuel tank. The point of impact was about ½ a meter off the road.
12. The trial court after hearing the parties and considering submissions filed issued a judgment in favour of the respondent as a follows; Pain and suffering Kshs.200,000/=, loss of dependency Kshs.9,000,000/=, Special damages Kshs.2,440/= plus costs and interest at court rated from the date of judgment.

The Appeal

13. Dissatisfied by this judgment, the appellant filed a memorandum of appeal dated 20.09.2022, premised on the grounds that;
 - a. The learned Trial Magistrate erred in law and in fact by shifting the burden of proof in an action founded on negligence to the Appellant thereby misdirecting himself in law and thus arriving at a completely erroneous decision.
 - b. The learned Trial Magistrate erred in law and in fact by failing to consider all the material facts that had been placed before the court and thereby failed to take into account relevant matters that he ought to have considered and instead considered irrelevant matters and as a result arrived at a completely erroneous decision.



- c. The learned Trial Magistrate erred in law and in fact in holding the Appellant 100% liable for the accident when in fact no evidence was placed before the Trial Court to support such a finding.
- d. The learned Trial Magistrate erred in law and in fact by misdirecting himself leading to a finding on liability when the evidence adduced did not support such a finding and thereupon assessing damages erroneously without any evidence on liability having been established.
- e. The learned Trial Magistrate erred in law and in fact in failing to appreciate or take into consideration the Appellants submissions or at all.
- f. The learned Trial Magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on quantum damages quoted in the written submissions presented filed by the Appellant.
- g. The learned Trial Magistrate erred in awarding the sum of Kshs.9,302,440/= as compensation which was inordinately high and excessive in the circumstances thus occasioning a miscarriage of justice.
- h. The learned Trial Magistrate consequently erred in law and in fact awarding costs and interest thereto.

14. The Appeal was canvassed by way of written submissions.

C. Submissions

i.Appellants submissions

- 15. The appellant submitted that the analysis given by the learned magistrate contradicted the evidence as was captured in the proceedings and therefore the decision of the learned trial Magistrate was erroneous and no reasonable court would have arrived at that said conclusion. There was no evidence to support the finding that the Appellant was 100% liable for the accident. Pw2 evidence was shaky as he was not listed as a witness in the police abstract produced into evidence, further the said police abstract did not blame the Appellants driver for the accident.
- 16. While relying on the case of Kiema Mutuku vs Kenya Cargo Services Limited [1991] it was submitted that there could be no liability without fault and since no fault had been established on the part of the Appellant, the finding on liability could not stand the test of legal scrutiny. As regards quantum, the Appellant relied on its submissions made before the trial court. They also relied on the case of Farah Awad Gollet vs CMC Motor Group Limited (2018) e KLR , to emphasize that the Respondent failed to establish their claim against the Appellant and therefore the claim ought to have been dismissed with costs awarded to them.

ii.The Respondents Submissions

- 17. The Respondent on the other hand submitted that PW2 evidence was reliable in explaining the circumstances of the accident and he had blamed the Appellant for causing the accident. DW1 had also testified that he did not see the deceased come from behind. It was submitted that the Respondent had on a balance of probability proven his case. As regards general damages, it was submitted that the award was appropriate and reasonable in the circumstance. The Appeal as filed had no merit and the same should be dismissed.



D. Analysis and Determination

18. A first appellate court is also the final court of fact and litigants are entitled to full fair independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of section 78 of the *civil procedure Act* a court of first appeal can appreciate the entire evidence and come to a different conclusion. See Kurian Chacko Vs Varkey Joseph AIR 1969 Keral 316.
19. In Coghlan vs. Cumberland (1898) 1 Ch. 704, the Court of Appeal (of England) stated as follows -

“ Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong...When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen.”
20. Therefore, this court is under a duty to delve at some length into factual details and revisit the facts as present in the trial court, analyse the same, evaluate it and arrive at its own independent conclusions, but always remembering, and giving allowance for it, that the trial court had the advantage of hearing the parties
21. This court has considered the Memorandum of Appeal, the Trial Court record and the filed submissions of the parties and finds the following as the issues for determination;
 - a. Whether the Appellant is liable for the accident.
 - b. Whether the Respondent is entitled to damages
 - c. Who should be awarded costs of the Appeal
 - i. Whether the Appellant is liable for the accident
 1. It is not in dispute motor cycle registration number KMDK 516Z and motor vehicle registration number KBL 931M were involved in an accident on 14.09.2017 at Ndumoni area along Kitui – Machakos road. The deceased herein was the rider of the suit motorcycle and he suffered fatal injuries. The Appellant contends that there was no evidence to support the finding that their driver was 100% liable for the accident. Further, the Appellant contended that the evidence of PW2 was shaky because he was not listed as a witness in the police abstract and the Appellants driver was not charged with any offence as a result of the said accident. The respondents on the other hand averred that the evidence adduced was adequate to prove the Appellants liability and the trial Magistrate finding could not be faulted as he had accurately assessed the evidence adduced and arrived at the right decision.



23. On the issue of liability, the court in *Ndato v Chebet (Civil Appeal 8 of 2020)* [2022] KEHC 346 (KLR) relied on the case of;

“In *Stapley –v- Gypsum Mines Limited (2)* (1953) A.C 663 at P. 681 where Lord Reid reasoned that:

“ To determine what cause an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law, this question must be decided as a properly instructed and reasonable jury would decide it.....

The question must be determined by applying common sense to the fact of each particular case. One may find that a matter of history, several people have been at fault and that if anyone of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes, it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly cause the accident. I doubt whether any test can apply generally.”

24. Where it is not clear who is to blame for an accident, the court in the case of *Ndato v Chebet (supra)* further rendered itself as follows;

The Act further creates offences relating to the manner of driving the motor vehicles on the road. These are provided under Section 46, 47 and 49. These Sections requires motorists to drive with due care and attention. The appellant was turning to the right when the accident happened. The vehicles behind him were supposed to give him way. The motor cycle rider who was behind him while trying to overtake had an obligation to slow down. He was also supposed to keep distance. It is my view that the appellant was not the one who could bear the greatest responsibility for the accident as he had put indicators to turn right when the cyclists banged him on the right door. The law is trite as established by a line of authorities that where the court is unable to determine who is to blame for the accident, liability is apportioned equally. In the case of *Platinum Car Hire Limited v Samuel Arasa Nyamesi and Another, Majaja J, H.C Kisii C.A 29/2016* quoted with approval the Court of Appeal decision in the case of *Berkly Steward Limited v Waiyaki [1982-1988] KAR* where it is cited with approval the decision in *Baker v Market Harborough Industrial Co-operative Society Ltd (1953) 1 KLR 1472, 1476* where Lord Denning LJ observed inter-alia that-

“Every day proof of collision is held to be sufficient to call on the dependants for an answer. Never do they both escape liability. One or the other is held to blame. They would not escape simply because the court had nothing by which to drawn any distinction between them.”

28. Justice Majanja stated that where the court is unable to determine who is to blame it has apportioned liability equally as illustrated by the Court of Appeal in *Hussein Omar Farar v Lento Agencies C.A Nairobi, Civil Appeal No.34/2005 [2006] eKLR* where it observed that-

“In our view it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs, the question arises whether both drivers should be held to blame. It has been held in our



jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.”

In the end he held that – “ I too come to the conclusion that following the collision, the appelland and the second respondent must share culpability in the absence of any other evidence exonerating one or either party.”

25. Section 68 (3) of the *Traffic Act*, (Cap 403 Laws of Kenya) provides as follows:

“(3) A failure on the part of any person to observe any provisions of the highway code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

26. The evidence of PW2 and DW1 are identical in nature. Both stated that the suit motor vehicle and the suit motor cycle were both heading towards the same direction. The suit motor vehicle made a right turn, to enable it deliver bread to its client at Nduumoni shopping centre, when the deceased riding the suit motor cycle, came from behind and rammed into the side of the suit motor vehicle causing its rider to suffer fatal injuries. While PW2 blamed DW1 for turning abruptly and without signalling, DW1 on his part blamed the deceased for not having a proper look out of the vehicles in front of him, ignoring his indicator showing that he as turning right, driving at a high speed and failing to overtake from the extreme left lane where he had already left space for the rider to pass.

27. In a trial the evidential burden shift, and once the respondent had established their case, it was upon the Appellant to bring cogent evidence to disapprove the same. Under the circumstances of the case and based on both set of evidence presented, it is difficult to pass liability exclusively to one party. As can be seen from the Invetech Investigation report produced by DW3, at page 9, thereof, (page 45 of the record of Appeal) the point of impact is off the road. This implies that the deceased did not have ample room to manoeuvre to avoid the accident, either because of his own high speed or due to sudden manner with which DW1 took the right turn thereby not giving the respondent enough time to react. There is no independent evidence which was produced by the Traffic investigating office to clear the clouded facts herein.

28. The trial court therefore erred in believing PW2 evidence, without disapproving the evidence of DW1. Section 3(4) of the *Evidence Act*, provides that “A fact is not proved when it is neither proved nor disapproved.” There being no clear evidence for this court to rely upon, to prove the exact circumstances as to how the accident occurred, the court had no option but to equally put blame on both parties for the collision that occurred.

29. The apportionment of liability by the trial magistrate therefore cannot be sustained. The deceased cyclist certainly bears a certain degree of responsibility for the accident which occurred. In the circumstances, it is my view that both the deceased and the Appellant failed to exercise the degree of skill and care reasonably expected of a person using a public road and bear equal responsibility for the accident. The finding of the trial Magistrate as to liability is thus set aside.

iii. Quantum



30. With regards to interference of the award of damages, it was observed in the case of *H. West & Son Ltd vs. Shephard* [1964] AC 326, that:

“...In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range of limits of current thought. In a case such as the present it is natural and reasonable for any member of an appellate tribunal to pose for himself the question as to what award he himself would have made. Having done so, and remembering that in this sphere there are inevitably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment.”

31. The Court of Appeal in the case of *Gitobu Imanyara & 2 Others vs. Attorney General* (2016) eKLR, held that:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, JA that: ‘An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.’

32. Under the head of loss of expectation of life, this court is guided by the finding in the case of *Mercy Muriuki & Another vs Samuel Mwangi Nduati & Another* (suing as the Legal Administrator of the estate of the late Robert Mwangi) [2019] eKLR where Muchemi J. stated that: -

“The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs.100,000 while for pain and suffering the awards range from Kshs.10,000 to Kshs.100,000 with higher damages being awarded if the pain and suffering was prolonged before death”.

33. The trial court awarded Kshs.200,000/= under loss of expectation of life and Kshs.100,000/= for pain and suffering. I find that the award of pain and suffering was sufficient in the circumstances and reduce that of loss of expectation of life to Kshs.150,000/=.

34. On the award of loss of dependency of Kshs.9,000,000/=, The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency were enumerated by Ringera, J (as he then was) in *Beatrice Wangui Thairu –vs- Hon. Ezekiel Barngetuny & Another – Nairobi HCCC. No.1638 of 1988* (unreported), held that:

“The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must in the first instance find out the value of the annual dependency.



Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased... I am constrained to observe that there is no rule of law that two thirds of the income of a person is taken as available for his family expenses. The extent of dependency is a question of fact to be determined in each case. Where a trial court adopts two thirds of the income to value of dependency, this is no more than a finding of fact that such is reasonable in the particular case. Unfortunately those findings of fact have for long masqueraded as holdings on points of law and counsel appearing before courts may be forgiven for assuming them to be the law. They are not. It takes a discerning court to put the law back to track. If I may say with admiration, such was the appellate bench in *Boru Onduu* [1982-1992] 2 KAR 288...

.....

When a court adopts any fraction that must be taken as its finding of fact in the particular case and in considering the reasonable figure, commonly known as the multiplier, regard must be considered in the personal circumstances of both the deceased and the dependant such as the deceased's age, his expectation of working years, the ages of the dependants and the length of the dependant's expectation of dependency. The chances of life of the deceased and the dependants should also be borne in mind. The capital sum arrived at after applying the annual multiplicand to the multiplier should then be discounted by a reasonable figure to allow for legitimate concerns such as the widow's probable remarriage and the fact that the award will be received in a lump sum and if otherwise invested, good returns can be expected”

35. The same court in the case of *Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989* did hold that:
- “The court must find out as a fact what the annual loss of dependency is and in doing so, it must bear in mind that the relevant income of the deceased is not the gross earnings but the net earnings. There is no conventional fractions to be applied, as each case must depend on its own facts. When a court adopts any fraction that must be taken as its finding of fact in the particular case.
36. The deceased herein was 32 years old and according to PW1 he was a mason/contractor and this is indicated in the death certificate. Besides that, there is no proof of employment/income that was provided and therefore it was erroneous for the trial magistrate to calculate the dependency ratio using the “bundled income of Kshs.45,000/=”.
37. The appellant in their submissions, did urge the court to use the regulation of wages (General) (Amendment) order, 2017 to find that the deceased wages ought to be pegged at Kshs 6,896.15/= as a general monthly wage for someone who works and resided in areas outside cities and former municipalities. Generally, in the absence of proof of income, the court should use the regulation of wages (General)(Amendment) order to determine income, but under the circumstances herein there are scanty details as to the deceased exact nature of skills, where he resided and experience. The court takes judicial notice of the fact that “skilled fundis” whether they reside in urban or rural areas earn decent daily wages more that what the wages regulation proposes.
38. It has also been held that, the multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application and the court may use the Global award method in determining the level of dependency.



The court in *Moses Mairua Muchiri v Cyrus Maina Macharia* (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR, held as follows-

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”

39. The deceased was 32 years at the time of death, and it was proved that he was a mason. He had a family he would take care of and considering all the facts herein I would award him a global sum of Kshs.3,000,000/= for loss of dependency.

E. Disposition

40. Having exhaustively analysed all the issues raised in this appeal I find that this Appeal has merit. The Judgement/ decree of the Honourable Mbugi (C.M) delivered on 16th September 2022 in Kitui Chief Magistrate’s court civil case No 308 of 2018 is hereby set aside and substituted with;
- a. Liability will be shared equally by 50%/50% by both parties.
 - b. Loss of expectation of life is reduced to Kshs.150,000/=
 - c. Loss of dependency is awarded at Kshs.3,000,000/=
41. The award on pain and suffering and special damages remains as awarded by the trial court. The respondent is also awarded cost of the primary suit and interest thereon from the date of Judgement in the said primary suit.
42. The Appellant is awarded costs of this Appeal which is assessed at Kshs.200,000/= all inclusive
43. It is so ordered.

CONCLUSIONS

Judgment written, dated and signed at Machakos this 17th day of July, 2024

*4.**

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 17th day of July, 2024.

In the presence of: -

Ms Kohati for Appellant

No appearance for Respondent

Susan/Sam Court Assistant

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