



**Nyatogo v Mini Bakeries Limited (Civil Appeal E38 of 2021)
[2023] KEHC 1593 (KLR) (10 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E38 OF 2021
LN MUGAMBI, J
MARCH 10, 2023**

BETWEEN

EZEKIEL MORARA NYATOGO APPELLANT

AND

MINI BAKERIES LIMITED RESPONDENT

*(Being an appeal arising from the Judgement of the Honourable
J.M. Nang'ea, Chief Magistrate, delivered on the 16th of February,
2021 in Thika Chief Magistrates Court Civil Suit No. 572 of 2018)*

JUDGMENT

1. When this the suit came up for hearing in the lower court on the October 27, 2020, the parties therein recorded a consent as follows:
 - a. Judgement on liability be entered in favour of the plaintiff at the ratio of 80:20
 - b. The plaintiff's and defendant's respective bundles of documents be admitted as exhibits in supporting their cases; and,
 - c. Submissions for assessment of damages be filed on February 1, 2020.
2. The only issue left for the court to determine was assessment of damages which included examination of the relevant portions of the pleadings and evidence tendered in substantiation thereof.
3. In the plaint filed in court on dated June 5, 2018 and filed July 17, 2020, the appellant averred that as a result of the accident he sustained the following bodily injuries:
 - a. Right comminuted posterior column fracture;
 - b. Blood loss;



- c. Several soft tissue injuries.
4. That at the time he was working as a relationship officer-Micro Credit with Equity Bank earning a monthly salary of Kshs 60,000/- which went towards his upkeep and his family. He prayed for loss of income from April 2017 to the date of filing the suit.
5. He further pleaded that he suffered 50% permanent disability which diminished his earning capacity due to the injuries sustained and thus prayed for damages for the diminished earning capacity.
6. The appellant further averred that there would be a future medical cost estimated at Kshs 250,000/= for the removal of the surgical implants.
7. The appellant prayed for judgement against the defendants jointly and severally for:
 - a. General damages;
 - b. Special damages;
 - c. Damages for diminished earning capacity;
 - d. Costs of future medical expense;
 - e. Costs of the suit;
 - f. Interests;
 - g. Loss of future earnings.
8. The respondent, (then defendant) in the main suit denied any injuries were sustained by the plaintiff or his earning capacity was affected the injuries (if any), and consequently that he could not claim for any loss of earning and/or diminished earning capacity.
9. In the judgment of the trial court delivered on the February 16, 2021; the trial court awarded damages as follows:
 - a. General damages- Kshs 1,000,000/-
 - b. Diminished earning capacity- nil
 - c. Loss of future earnings- nil
 - d. Future medical expenses- 250,000/-
 - e. Special damages- Kshs 308,278.44
Total- Kshs 1,558,278.44
Less 20% contribution: Kshs 311,655.60
Net total : Kshs 1,246,622.84
 - f. Costs of the suit and interest at court rates.
10. The appellant through a memorandum of appeal dated March 9, 2021 and filed on the March 15, 2021 contested the judgment of the trial court on the following grounds:
 - a. That the learned magistrate erred in law and in fact by holding that the appellant did not specifically prove loss of future earnings while the appellant pleaded both in his plaint and his submissions;



- b. The learned magistrate erred in law and in fact by holding that the appellant did not specifically prove loss of future earnings while the appellant provided both in his witness statement, submissions and documents that he is out of a job;
 - c. The learned magistrate erred in law and fact by holding that the appellant has no evidence that he could lose his job or is unable to perform the job he is currently doing while at the same time he agrees that the appellant has testified as such;
 - d. The learned magistrate erred in law and in fact by holding that the appellant did not strictly prove that he will be unable to handle the same work he was doing while at the same time upholding the report of the applicant's two doctors who opined that the appellant suffered 50% disability hence he can only deliver 50% if at all he gets another job;
 - e. The learned magistrate erred in law and facts by failing to take into consideration the fact that the appellant was a banker specifically working in micro credit collection, hence mobility was essential. The appellant was declared 50% disabled through the accident. Further the learned magistrate failed to take into consideration that in the banking industry, image is everything hence it would be very hard for the appellant to get another job which is the actual position.
11. The appellant urged this court to find merit in his appeal, allow the same with costs and be pleased to make further orders as it may deem necessary.
12. On the August 10, 2021, the appeal was admitted to hearing and the court directed that the appeal be canvassed by way of written submissions. The record of appeal was filed on the September 19, 2022.
13. The appellant filed his submissions on the June 16, 2022. He submitted on the following issues for determination:
- a. Whether the appellant proved damages for diminished earning capacity on a balance of probability
 - b. Whether the appellant strictly and specifically proved loss of future earning capacity.
14. On the first issue, the appellant submitted that the evidence tendered by him is that he was a relationship micro officer credit with Equity Bank earning a monthly salary of Kshs 60,000 and that some of his duties included moving from one place to another sourcing for clients to take up loans with his previous employer but as a result of the accident, he can no longer perform any of the functions. That he proved during the hearing that the accident rendered him 50% functionally disabled and he has to use clutches. That this disability has reduced his earning capacity. He relied on the case of *Beatrice Anyango Okoth v Rift Valley Railways (Kenya) Limited & another* (2018) eKLR where the court in making an award for diminished capacity stated thus:

“69 ...damages under this heading are awarded where it is proved that owing to the injury suffered by the plaintiff, his chances of getting a job in the labour market comparable to the one he held before the injury are diminished or just lowered....



70 ...The court would be properly entitled to make a global award because there is a general agreement in decisions rendered by courts that there is no formula in assessing damages for lost and diminished earning capacity provided the judge takes into account the relevant factors....”

15. The appellant submits that despite him proving his case on a balance of probability and being entitled to damages for diminished earning capacity, the learned magistrate failed to award him and that this court should uphold the said ground and find that he indeed proved his case and award him Kshs 1,000,000 as a sufficient award under this head.

16. While submitting on the second issue, the appellant stated that from the evidence adduced he was 37 years old at the time of the accident and reiterated that he was employed at the time. That he provided sufficient evidence that proved that he was a hardworking man with great prospects in life and he would have continued to work until the age of 60 years, the average retirement age. That this would essentially mean that he would have had 23 years of active working life and in that regard a multiplier of 20 years would be appropriate. He relied on the case of *SJ v Francesco Di Nello & another* (2015) eKLR where the principles of loss of income were explained thus:

“claims under this heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real actual loss is loss of future earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. On the other hand, loss of earning capacity is compensated by an award of general damages once proved.....”

17. He also relied on the case of *Mumias Sugar Limited v Francis Wanalo* (2007) eKLR where the court held thus:

“The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification of the award when the plaintiff is employed is to compensate the plaintiff for the risk that the disability has exposed him of either losing his job in future or in case he loses the job, his diminution of chances of getting an alternative job in the labour market, while the justification for the award where the plaintiff is not employed at the date of the trial is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future...”

18. The appellant urged this court to award him a multiplicand of Kshs 60,000 per month for loss of earning capacity using a multiplier of 23 years as below:

- a. Salary per month Kshs 60,000
- b. Age at the time of accident 37 years
- c. Retirement age 60 years
- d. Number of years to retirement 23 years
- e. Number of months in a year 12 months
- f. Suggested multiplier 23
- g. Permanent incapacity 50% 60,000x12x23 Kshs 16,500,000



Loss of future earning capacity Kshs 16,500,000

19. The appellant concluded by submitting that he has proved that indeed the trial magistrate erred in law and in fact for failing to consider the loss of future earnings.
20. The respondent filed his submissions on the November 1, 2022. It submitted on the following issues for determination:
 - a. Whether the damages awarded by the trial court are inordinately low;
 - b. Whether the appellant specifically pleaded and strictly proved loss of future earnings;
21. On the first issue, the respondent submitted that general damages is a matter of discretion and that the appellate court should be very hesitant to disturb an award as was held in the case of *Ken Odondi & 2 others v James Okoth Omburab T/A Okoth Omburab & Company Advocates* (2013) eKLR where the Court of Appeal stated that:

“We agree that this court will not ordinarily interfere with the findings of a trial judge on an award of damages merely because this court may take the view that had it tried the case it would have awarded higher or lower damages different from the award of the trial judge. To so interfere, this court must be persuaded that the trial judge acted on the wrong principles of law or that the award was so high or so low as to make it an entirely erroneous estimate of damages to which the plaintiff is entitled....”
22. The respondent also relied on following cases to buttress the aforementioned point:
 - a. *Omar Athumani Mohammed t/a Paint Work and General Maintenance v Jumwa Kaingu* (2021) eKLR;
 - b. *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A M Lubia and Olive Lubia* (1982-88) 1KAR 727 at p730;
23. The respondent submitted that the amount of Kshs 1,000,000 awarded by the trial court was reasonable and that no irrelevant factors were considered neither was a relevant factor ignored nor was the award inordinately low that it would be a wholly erroneous estimate of damage thus the award should not be disturbed. They relied on the case of *Beatrice Khamede v Erick Wanunu & another* (2019) eKLR, where the appellate court did not disturb an award of Kshs 800,000/-.
24. The respondent contends that there lies a distinction between loss of future earnings and loss of earning capacity and elaborated that the former can be termed as special damages while loss of earning capacity is compensated by an award in general damages. They relied on the case of *Mumias Sugar Company Limited v Francis Wanalo* (2007) eKLR.
25. While discussing their second issue, the respondent sought to distinguish between special and general damages while relying on the Court of Appeal case of *Jogoo Kimakia Bus Services Ltd v Electrocom International Ltd* (1992) KLR 177 where the court stated thus:

“The law of damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss



which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

26. The respondent emphasised the fact that special damages must be specifically pleaded and strictly proven while relying on the case of *Joseph Kipkorir Rono v Kenya Breweries Limited & another* Kericho HCCA No 45 of 2003 where Kimaru, J held thus:

“In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages, they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred....”

27. That during trial, the appellant did not demonstrate any disadvantage occurring to himself as a direct consequence of the injuries sustained and that he did not call any witnesses to support this averment or adduce any evidence in support thereof. The respondent contends further that the medical report dated September 24, 2020 assessed the appellant disability at 15% which meant that he was still an able man capable of engaging in gainful employment. That the appellant had also not brought any letter of termination of employment or any documentation from his former employer to confirm the allegation that he was out of gainful employment as a result of the accident.
28. The respondent concluded by submitting that this appeal is misconceived as the award granted by the lower court is sufficient and as such the decision should be upheld and this appeal dismissed accordingly with costs to the respondents.
29. The respondent filed their submissions on the November 27, 2020. They submitted that the plaintiff was only entitled to special damages of Kshs 93,750 as special damages. On the issue of loss of income the respondent submitted that the claim of loss of income is unsustainable as the plaintiff has not proved that he was terminated from his employment as he did not give any note or termination letter to confirm the same. They intimated that the appellant’s medical bills were all paid by Equity Bank, his employer and that a former employer cannot be paying a former employee’s medical bills. That the respondent should not be entitled to the medical bills that had been paid by Equity Bank as this would amount to unjust enrichment. They urged the trial court to disregard any receipts produced by the appellant for the special damages if they lacked stamp duty receipts.
30. From the pleadings and submissions before this court, it is evident that the following are the issues for determination:
- a. whether the appellant specifically pleaded loss of future earnings;
 - b. Whether the trial court considered the appellant’s submissions on loss of future earnings;
 - c. Whether the appellant has proved that he is entitled to general damages for loss of earning capacity
 - d. Whether the appeal has merit;
 - e. Who pays for the costs of the appeal.
31. As I embark on considering the issues in this appeal which mainly concern assessment of damages by the trial court, may I acknowledge that in matters quantum, the principle applicable is that the appellate court should scarcely interfere with an award for damages as it is an exercise of judicial



discretion. The appellate court can only poke its nose in that arena only if it is clear that the trial court acted on the wrong principles or awarded excessive or insignificant damages in comparison with comparable injuries that no reasonable court would award or where the court considered matters that it ought not to have considered. This was the holding in *Kenfro Africa Limited T/a Meru Express Service Gathongo Kanini v Ann Lubia* (1982 – 88) 1 KAR 727)

32. The first issue is whether the appellant specifically pleaded loss of future earnings. Apparently, the trial court lumped the pleading on diminished earning capacity and loss of earnings as one issue and made the following finding:

“...There is no evidence that the plaintiff could lose his job or will be unable to perform the job he is currently doing. He has testified in that regard. Loss of future earning is not also specifically pleaded and strictly proven as required in law...”

33. From the point of view expressed by the trial court, the appellant had neither specifically pleaded nor proved loss of future earnings. Nevertheless, a scrutiny of the plaint at paragraphs 7 and 8 indicates that the same was pleaded even though it was slightly mixed up with his pleading on diminished earnings which is part of general damages unlike loss of future earnings which is a special damage. He alleged pleaded as follows:

“7. The plaintiff was until the time of the accident, living a vigorous healthy life with no medical complications. He was a hardworking man with excellent prospects of advancement in life. He was at the time working as a relationship officer micro credit, with Equity Bank earning a monthly salary of Kshs 60,000/- which went towards his upkeep and that of his family. The plaintiff has however been subjected to suffer grave loss and damage as a result of the accident as he has been left 50% permanently disabled. This has diminished his earning capacity and left him unable to adequately maintain his family. The plaintiff therefore prays for loss of income from April, 2017 to the date of filing this suit.

8. Alternatively, the plaintiff's earning capacity has diminished by virtue of the injuries sustained which left him 50% incapacitate. For this the plaintiff prays for damages for diminished earning capacity...”

33. In claiming loss of future earnings, the appellant also appears to have limited it to the period from April 2017 to date filing of the suit but he also failed to compute with exactitude the amount of loss he was seeking being a special damage. In my view, the pleading was imprecise and incomplete as a special damage claim and could not therefore be properly determined considering the form and manner it was pleaded.

33. On whether the court erred in failing to award the appellant damages for diminished earning capacity, the appellant contended that due to the accident, he suffered 50% permanent disability and has not only been unable to carry out his duties at the bank but also that his employment was terminated. The respondent disputed the facts that the appellant lost his job as there was no evidence of termination employment and if the same was terminated whether the termination was as a result of the accident.

34. Diminished earning capacity refers to decrease in a person's earning ability as a result of the disability suffered. It is different from loss of earnings which looks at what has actually been lost as a result of the accident. Diminished earning capacity need not be specifically pleaded and proved but loss of earnings must be specifically pleaded and proved.



35. Usually, loss of earning capacity is concerned with the effect of the injury on the person's future earning ability as opposed to the present loss.
36. However, it is the responsibility of the respondent to demonstrate, by way of evidence, the effect that injury would have on his earnings in the future in order to get an award under that head.
37. Such a claim should then be evaluated by the court based on the nature of the injury vis-vis the type of work done by the person, his age, how long the injuries might last, the degree of incapacity and such other factors. In short, court must show how it has arrived at that amount, it not just by coming up with a random figure.
38. In this case, there was evidence led on the respondent's earning. Parties also entered into a consent to have the documents admitted in evidence and among the said documents were three medical reports by three different doctors. The reports were as follows:

- a. Medical legal report by Dr A O Wandugu dated April 30, 2018:

His professional opinion was that:

- a. He suffered severe injuries (grievous harm) much suffering inconvenience a lot of pain and mental anguish;
- b. The injuries are consistent with the nature of the force that caused them-blunt;
- c. His current medical complains and findings on clinical examination are also consistent with injuries sustained and are a direct result of them.

His prognosis was that:

- a. The injuries have resulted in a chronic disabling pains in the affected areas, a source of chronic ill health which might need medication on and off;
- b. The injuries have resulted in permanent scars which are rather uncosmetic in the affected areas;
- c. The injuries by their effects in the hip joint have resulted in permanent weakness of the (R) leg which is going to be progressive due to inevitable early onset of post traumatic arthritis in the hip joint.

He estimated functional disability at 50% and estimated the cost of removal pre and post supportive medical services at a minimum of Kshs 250,000/=.

- b. Medical legal report by Mr W M Wokabi dated September 24, 2020:

His opinion was that:

- a. I can confirm that the fracture of the socket of the right hip joint was successfully operated on and a metal plate was inserted;
- b. He has complaints usually the associated with such injury and surgery;
- c. Muscles and ligament that got injured are the source of his complaints;
- d. In his case I assess degree of permanent disability at 15% (fifteen percent). 50% disability as assessed in another report is very overstated. There is no clinical basis for such an award as it is more that amputation of a leg at lever of below knee;



- e. Like in similar cases he will be predisposed to develop arthritis of the hip as joint as his age advances;
 - f. I perused an x-ray, P3 form and Dr Wandugu's medical report when preparing this medical report. Plates used to fix fractures of socket of hip joints are usually not removed as they do not interfere with functionality of the joint. As such he will not need to spend money to have the plate removed.
- c. The medical legal report by Dr Cyprianus Okoth Okere dated October 1, 2020:
His opinion and prognosis was that:
- a. He sustained a comminuted fracture of the posterior wall of the right acetabulum and bruises on both lower limbs. The injuries can be classified as grievous harm. The right hip may develop osteoarthritis in future.
39. While discussing the assessment of damages for diminished earning capacity, the court in the case of *Alpharama Limited v Joseph Kariuki Cebron* [2017] eKLR stated thus:
- ‘...To assess loss of earning capacity in the future, the court must consider to what extent the claimant’s ability to earn income will be affected in the future and for how long this restriction will continue. The traditional approach adopted by the courts when calculating a claim for future loss is to assess what lump sum is needed to compensate the claimant for the future loss. The starting point in this calculation will be to determine what annual net loss the claimant will incur in the future (the “multiplicand”), which is the annual loss of earnings. The multiplicand will then be multiplied by a “multiplier”. The multiplier is assessed having regard to the number of years between the date of the settlement and the date when the loss stops. In a claim for future loss of earnings, this may be the date when the claimant would, but for the injury, have retired”. According to the bank statements produced, the plaintiff indeed had money flow into her account. The flow showed a steady growth. While taking an average for the entire period of banking shown in the bank statements may not be the most accurate formula to determine the monthly income that alone should not be the basis to conclude that ascertaining a monthly income is difficult and therefore the court is unable to assess the damage. On the same vein the multiplier approach is just but one aid the court applies in assessment of damages. It is not the only one. The court would be properly entitled to make a global award because there is a general agreement in decisions rendered by courts that there is no formula for assessing damages for lost or diminished earning capacity provided the judge takes into account relevant factors....” (Emphasis, my own)
40. The fact that the appellant was an employee of Equity Bank is not denied by the parties. In his witness statement he said that he was laid off by the former employer, Equity Bank Ltd after the accident. He provided the certificate of service indicating that was employed on August 29, 2011 and the date his employment ceased was on April 30, 2017 which very proximate to the date of the accident. This accident occurred on 10th April, 20. The receipts produced by the appellant confirm that his clinical visits were still going on late as September 25, 2018 which clearly shows his health had taken a beating and naturally his productivity too as he was in and out of hospital. In my view, taking into account the proximity between the accident and the time his employment ended, which was shortly after a debilitating road accident, the prolonged treatment that was going on even a year later , I cannot dismissively rule out that the loss of his employment had nothing to do with the accident. That in view of the fact that he lost his job shortly after the accident was not an idle contention.



41. I thus find that trial court's finding that there was no evidence that the plaintiff could lose his job was erroneous for he had clearly demonstrated he had in fact he lost the job during the time he was still undergoing treatment for the injuries sustained. The trial court further went on to say that there was no evidence to show he could not perform the present job, yet he had lost the job already.
42. I find that denying him damages for diminished earning capacity was thus specious in the circumstances and I reverse that finding. The question now becomes, what would be the amount of damages to award on that head. I will proceed on the basis that damages for diminished earning capacity can be awarded as part of general damages.
43. In HCC No 266 of 1998 at *Machakos, Zachariah Nyabuti Uchiri v Tashrif Bus Services Ltd*, the respondent sustained a severe head injury with a fracture of the right macular sinus, a fracture of the right transverse process of the cervical, spine and a compound fracture of the left tibia and fibula. The degree of permanent incapacity was assessed at 45%..." In another case of *Regina Mwikali Wilson v Stephen M Gichuhi & another* [2015] eKLR the respondent sustained multiple skeletal fractures and soft tissue injuries which occasioned her pains and prolonged ongoing mobility and was awarded Kshs 2.5 million in general damages. Her estimated incapacitation had been assessed at 20%. Similarly in the case of *Teresiah Ngugi & another v Michael Masia Kimende* [2018] eKLR, the appellate court reviewed the trial court assessment of the appellant permanent incapacity of 70% and relied on the defence doctor's opinion that the percentage of incapacity was 7% for the injuries suffered by the appellant namely: a mild head injury with facial bruises, a blunt chest injury with fractural ribs, a cut wound right leg below, the knee had compound fracture of the right tibia fibula, bone grafting was done on his right leg and metal bars were inserted. The court noted that:

"The trial court observed the respondent when he was giving evidence, the opinion that it formed was that the respondent will be on that wheel chair for a long time than expected because his muscles had wasted. However an expert orthopedic surgeon and trauma Dr Kimuyu was of opinion that a person with a 60% disability is where the leg is amputated at the hip joint and other limbs are injured. He further explained that in such cases as this where the plaintiff has three functioning limbs disability cannot be that high. He based his disability at 7% as his leg was only injured below the knee and can be fully used after corrective surgery. He did explain how disability is assessed using the alberta scale and stated that they look at when determining disability. The trial court relied on the fact that the respondent was on a wheel chair to rely on suggested incapacity of 70% opined by respondent doctor who was not an expert in the circumstances. That consideration was irrelevant for trial court to utilize it in making a finding. A disability of 7% as opined and supported by Dr Kimuyu was more persuasive."

44. When faced with the same scenario as the trial court in this case, the Court in the case of *China Road and Bridge Corporation (Kenya) v Job Mburu Ndungu* [2021] eKLR stated thus:

"The two medical reports disagreed on the assessment of permanent incapacity. Whereas the respondent's doctor who had seen the respondent six months after the accident and put permanent incapacity at 50%, the appellant's doctor saw the respondent seven months later and put permanent incapacity at 15%. It would have been important for the trial court to state whether to accept the assessment of 50% by the respondent's doctor, or 15% by the appellant's doctor. In my view, to reconcile this discrepancy it is appropriate to take the average of the two assessments which would put disability at 32.5%."



45. The two doctors differed on extent of permanent disability whereby Dr A O Wandugu assessed the same at 50% and Dr Wokabi estimated it at 15%. The view of this court is that what is critical here is that all the medical reports point to a future prognosis of osteoarthritis in future due to the injuries sustained
46. I have already said that I would consider damages for diminished earning capacity as part of general damages. In the instant case, the trial court awarded general damages of Kshs 1,000,000 after ruling out that the appellant was not entitled to damages for diminished earning capacity. I will maintain the award of Kshs 1,000,000/- awarded for bodily injuries sustained. Further, the appellant had his health impaired as result of the accident which had a toll on his productivity and job sustainability hence impacting on his future earning ability unlike before when was in full health.
47. I would thus award an additional global figure of Kshs 800,000/- bearing in mind what he used to earn before the accident and considering that the two doctors assessment of permanent incapacity varied and ranged between 15% to 50%.
48. The rest of the trial court's award shall remain intact meaning that the judgement shall be as follows:
- a. General damages Kshs 1,000,000/=
 - b. Special damages Kshs 308,278.44
 - c. Damages for diminished earning capacity
Kshs 800,000/=
 - d. Costs of future medical expenses
Kshs 250,000/=
 - e. Loss of future earnings nil
Less 20% contribution (Kshs 471655.688)
Total Kshs 1,886,622.752=
49. The appeal thus succeeds on the part of the appellant and is thus entitled to costs of this appeal and interest at court rates.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 10TH DAY OF MARCH 2023.

L.N MUGAMBI

JUDGE

In presence of:

Appellant- absent

Respondent- absent

Advocate for Appellant- Osembe for the Appellant.

Advocate for Respondent not present

Court Assistant- Brian

Court



This Judgement be transmitted digitally by the Deputy Registrar to the Advocates for the Parties on Record through their respective email addresses.

