



REPUBLIC OF KENYA



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**Njagi & another v Ndunge & 2 others (Civil Appeal E76, E78 & E79 of 2021
(Consolidated)) [2023] KEHC 17327 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 17327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E76, E78 & E79 OF 2021 (CONSOLIDATED)**

**HM NYAGA, J
MARCH 23, 2023**

BETWEEN

ELIJAH NJAGI 1ST APPELLANT

CYRUS KARAYA NJERU 2ND APPELLANT

AND

YVONNE NDUNGE 1ST RESPONDENT

EUNICE MWENDE KILONZO 2ND RESPONDENT

DICKSON NJOROGE MAINA 3RD RESPONDENT

*(Being appeals against the Judgment of Hon. Bernard Kasavuli (Principal Magistrate)
delivered on 20/05/2021 in Mavoko CMCC Nos.614,610 & 613 all of 2019)*

JUDGMENT

1. These appeals herein arise from 3 suits which were filed in the Chief Magistrate's Court at Mavoko by the Respondents herein. They had sued the Appellants Elijah Njagi & Cyrus Karaya Njeru, for damages in respect of injuries they allegedly sustained on April 30, 2019, while lawfully travelling as fare paying passengers aboard motor vehicle registration number xxxx (hereafter the suit Motor vehicle) along Nairobi-Mombasa Road near stage 39. The 1st Appellant was sued in its capacity as the driver of the suit motor vehicle whereas the 2nd Appellant was averred to be the registered owner of the suit Motor Vehicle. The Respondents had averred the 1st Appellant carelessly, recklessly and/or negligently drove, the said motor vehicle causing it to hit the Motor Vehicle that was in front, as a result of which they sustained injuries.
2. The Appellants denied liability through their statement of defence dated September 30, 2019 & September 25, 2019 respectively. Alternatively, the Appellants pleaded contributory negligence against the Respondents.



3. The suits proceeded to full hearing during which evidence was adduced by the respective parties. In each of his judgments, the learned magistrate found the Appellants 100% liable for the accident.
4. As regards quantum, the trial court awarded;
 - a. The 1st Respondent General Damages of Kshs 200,000/= & Special Damages of Kshs 3,550/= . Making a total sum of Kshs 203,550 /=-
 - b. The 2nd Respondent General Damages of Kshs 600,000/=; Future Medical Expenses of Kshs 100,000/=; & Special Damages of Kshs 3,550/= . Making a total sum of Kshs 703,550/=
 - c. The 3rd Respondent General Damages of Kshs 700,000/=; Future Medical Expenses of Kshs 100,000/=; & Special Damages of Kshs 3,550/= . Making a total sum of Kshs 803,550/=.
5. Aggrieved with the outcome, the Appellants preferred these appeals challenging the finding on quantum, based on the following grounds: -
 1. That the Learned Magistrate erred in fact and in Law in awarding the 1st Respondent Kshs 200,000/= as general damages and Kshs 3550/= for special damages which amount was exorbitantly high in the circumstances and injuries by the Respondent.
 2. That the Learned Magistrate erred in fact and in Law in awarding the 2nd Respondent Kshs 600,000/= as general damages, Kshs 100,000/= as Future Medical Expenses and Kshs 3550 for special damages which amount was exorbitantly high in the circumstances and injuries suffered by the Respondent.
 3. That the Learned Magistrate erred in fact and in Law in awarding the 3rd Respondent Kshs 700,000/= as general damages, Kshs 100,000/= as Future Medical Expenses and Special Damages of Kshs 3550/= which amount was exorbitantly high in the circumstances and injuries suffered by the Respondent.
 4. That the Learned Magistrate erred in fact and in Law in holding that the Respondents had proved their cases on a balance of probabilities which finding was against the weight of evidence on record.
 5. That the Learned Magistrate erred in fact and in Law when he failed to consider the Appellants' evidence on points of Law and facts with regard to quantum based on the injuries sustained by the Respondents.
 6. The Learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 7. The Learned Trial Magistrates erred in Law and in fact in failing to pay regard to submissions and decisions filed alongside the defendants' submissions that were guiding in the amount of quantum that is appropriate and applicable on similar injuries as the case he was deciding.
 8. The Learned Magistrate erred in fact and law in finding that the Respondents were entitled to general damages that were too high in view of the injuries suffered.
6. The Appellants thus proposed that:
 - a. This Appeal be allowed with costs.



- b. The Appellate Court do set aside the Learned Trial Magistrate’s judgement delivered on May 20, 2021 on quantum and replace with its own assessment.
 - c. Costs of this Appeal be borne by the Respondents.
7. The appeal was canvassed by way of written submissions.

Appellant’s Submissions.

8. The Appellants filed their submissions on September 12, 2022.
9. The Appellants cited the case of *Power Lighting Comp. Ltd & another v Zakayo Saitoti Naingola & another [2008] eKLR* where the court laid down the following principles on assessment of damages:
 1. Damages should not be inordinately too high or too low.
 2. They are meant to compensate a party, for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered.
 3. Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts.
 4. Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of the Kenyan shillings, then at the time of the judgment.
10. In view of the foregoing, the Appellants’ Counsel submitted that the awards made by the trial court as general damages were manifestly excessive.
11. The Counsel urged this court to substitute the general Damages of Kshs 200,000/= awarded to the 1st Respondent with Kshs 60,000/=. In support of this position, reliance was placed on the following cases: -
 1. *Ndungu Dennis v Ann Wangari Ndirangu & another [2018] eKLR* – the Respondent herein had suffered soft tissue injuries to the lower right leg and soft tissue injuries to the back (trunk) and she was awarded Kshs 300,000/= as general damages by the trial court. On appeal, the said award was reduced to Kshs 100,000/=.
 2. *Eva Karemi & 5 others v Koskei Kieng & another [2020] eKLR*- The trial court had awarded the 1st Appellant Kshs 70,000/- for injuries to her right thigh and bruises on her lower and upper limbs, 2nd Appellant Kshs 40,000/- for injuries on the right shoulder pain and cut wound on her mouth, 3rd Appellant Kshs 45,000/- for injuries on and pain on her back and right shoulder pain & the 4th appellant Kshs 40,000/- for cuts on the chin and right shoulder tenderness. On appeal, the High Court upheld the above awards on grounds that the same were not manifestly low.
12. Regarding the 2nd Respondent, the Appellants submitted that the sum of Kshs 300,000/= as general damages would suffice. To support this position reliance was placed on three authorities. Namely: -
 1. *Logistics Solutions Ltd v Steere Mavu Mwambela [2021] eKLR* where the High Court sitting on appeal upheld an award of Kshs 450,000/= general damages for a claimant who had suffered a fracture of the right humerus arm bone (mid 1/3), a deep cut on the right eye, abrasion on the head and a blunt injury to the right shoulder and chest.



2. [*Philip Mwago v Lilian Njeri Thuo \[2019\] eKLR*](#) where the High Court sitting on appeal upheld an award of Kshs 500,000/= general damages for a claimant who had sustained a fracture of the left humerus with a permanent disability of 8%.
 3. [*Maina Onesmus v Charles Wanjohi Githome \[2019\] eKLR*](#)- the High Court reduced general damages of Ksh 600,000 to Kshs 350,000 for a claimant who had sustained fractures of the mid shaft humerus, and condyles, and fragment fracture of the shoulder girdle.
13. With respect to general damages of Kshs 700,000/= awarded to the 3rd Respondent, the Appellants urged this court to substitute the same with Kshs 350,000/=. To buttress this position, the Appellants relied on the cases of;
1. [*Lynn Kambua Enterprises v Edith Vaati Simon Kasika \[2021\] eKLR*](#) –where the Appellate Court upheld the trial Court’s general damages award of Kshs 350,000/= for a claimant who had sustained soft tissue and blunt injuries, and a fracture of the Clavicle.
 2. [*H Young & Company EA Ltd v Edward Yumatsi \[2016\] eKLR*](#) – where the High court upheld the award of Kshs 500,000/= as general damages for a claimant who had sustained Deep cut wound on the head; Bruises on the knee; Cerebral concussion; Fracture of the right clavicle bone & Deep cut wound on the left elbow.
 3. [*Sheikh Abdulqader Mohammed Ahmed Shallo Julius Matteo Mumo \(2018\) eKLR*](#)- similarly in this case the High Court upheld the award of Kshs 500,000/= as general damages for a claimant who suffered displaced fracture of the left clavicle, blunt object injury to the neck and left leg and bruises on the cheeks and left knee with 3% permanent partial disability and deformity.
14. On costs, the Appellants submitted that the same follow the event. They prayed to be awarded the costs of this appeal Pursuant to section 27(1) of the [*Civil Procedure Act*](#).

Respondents Submissions

15. The respondents concurred with the findings of the trial court. They submitted that the lower court considered evidence adduced by respective parties, submissions and attached authorities and arrived at a just determination.
16. They submitted that the lower court award was commensurate to the injuries they sustained.
17. The 1st respondent relied on the following cases in support of her claim: -
 1. [*Lake Naivasha Growers v Muigai Thuka \[2020\] eKLR*](#) where the High Court sitting on Appeal upheld an award of Kshs 250,000/= general damages for a claimant who had suffered Severe soft tissue injuries of the left thigh & Soft tissue injuries of the left leg.
 2. [*Equity Bank Kenya Ltd & 2 others v David Githuu Kuria \[2020\] eKLR*](#) where the Appellate court substituted an award of Kshs 400,000/= as general damages with Kshs 250,000/= for soft tissue injuries which were moderate in degree, blunt injury (tender) anterior chest wall, cut wounds left knee and swollen, tender left knee.
18. The 2nd respondent on her part referred this court to the decision in [*Judy Ngochi v Kamakia Ele Selelo Ledamoi \[2019\] eKLR*](#) which this court made an award of Kshs 1,000,000.00 being general damages for lacerations of little finger, blunt injury to right arm, fracture right humerus, blunt injury left shoulder, fracture left clavicle and chip fracture of right acromion while the 3rd Respondent cited the case of *H. Young & Company E.A Ltd v Edward Yumatsi*(supra) and the case of [*Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Adano Isacko \[2019\]eKLR*](#) where the trial Court



awarded Kshs 700,000 as general damages for a fracture of the right clavicle and the award was upheld by the High Court on appeal .

19. In regards to Future Medical Expenses, the 2nd and 3rd Respondents submitted that evidence on record shows that they would require future medical expenses for removal of the implants and as such there is no basis for disturbing the trial court's award on the same.
20. With respect to special damages, the Respondents submitted that they produced receipts to corroborate the amounts claimed and urged this court to uphold the same.

Analysis & Determination

21. In a first appeal, the court is duty bound to evaluate the evidence in the lower court both on points of law and fact and come up with its findings and conclusions. This principle is set out in the case of *Selle v Assorted Motor Boat Company 1968 EA Company 1968 EA 123-126*. In this case it was held that:

' Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial. Judge's findings of fact appear earlier that he has clearly failed on some part to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.'

22. Similarly, in *Gitobu Imanyara & 2 others v Attorney General [2016] eKLR*, the Court of Appeal stated that:

' An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect'

23. Having considered the record of appeal, the submissions and the authorities relied on by the respective parties, I opine that the following issues fall for determination: -
 1. Whether the quantum awarded by the trial court was manifestly excessive
 2. Who should pay the costs of this Appeal?
Whether the quantum awarded by the trial court was manifestly excessive

General Damages

24. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards. This position finds support in the case of *Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No 147 of 2002 [2004] eKLR* where the Court of Appeal held:

' Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.'



25. The Court of Appeal observed in *Simon Taveta vs Mercy Mutitu Njeru [2014] eKLR* that –
- ' The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.'
26. In *Charles Oriwo Odeyo vs Appollo Justus Andabwa & Another [2017] eKLR* the court said that –
- ' On the issue of damages, it is settled that the award of damages is within the discretion of the trial court and the Appellate court would only interfere on the particular grounds. These grounds were and are (a) that the court acted on wrong principles or that the award is so excessive or so low that no reasonable tribunal would have awarded or (b) that the court has taken into consideration matters which it ought not to have or left out matters it ought to have considered and in the result arrived at wrong decision. (See *Butler vs Butler (1984) KLR 225*.
- The assessment of damages in personal injury case by court is guided by the following principles: -
- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
 - 2) The award should be commensurable with the injuries sustained.
 - 3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
 - 4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
 - 5) The awards should not be inordinately low or high (See *Boniface Waiti & another Vs Michael Kariuki Kamau (2007) eKLR*.'
27. With the above background, I will now proceed to analyse the aforementioned issue.
28. The 1st Respondent pleaded that she sustained cut wound on the face, bruises on the left lower limb and bruises on the right lower limb. The discharge summary from Mariakani Cottage Hospital, the P3 form filled in the said hospital and the Medical report by DR. Titus Ndeti Nzina produced in evidence confirmed the 1st Respondent sustained these injuries.
29. Before the trial court, the appellants submitted that an award of Kshs 50,000/= would suffice as general damages. They relied on the cases of *Peter Kabungu & another v Sarah Norah Ongaro [2004] eKLR*, *Samwel Mburu N Ng'aari, Sarah Wanjiku N Ng'aari, Grace Waithira N Ng'aari, Mary Waithira Mburu & Jeanette Wangui Mburu v Wangiki Wangare & Christopher Kimani Kuruma [2014] eKLR* & *Neelam Mansukhlal Shah & Others Vs Duncan Linscott [2004] eKLR*
30. I have read the above cases and I do opine that the cases of Samwel Mburu N Ng'aari, Sarah Wanjiku N Ng'aari, Grace Waithira N Ng'aari, Mary Waithira Mburu & Jeanette Wangui Mburu v Wangiki Wangare & Christopher Kimani Kuruma & Neelam Mansukhlal Shah & others vs Duncan Linscott were relevant. In the former case the court awarded the 1st Plaintiff Kshs 120,000/= for moderate soft tissue injuries & 4th Plaintiff Kshs 50,000/= for abrasions and bleeding while in the latter case the claimant was awarded Kshs 50,000/= for Laceration of the left side of scalp & Bruising of the right hip.



31. The 1st Respondent on her part in the lower court submitted that general damages of Kshs 300,000/= would suffice. She relied on the case of *Baloch Faisal & another v Elloy Kawira Nthiiri [2019] eKLR* where the Appellate Court revised downwards the trial court's award of Kshs 360,000/= as general damages to Kshs 200,000/= for soft tissue injuries to the head, both knees, chest, back and injury to upper incisor teeth.
32. The trial court rightly found that the authorities by both parties were relevant save that those cited by the Appellants were patently very old and it proceeded to adopt the one by the 1st Respondent and awarded her Kshs 200,000/= as general damages.
33. The authorities relied on by the Appellants in this Appeal are relevant. The case of *Equity Bank Kenya Ltd & 2 others v David Githuu Kuria* relied on by the 1st Respondent is similarly relevant.
34. I have on my part looked at cases with similar injuries for example: *Fred Barasa Matayo v Channan Agricultural Contractors [2013] eKLR*: The court reviewed downwards an award of Kshs 250,000/= to Kshs 150,000/= for moderate soft tissue injuries that were expected to heal in eight months' time *Dickson Ndungu v Theresia Otieno & 4 Others [2014] eKLR* The court reviewed the award of Kshs. 250,000/- to Kshs 127,500/= for soft tissue injuries which produced no complains. *Purity Wambui Muriithi v Highlands Mineral Water Company Ltd [2015] eKLR*: The award of Kshs 700,000/= was reduced to Kshs 150,000/= for injuries to the left elbow, pubic region, lower back and right ankle.
35. Taking into account the aforesaid precedents, passage of time and inflation trends, it is my considered view that an award of general damages of Kshs 200,000/= was not manifestly excessive and it was within the range of similar awards.
36. The 2nd Respondent sustained soft tissue injuries and fracture of the left humerus bone. Her testimony regarding the injuries was corroborated by PW3. PW3 also assessed the degree of incapacity at 8 %. Dr Jeniffer Kahuthu who testified on behalf of the Appellants concurred with the findings by DR Titus(PW3) on injuries but differed with him on the degree of incapacity. She stated that the said doctor did not lay a basis on how he assessed the degree of incapacity. On her part she assessed the degree of incapacity at 0%.
37. The Appellants before trial court submitted that an award of Kshs 150,000/= as general damages would suffice. They relied on the case of *Fast Choice Co Ltd & Another v Hellen Nungari Ngure [2011] eKLR* where the Appellate court reduced the trial court award of Kshs 450,000/- to Kshs 180,000/ for a claimant who had sustained comminuted simple fracture of the shaft of the right humerus middle 1/3; Bruised right small finger & Soft tissue injuries of the chest and anterior wall. T
38. The 2nd respondent relying on the case of *Philip Mwago v Lilian Njeri Thuo* (supra) submitted that award of Kshs 800,000/= as general damages would suffice.
39. The learned magistrate considered the authorities relied on by both parties and found that the ones cited by the appellants represented less severe injuries and that the claimant therein had healed unlike the 2nd respondent herein who had not and would require future medical attention to remove implants. The court found the authority by the 2nd Respondent to be more relevant as it represented comparable injuries and based on the same it awarded Kshs 600,000/= as general damages.
40. It is imperative to note in that in *Philip Mwago v Lilian Njeri Thuo* (supra) the claimant therein sustained severe injuries as his degree of incapacity was assessed at 8%. In the instant case, the injuries sustained by the 2nd Respondent were less severe as there was no concrete evidence that she sustained any permanent incapacity.



41. On my part I have considered the following authorities:
1. *Nguku Joseph & another v Gerald Kibiu Maina [2020] eKLR* the court revised a sum of Kshs 2,500,000/= downwards to a sum of Kshs 500,000/= for the Plaintiff who had sustained fracture of the right humerus and other minor injuries.
 2. In *Luke Osoro & another vs Daniel K Cberuiyot [2008] eKLR*, where the plaintiff upon suffering a fracture of the right humerus and soft tissue injuries, was awarded Kshs 250,000/=.
42. The authorities relied on by the Appellants in this appeal are more relevant and this court should adopt them. It is my considered view that the award of Kshs 600,000/= by the trial court was on the higher side and the same should be reviewed downwards to Kshs 500,000/=.
43. With respect to the third Respondent, she pleaded that he sustained Blunt head injury, cut wound on the forehead, Soft Tissue injuries to the upper limb, Blunt injury to the anterior chest wall and Fractured Left Clavicle Bone. During hearing discharge summary from Athi River Shalom Community Hospital, P3 form filled at the said hospital and the Medical reports by DR Titus Ndeti Nzina & DR Ruth ichamwenge were produced in evidence. These documents corroborated and confirmed that the 3rd Respondent sustained the pleaded injuries.
44. Before the lower court the appellants submitted that Kshs 150,000/= would suffice as general damages. They relied on the cases of *Hassan Noor Mahmoud V Tae Youn Ann, (2001) e KLR*, where the court awarded the claimant general damages of Kshs 200,000/- for fracture in the lower 1/3 of the left tibia and fibula & Fracture of left clavicle. & *Odinga Jactone Ouma v Moureen Achieng Odera [2016] eKLR* where the appellate court reduced the trial court general award of Kshs 400,000 to Kshs 180,000/-for Head injury (concussion), Cut wound on the right mandible, Neck muscle contusion, Chest pain on the left side and lacerations, cut wound on the right shoulder blade region, Multiple lacerations over the left shoulder and upper arm, cut wounds and lacerations over right forearm & Painful swollen 4th left finger.
45. The 3rd respondent on his part relying on the case of Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Adano Isacko(supra) submitted that Kshs 900,000/= would suffice as general damages.
46. The trial court adopted the authority by the 3rd Respondent on grounds that it was relevant and most recent compared to the one cited by the Appellants.
47. It is my view therefore that the court did not err in making the award of Kshs 700,000/= as the same was within the range of comparable awards.

Future Medical Expenses

48. Based on the medical reports by both doctors for the Appellants and the Respondents there is no doubt that the 2nd and 3rd respondents would require future medical expenses.
49. The claim for future medical expenses was supported by a professional assessment. DR Titus Ndeti medical report indicated that the 2nd respondent and 3rd would each require removal of implants in a low cost hospital at Kshs 150,000 while defence doctor DR Jeniffer Kahuthu testified that they would each require Kshs 100,000/=.
50. The trial court adopted the proposal by the Appellants' doctor and awarded each respondent Kshs 100,000/= as future medical expenses.



51. In the circumstances therefore, it is my view that the awards on Future Medical expenses were reasonable and there is no basis for interfering with the same.

Special Damages

52. In regard to special damages the law is quite clear on the same. Special Damages must be both pleaded and proved, before they can be awarded by the Court. Suffice it to quote from the decision of the Court of Appeal in *Hahn V Singh, Civil Appeal No 42 Of 1983 [1985] KLR 716*, at P 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag JA - held:

' Special damages must not only be specifically claimed (pleaded) but also strictly proved for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.'

53. Each respondent specifically pleaded for Kshs 3550/= as special damages and strictly proved the same by adducing medical reports and Motor Vehicle Search Certificates receipts amounting to the said sum. They thus successfully proved the claim herein.
54. The upshot is that the Appeal against the 1st and 3rd Respondents should be dismissed in its entirety.
55. The Appeal against the 2nd respondent partially succeeds. The trial court award of Kshs 600,000/= as general damages should be substituted with an award of Kshs 500,000/=

Who should pay the costs of this Appeal?

56. Section 27 of the *Civil Procedure Act* provides: -

' (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.'

57. Based on the above Section it is trite law that costs follow the cause/event, Sir Dinshah Fardunji Mulla in his book *The Code of Civil Procedure, 18th Edition, 2011* reprint 2012 at 540, writes that costs must follow the event unless the court, for some good reasons, orders otherwise.

58. The *Halsbury's Laws of England, 4th Edition (Re-issue), [2010], Vol 10* para 16, notes that:

' The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice'



59. The 1st and 3rd respondents have been successful in this Appeal. In other words, the appellants were not successful. This court should award the respondents the Costs of this appeal and for the lower court case. Interest should also be awarded to them until payment in full. It is so ordered.

60. The appellants have partly succeeded in the Appeal against the 2nd Respondent. I direct that each party (in High Court Appeal No. E 78 of 2021) shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF MARCH, 2023.

H. M. NYAGA

JUDGE

In the presence of:

C/A

For Appellant N/A

Miss Serگون for Respondent

Court: Stay granted for 30 days.

