**Ndolo & 2 others v John & 2 others (Civil Appeal E136, E129 & E073 of 2021 (Consolidated)) [2023] KEHC 3643 (KLR) (2 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3643 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KIAMBU**

**CIVIL APPEAL E136, E129 & E073 OF 2021 (CONSOLIDATED)**

**MM KASANGO, J**

**MAY 2, 2023**

**BETWEEN**

**SHARON MWENDE NDOLO ..... APPELLANT**

**AND**

**RAHAB NYANGIMA JOHN ..... 1ST RESPONDENT**

**NELSON MWANGI NDUKI ..... 2ND RESPONDENT**

**AS CONSOLIDATED WITH**

**CIVIL APPEAL E129 OF 2021**

**BETWEEN**

**RAHAB NYANGIMA JOHN ..... 1ST APPELLANT**

**NELSON MWANGI NDUKI ..... 2ND APPELLANT**

**AND**

**SHARON MWENDE NDOLO ..... RESPONDENT**

**AS CONSOLIDATED WITH**

**CIVIL APPEAL E073 OF 2021**

**BETWEEN**

**RAHAB NYANGIMA JOHN ..... 1ST APPELLANT**

**NELSON MWANGI NDUKI ..... 2ND APPELLANT**

**AND**

**SHARON MWENDE NDOLO ..... RESPONDENT**

***(Being an appeal from the Ruling of the Senior Principal Magistrate's Court at Ruiru (Hon. P. Nyota, RM) dated 6th April, 2021 and from the Judgment of (Hon. C.A. Otieno, SPM) in Civil Suit No. 203 of 2020 dated 2nd July, 2020)***

## JUDGMENT

1. The above three appeals were consolidated by this court's order of March 3, 2022. They all originate from the civil case No 203 of 2002 before the Ruiru Senior Principal Magistrate's Court. That case was filed by Sharon Mwende Ndolo, hereafter Sharon. The defendants in that case are Rahab Nyangima John and Nelson Mwangi Nduki whom for convenience, I shall refer to as the 1st and 2nd respondents respectively.

2. Before the trial court Sharon sued both the respondents seeking judgment for both general and special damges in respect of the injuries she suffered following a motor vehicle accident. Sharon pleaded that she was travelling in a public service vehicle, registered in both respondents' names, and on reaching her destination, and as she alighted the vehicle suddenly drove off. This was while she was in the process of alighting. The vehicle dragged Sharon as it moved and when she let go the vehicle's door rail, Sharon fell on the ground and the vehicle's left tyre run over her right upper thigh.

3. The trial court by its judgment of July 2, 2021 found the respondents 100% liable for that accident and awarded Sharon Kshs 500,000 in general damges, Kshs 1,676,470 in special damages and Kshs 2million for future medical expenses. That judgment aggrieved both Sharon and the respondents and they both filed the three appeals before this court.

4. This is the first appellate court. An appeal before this court as first appeal, is by way of retrial. This court is required to reconsider the evidence, evaluate it and draw its own conclusion. This is done with the caution that this court did not see nor hear the witnesses as they testified: see the case of *Selle & another v Associated Motor Boat Co Ltd & others* (1968) Ea 123 civil appeal No. E129 of 2021

5. Civil appeal No E129 of 2021 filed by the respondent's, challenges the entire finding of the trial court by its judgment of July 2, 2021. It challenges the awards both in general and special damages. The court will consider that appeal first because its finding may affect the other appeal filed by Sharon.

6. That appeal E129 of 2021 brings forth the following issues for consideration:-

    a. Did the trial court err in finding the respondents 100% liable for the accident?

    b. Were the claims in general and special damages pleaded and proved and did the trial court err in awarding for future medical expenses?

    c. Did the trial court err in its award for general damages?

7. The respondents filed before the trial court a defence denying the claim filed by Sharon. They however did not adduce evidence to support that defence. It follows that the defence, and that pleading, remained mere allegation of the respondents. In the case of *Netah Njoki Kamau & another v Eliud Mburu Mwaniki* (2021) Eklr the court discussing a situation similar to the one in this appeal stated:-

    "

> " 9. Similarly, the Court of Appeal in the case *Edward Mariga Through Stanley Mobisa Mariga v Nathaniel David Shulter & another* [1979] eKLR said:-
> 'The respondents filed a defence in which they denied the appellant's claim and averred that the accident was caused by the appellant's own negligence in that he suddenly ran across the road and in the process was hit by the motor vehicle. The respondents did not give evidence and so the only explanation as to how the accident happened was the version put forward by the appellant and his brother.'"

8. Even though the respondents filed their defence denying liability, no witness was called on their behalf and it follows that Sharon's case on liability stood unchallenged and the respondents' denial remained unsubstantiated: See the case *Avtar Singh Bahra and another v Raju Govindji* (2001) eKLR.

9. The trial court by its judgment well appreciated the afore-stated principle of law by making the following finding:-

> " On who was to blame for the RTA, the plaintiff's evidence was that the vehicle stopped for her to alight but suddenly moved dragging her along before she fell to the ground and had her right upper thigh ran over by the back tyres of the vehicle. Her evidence with regard to who was to blame for the RTA is corroborated by the police abstract (P Exh2) which indicates that motor vehicle registration number KCE 472 N was to blame for the RTA. Despite denying the particulars of negligence as stated in the plaint, and stating in their joint defence that the plaintiff was wholly to blame or substantially contributed to the RTA, no evidence was led in support of the particulars of negligence with regard to the plaintiff...
>
> It is clear from the evidence presented that the action of the driver of motor vehicle registrations number KCE 472 N of driving away before ensuring that the plaintiff had alighted was the sole cause of the RTA. The driver of the motor vehicle registration number KCE 472 N ought to have driven away only after he had ascertained that the passenger had alighted."

10. The respondents by their submission stated that the trial court erred in its finding on liability because the police officer who produced the police abstract stated, while being cross examined that Sharon was injured when she alighted from the subject vehicle, at a roundabout where there was no bus stop.

11. My response to that submission is that the police officer was not the officer who attended the scene of accident, she gave evidence from the information in the abstract. Sharon in her uncontroverted evidence stated when cross examined:-

> " The conductor of the vehicle gave me permission to alight."

12. With the above evidence by Sharon, the trial court cannot be faulted for having found the driver of the vehicle was 100% liable. Section 66(1)(w)(x) of the *Traffic Act* cap 403 has no bearing in this case because Sharon's clear evidence was that the vehicle stopped, she was permitted by the conductor to alight, she placed one foot on the ground while still holding the vehicle's door rail and the vehicle suddenly drove off dragging her. The respondents" submissions are rejected in that respect. The trial court's finding on liability is upheld. Issue (a) above is determined in the negative. The trial court did not err to find the respondents 100% liable for the accident.

13. On issue (b) the respondents faulted the trial court's award of Kshs 2million for the future medical expenses on the ground that Sharon, by the time she filed the case, had skin grafting done by the Coptic

Hospital. Respondents submitted that the claim for future medical expenses was not supported by evidence.

14. I begin in response to that submission by reiterating that the respondent did not all adduce evidence to support their defence and further, that they did not have Sharon re-examined by doctor of their choice. This calls to mind the holding in the case *Chaabhadiya Enterprises v David Wambutsi Wambukoya* (2017) eKLR as follows:-

> " In the case of *Ephantus Mwangi & Geofrey Nguyo Ngatia v Duncan Mwangi Wambugu* (1982-88) 1 KLR 2871 Justice R. Nambuye (as she then was) stated as follows:
>
> 'Medical evidence cannot be attacked from the bar. If the defence doubted the injuries they should have sent the patient to be examined by a doctor of their choice. In the absence of that, this court has no alternative but to go by that medical evidence on record.'"

15. The respondents seek to attack clear evidence of two doctors whose reports were before the trial court which stated that Sharon needed future medical intervention.

16. Doctor Nang'ole F. Wanjala confirmed that Sharon was skin grafted in two sessions then stated in his report that:-

> " She (Sharon) has recovered well and now require secondary reconstructive procedure. The cost of the procedure will cost about Kshs two million only (Kshs 2,000,000)."

17. Doctor G.K. Mwaura by his report stated that Sharon needed to cater for:-

> " Future medical future expenses; re-construction surgery at cost of Khsh 2million."

18. There was no evidence controverting the above doctor's reports. Further, Doctor Mwaura testified before the trial court and he was very resolute that Sharon need reconstructive surgery costing Kshs 2million.

19. The fact that Doctor Nang'ole Wanjala in filing the P3 form stated the injuries were two weeks old as at September, 2019, does not detract the weight of the evidence presented showing Sharon required to cater for further medical expense.

20. Sharon by her plaint pleaded that she suffered closed degloving injury haemotoma on her right thigh and that pleading despite submissions of the respondents was not contradicted by Doctor Mwaura. The trial court mistakenly in its judgment stated that Sharon suffered degloving wound. The trial court's misstatement of Sharon's injuries was corrected when it stated that she suffered soft tissue injury. Degloving injuries are severe and at times are life threatening.

21. On the whole, after considering the parties submissions, and bearing in mind the above discussion, I find and hold that the issue (b) above is in the negative. Sharon's claim for general and special damages was pleaded and proved. Further the trial court did not err in its award of special damages in the form of future medical expenses.

22. The last issue to consider in this appeal is whether the trial court erred in its award in general damages. The trial court award Kshs 500,000 in general damages. Respondents submit the trial court erred and that the award on this head should have beenKshs 100,000.

23. The respondents support their submission by the cases they cited before the trial court which I shall examine here after.

24. In the case *Ndungu Dennis v Ann Wangari Ndirangu & another* (2018) eKLR the injuries noted thereof were:-

> " ... minor bruises on the back: no fractures ... tenderness on the right leg ... the injures are soft tissue injuries."

25. The appellate court, in this case reduced the award of general damages from Kshs 300,000 awarded by the trial court to Kshs 100,000.

26. Before the trial case of *Philip Musyoka Mutua v Mercy Ngina Syovo* (2018) eKLR the injuries noted in the P3 form were:-

> " Injuries to the lower limbs. Injuries to the right knee."

27. The appellate court, in that case reduced the trial's award from Kshs 180,000 to Kshs 120,000.

28. In the case *PF (suing as next friend and father of SK (minor)) v Victor O.k Amdi & another* (2018) eKLR the injuries noted are: -

> " Cut wound to the forehead.
>
> Multiple small abrasions to the face.
>
> Blunt injury to the head leading to loss of consciousness for some time.
>
> Abrasion to the back-abrasion wounds to the dorsum of the right hand.
>
> Cut wound to the right leg."

29. The appellate court increased the award of general damages form Kshs 50,000 to Kshs 100,000.

30. In the case of *Nyambati Nyawwabu Erick v Toyota Kenya Ltd* (2019) eKLR the injuries were:-

> " ... cut wound on the scalp and blunt injury to the chest."

31. The appellate court awarded Kshs 90,000 against the award of the trial court of Kshs 55,000.

32. Sharon suffered injuries:

swollen, painful tender – right thigh/buttock. Severe blood loss and anemia. Blood was transferred. Closed degloving injury/hematoma – right buttock and thigh. She was admitted at St. Francis Community Hospital for 2½ weeks where hematoma was removed (aspiration). She was admitted for 7 weeks at Coptic Hospital where her wounds were skin grafted. She was put on antibiotic and analgesics. She will need to undergo future medical treatment.

33. The trial court having considered those injuries and the parties submissions awarded Sharon Kshs 500,000 in general damages. The trial court considered the legal authorities cited on behalf of Sharon, which the trial court found the injuries stated thereof were more extensive than that suffered by Sharon. That court also considered the respondents' authorities cited above in this judgment, where the court found the injuries in those authorities were less severe than what Sharon suffered. It was on that basis that the trial court made its award. In my view, the trial court's award was not inordinately high or low to lead this court to interfere with that award. In this regard, I rely on the case of *Kennfro Africa*

*Limited T/a Meru Express Services Gathogo Kanini v A.M Lubia and Olive Lubia* (1982-88) I KAR 727 thus:-

> " The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilango v Manyoka* [1961] EA 705, 709, 713; *Lukenya Ranching And Farming Co-operatives Society Ltd v Kavoloto* [1970] EA, 414, 418, 419. This court follows the same principles.'

34. There is no justification brought forth by the respondents' justifying the disturbance of the trial court's award. Accordingly, the finding and holding of this court on issue (c) is that there is no error in award of general damages. The trial court's award is upheld.

35. Having found in the negative the issues (a) to (c) I find and hold that the appeal No E129 of 2021 is without merit and the same is dismissed with costs.

**Civil Appeal No E136 Of 2021**

36. The above appeal was filed by Sharon. The appeal raises two issues, that is:-

    a. Whether the trial court erred in not awarding special damages as prayed for and proved by Sharon.

    b. Whether the trial court erred in awarding low general damages for pain and suffering.

37. Issue (a) above relates to the trial court's declination to award Sharon the total sum of Kshs 1,796,706 which Sharon presented as representing her total medical expense at Coptic Hospital. The trial court by its judgment made a finding that the Coptic Hospital bill indicated that there was a balance of Kshs 596,706 which remained unpaid by Sharon out of the total bill of Kshs 1,796,706. Accordingly, the trial court awarded in this regard special damages of Kshs 1,200,000/= which is the difference between Kshs 1,796,706 and Kshs 596,706. The trial court made a finding that the amount of Kshs 596,706 was not proved as paid and could not therefore be awarded. The trial court relied on the Court of Appeal decision in the case *Great Lakes Transport Company (u) Ltd v Kenya Revenue Authority* (2009) eKLR. In that case, the Court of Appeal upheld the High Court's finding that Kenya revenue Authority (KRA) illegally seized and held the appellant's vehicle. The Court of Appeal also upheld the High Court's finding that the appellant failed to prove it paid for cost of tyres and tubes that were rendered unroadworthy due to overstay of the vehicle at KRA's yard. The Court of Appeal in upholding that finding stated thus:-

> " There was no receipt produced to show that actual cash was paid, or any payment made for the alleged purchase of tyres. A mere invoice as the one produced in evidence was incapable of proving purchase. The claim could have been proved very easily by producing either a receipt from M/s General Tyre Sales Limited which was alleged to have supplied the alleged tyres or a witness from that company to confirm that indeed money changed hands when the alleged new tyres were acquired by and delivered to the appellant. ...
>
> We ... take cognizance of the fact that an invoice is not a receipt for goods supplied unless it is specifically endorsed to the effect that the goods for which invoice was prepared were paid

for. In such a case the endorsement should be visible on the invoice and then the invoice plus the endorsement on it can be treated as receipt for payment. What we mean is that in case the goods for which an invoice is issued have been paid for, one would normally expect endorsement such as the word "paid" on the invoice and that would turn the status of the invoice into a receipt.'

38. As will be noted above, the Court of Appeal in upholding the High Court's finding stated that "a mere invoice as the one produced in evidence was incapable of proving purchase" of the tyres.

39. The trial court, in this case was presented with evidence of a long running hospital bill of Coptic Hospital which at the end indicated as follows:-

Total bills: Kshs 1,796,706.00

Less payments: (1,200,000.00)

Less NHIF: 0.00

Net payable: 596,706.00

40. That bill is stamped with Coptic Hospital stamp.

41. By the ruling of March 3, 2022, this court alongside ordering the three appeals be consolidated, as alluded to above, also ordered Sharon to file additional evidence relating to the expenses of Coptic Hospital. Sharon filed supplementary record of appeal on March 11, 2022 which contains her affidavit and which affidavit annexed a letter dated September 20, 2021 written to Sharon's mother by Coptic Hospital. That letter makes a demand from Sharon's mother to pay Coptic Hospital the outstanding amount of Kshs 596,706 and further states in default legal action will be instituted. Sharon in her affidavit further deposed that a land title registered in the name of her father was deposited at Coptic Hospital as guarantee for the payment of the outstanding amount to the hospital. Sharon deposed: -

> " That the security deposited (the title) with the hospital stands to be lost if the amount is not paid or a suit for recovery of the said amount."

42. The respondents filed a replying affidavit, replying to the additional evidence produced by Sharon in this appeal. The respondents stated that the fact Sharon has produced the additional evidence, the Coptic Hospital letter and the land title document is proof that the trial court was correct in declining to award special damages, the unpaid hospital bill. Further, that Sharon failed to adduce evidence that the outstanding amount of Coptic Hospital was secured by deposit of Sharon's father's land title document. The respondent deposed that the additional evidence produced by Sharon was intended to sway this court sitting as an appellate court.

43. I have considered the submissions made in respect to the issue (a) above. The learned advocate for the respondents did not object to the production, during the trial of the long running hospital bill of Coptic Hospital. That long running bill indicated there was an amount outstanding for payment in respect to the medical treatment of Sharon at that hospital. In my view, the trial court, in this case, erred in relying on a case where the facts differed from the facts before it. The Court of Appeal's decision in the case *Great Lakes Transport Company (u) Ltd v Kenya Revenue Authority* (supra) considered the evidence adduced at trial, whether the purchase of tyres was proved by the appellant. The trial court, in that case found the appellant failed to prove there was such purchase of tyres. The Court of Appeal, in that case was of the view that if indeed the tyres were purchased, the invoice the appellant produced in evidence would have had a stamp of "paid" on it. There is a world of difference, in my view with the facts of that case and this case, considering purchase of goods in that case was tyres,

compared to medical treatment that Sharon went through. Medical treatment is ordinarily provided and the hospitals, more often than not, render their bills at the end of treatment. Of course, as seen in the case of Sharon, hospitals sometimes require piece meal settlement of their bills but inevitably at the end of hospitalization, patients are presented with a bill reflecting what has been paid and what is outstanding. That is what Coptic Hospital did in regard to Sharon's treatment.

44. The Court of Appeal in the case of *Cosmos Plastic Limited v Stephen Kiamba Nzuva* (2007) eKLR considered an appeal where the High Court ordered payment of outstanding hospital bill to be paid directly to the hospital. This is what the Court of Appeal stated as it summarized the trial court's evidence: -

> " He was eventually discharged from Kenyatta National Hospital on November 22, 1999. But because the employer did not pay hospital bill, he was detained at the hospital till December 22, 1999 when, after his wife's cousin pledged his vehicle log book for vehicle KSY 978 as security for hospital bill was he released from the hospital. That bill was Kshs 213,000/=. ...
>
> In short, the superior court found ...
>
> Kshs 213,000/= to be paid directly to Kenya National Hospital aforesaid. ...'

45. The Court of Appeal, although confronted with ground that challenged the High Court's finding by its judgment, did not interfere with the order of the High Court that the payment be paid directly to the Kenyatta National Hospital.

46. I do therefore find the case of *Great Lakes Transport Company (u) Ltd* (supra) is distinguishable to the case that was before the trial court. The Court of Appeal in the case of *Great Lakes Transport Company (u) Ltd* (supra) pronounced itself in respect to purchase of goods, that is tyres, whereas this case before the trial court, it related to medical treatment. The Coptic Hospital bill showing an outstanding amount was sufficient proof that Sharon was entitled to an award of Kshs 596,706.

47. I reject submissions made by the respondent that the outstanding amount having been secured by Sharon's father's land title document and the fact that the demand letter of Coptic Hospital was addressed to Sharon's mother is immaterial to the decision whether Sharon was entitled to the award of the amount outstanding and due to Coptic Hospital. Sharon did testify that at the time of accident she was a student. It is no wonder, therefore her parents guaranteed payment of her hospital bill.

48. In respect to issue (a) I do find the trial court erred in not awarding Sharon Kshs 596,706. Sharon is therefore awarded that amount by this judgment.

49. Issue (b) above has essentially been dealt with when the court considered civil appel No E129 of 2021. In that appeal, it will be recalled I made a finding that the trial court did not err in the award of general damages. The trial court made finding that the authorities relied upon by Sharon presented for more serious injuries to those suffered by Sharon and that court did not therefore rely on the authorities of Sharon. I find that I cannot fault the trial court in that finding nor in its finding that in view of the injuries suffered by Sharon and the length of her hospitalization. The amount of Kshs 500,000 in general damages sufficed as proper compensation to Sharon.

50. This court therefore finds in the negative issue (b) the trial court's award in general damages is upheld.

51. This appeal therefor only succeeds to the extent that Sharon is awarded the special damages of Kshs 596,706.

**Civil Appeal No. E073 Of 2021**

52. This appeal was filed by the respondents. The background of the appeal is that the trial court heard *ex parte*, Sharon's case on March 4, 2021 because the respondents did attend the trial. The judgment, after that hearing was reserved for delivery on April 6, 2021. The respondents filed, before the trial court an application dated March 5, 2021 seeking to set aside the *ex parte* hearing. When that application was heard by the trial court on April 6, 2021 the proceeding of that day are reflected as follows:-

> " Mr Ndegwa for the defendant
>
> Court – parties notified of courts direction.
>
> Mr Ndegwa – We request for a chance to cross examine the plaintiff as per our application dated March 5, 2021. We are willing to pay thrown away costs of Kshs 10,000.
>
> Mr Kimanzi – I leave the court to decide on the thrown away costs. They had counsel in court that was (sic) who didn't rise when the matter was called out. No objection to x-examining the witness.
>
> Mr Ndegwa – Counsel is only entitled to attendance costs. We moved the court with speed.
>
> Court – The application dated March 5, 2021 is compromised in the following terms: -
>
> 1. The defence is hereby given a chance to cross-examine the plaintiff.
> 2. The plaintiff to avail the doctor and the police as witnesses.
> 3. Defendant to pay Kshs 40,000 as thrown away costs before next court date.
>
> Nyotah
>
> Resident magistrate
>
> 6.4.21"

53. On May 4, 2021 the matter was listed before SPM C.A Otieno-Omondi. The said magistrate indicated in the proceedings that the matter was before her because RM P. Nyota had indicated she lacked jurisdiction to her the matter.

54. From the above proceeding, the respondents filed the grounds of appeal challenging: -

    a. The order for throw away costs as made by RM, P. Nyota when that magistrate lacked jurisdiction.

    b. The award of Kshs 40,000 for throw away cost by the magistrate who did not have jurisdiction.

55. I have considered the parties submissions on both grounds. I however wish to begin by stating that this appeal is misconceived for having been filed without leave of the court. Section 65 of the *Civil Procedure Act* provides that an appeal shall lie to the High Court from the subordinate court from an original decree. Further, section 75 of the same Act sets out the order from which an appeal shall lie. Consideration of that section reveals that an order for payment of throw away costs is not appealable as of right. Further, rule 43 of the *Civil Procedure Rules* does not provide that an appeal shall lie as of right from an order for payment of throw away costs. It follows that appeal having been filed without leave of the court it is misconceived and cannot be considered.

56. Having made that finding however, I find it necessary to inform the respondents that thrown away costs are not pegged on *Advocates (Remuneration) Order* of cap 16. They represent reasonable costs

of action which was aborted by an application made by another. Justice Lesiit (as she then was now Court of Appeal judge) in the case *Kenya Pipeline Company Limited v Grey Soil Investments Limited & 3 others* (2009) eKLR well-articulated what throw away costs represent, as follows:-

> " Costs thrown away by amendment would reasonably mean costs of the action which had been rendered abortive as a result of the amendment, in this case, to the plaint and which costs the defendants would never have been called upon to pay if it had not been for the amendment to the plaint. The defendant should be reimbursed the unnecessary costs occasioned due to the necessity to amend its pleading as a result of the amendment of the plaint. The costs to be re-imbursed are the drawing charge of the amended pleading and can be equated with (but are not the same as instructions fees) additional instructions made necessary to plead to the amended pleading. The reason for this is these instructions would not have been necessary but for the amended pleading. The original instructions are wasted to that extend and the defendants are entitled to the drawing charge of his amended pleading in terms of the order made by the court.
>
> An order for payment of thrown away costs does not however entitle a party in whose favour the order for costs was made to claim a separate instruction fee for drawing an amended pleading in consequence of the opponent's amendment.'

57. In the end, the appeal No E073 of 2021 for the reasons set out above is dismissed with costs.

**Disposition**

58. The sum total of the above finding is: -

    a. Civil appeal No E129 of 2021 is dismissed with costs.

    b. Civil appeal No e136 of 2021 is allowed to the extent that Sharon Mwende Ndolo is awarded Kshs 596,706 in special damages in addition to the awards made by the trial court. The half costs of this appeal are awarded to Sharon Mwende Ndolo to be paid by the respondents.

    c. Civil appeal No E073 of 2021 is dismissed with costs.

59. Orders accordingly.

**JUDGEMENT DATED, SIGNED AND DELIVERED AT KIAMBU THIS 2{{^ND}} DAY OF MAY, 2023.**

**MARY KASANGO**

**JUDGE**

**In the presence of: -**

**Coram:**

Mourice/Julia - Court Assistants

Mbue/Ndegwa & Advocates for the appellants: - Mr. Kimanzi

Elmer & Co. Advocates for Sharon Mwende Ndolo: - N/A

**Court**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**