Paleah Stores Limited & another v Musyoka (Personal Representative of the Estate of the Late Harrison Musyoka Muli) (Civil Appeal 4 of 2020) [2023] KEHC 18689 (KLR) (14 June 2023) (Judgment)

Neutral citation: [2023] KEHC 18689 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERUGOYA

CIVIL APPEAL 4 OF 2020

FR OLEL, J

JUNE 14, 2023

BETWEEN

PALEAH STORES LIMITED ..... 1ST APPELLANT

MAPPING TRADING COMPANY ..... 2ND APPELLANT

AND

JAMES MUTAVI MUSYOKA (PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE HARRISON MUSYOKA MULI) ..... RESPONDENT

(BEING AN APPEAL FROM THE DECREE & JUDGMENT OF HON. P. M. MUGURE (S.R.M.) DELIVERED ON 11TH NOVEMBER 2019 IN WANG'URU CIVIL CASE NO 183 OF 2018)

JUDGMENT

1. The Appellant's were the defendants in the primary suit, where they were sued as the registered owner and beneficial owner respectively of Motor vehicle registration number KBW 117 R (Herein after referred to as the 1st suit motor vehicle). It was alleged that on 9th February 2016, the deceased was lawfully driving the motor vehicle registration number KBC 440M (herein after referred to as the 2nd suit motor vehicle) along Kenol-Makuyu road at or near Bombay Inn area when the 1st suit motor vehicle was so negligently driven, controlled and/or managed by their authorized driver, servant one Amos Muthee Mbugua (deceased) causing it to veer off its lane of travel and violently collide head on onto the 2nd suit motor vehicle. As a result, the deceased sustain fatal injuries.

2. The respondent filed the suit as legal representative of the Estate of the late Harrison Musyoka Muli {deceased} and sort for compensation under *Law Reform Act*, and *Fatal Accident Act*. The respondent also prayed for special damages to the tune of Kshs 160,315/=, plus costs and interest of the suit. The appellants herein filed their statement of defence dated 20.06.2019 denying the contents of the Plaint and laid blame/negligence on the deceased {Harrison Musyoka Muli }. The suit was heard and

judgment delivered in favour of the respondent, who were awarded a total of Kshs 1,612,545/= plus costs and interest of the suit.

3. Being dissatisfied by the said judgment, the Appellant filed this Appeal on 10.01.2020. The Appellant sought to have the judgment set aside and be substituted with an order dismissing the suit with costs. The Appeal is set on the grounds that;

    a. The learned magistrate erred in law and in fact in finding that the defendant's 100% liable.

    b. The learned magistrate erred in law and in fact in awarding excessive and exorbitant damages to the Plaintiff.

Facts at Trial

4. The Plaintiff called 3 witnesses. PW1 Sergent James Buyo testified that that the accident occurred on 9.2.2016. At about 14.30 hours the station received a report that there was a fatal road accident along Kenol- Sagana road near Bombay restaurant. It involved Motor vehicle KBW 117R Trailer ZE 4428 Mercedes Benz which was coming from general direction heading towards Sagana. The accident occurred when the driver of the 1st suit motor vehicle veered off his lane towards the right lane and crashed into the 2nd suit motor vehicle, which was on its rightful lane and being driven in the opposite direction. After the impact, the driver of the trailer Amos Muthee Mbugua died on the spot.

5. The 1st suit motor vehicle further veered off the road and crashed into the parking of Bombay restaurant. In the process the said suit motor vehicle crashed into parked motor vehicle KCB 443F Toyota Prado, KBU 647W Isuzu Canter and also damaged part of the butchery Bombay restaurant. The driver of the 2nd suit motor vehicle too died in hospital, while his turn boy one Dickson Kiung'oo sustained fractures on both legs. The driver of the 1st suit motor vehicle was to be blamed for the accident as he veered off his proper lane and crashed into the other motor vehicles. The witness produced the police abstract.

6. In cross examination, the witness said he was not the investigating officer but one Sergeant Barasa was. Further he stated that he did not witness the accident but relied on the information obtained from the occurrence book. The deceased plaintiff too died on the spot as a result of the impact of the accident.

7. PW2, James Mutavi Musyoka first sought to amend the Plaint to include further particulars of Ksh.550 into special damages. The same was allowed and special damages total increased to Kshs.150,865/=. He testified that the Defendant was his father, he was employed at Mullys Children Family Home. PW2 adopted his statement recorded on 7/11/2018. He produced his claim supporting documents as Exhibits 1-8. In cross examination, the witness stated that the deceased died in hospital and total food expenses for the funeral was Ksh.50,000/=. There were no receipts for food consumed during the funeral/burial ceremony

8. PW3, Dickson King'oo testified that the accident occurred on 9.2.2016. He was the turn boy in the 2nd suit motor vehicle. He adopted the statement dated 1.7.2019 as his evidence. In the said witness statement, the witness recalled that on 09.02. 2016 he and the decease were assigned to go fetch firewood for use at the children's home where they were working. They were to bring the said firewood from Kakuzi farm in Makuyu and were using their employer's motor vehicle KBC 440M Isuzu Lorry. {The 2nd suit motor vehicle}.

9. Having loaded the firewood, they started they started their journey back along Kenol Makuyu towards the general direction of Thika town. He was seated in the cabin, while the deceased was driving at a moderate speed on his correct lane of travel. Upon reaching a popular eatery area known as Bombay

Inn, the 1st suit motor vehicle suddenly left its lane, veered onto their lane and violently collided onto the 2nd suit motor vehicle and other motor vehicles parked alongside the road. They were rescued by good Samaritans and taken to Thika level 5 Hospital. The deceased died while undergoing treatment. He blamed the driver of the 1st suit motor vehicle who was driving at high speed before losing control of the said motor vehicle and crushed into the 2nd motor vehicle and another vehicle's parked by the road side. The said driver of the 1st suit motor vehicle also died due to the impact of the accident.

10. In Cross –examination, the witness reiterated that the driver of the 2nd suit motor vehicle was driving at moderate speed, and was not moving fast, though he did not check the speedometer. The driver of the 2nd motor vehicle died in hospital.

Appellants Submissions

11. The Appellant filed their submissions on 7.12.2022 in which it was submitted while relying on the cases of *Ephantus Mwangi & Another v Duncan Mwangi* [1984] , *S.C v Republic* [2018] eKLR and *Samuel Kimani & Another v Mary Wanjiku Kamau & Another* [2019] e KLR that PW1 was not the investigating officer, did not visit the scene of the accident nor was he a witness so as to establish liability against the Appellants. He merely read the contents of the occurrence book but could not testify as to the veracity of its contents. Further, that PW3 stated that the driver of the trailer was moving at a moderate speed and the trial court ought to have apportioned liability equally.

12. As to whether the damages awarded were excessive, it was submitted that for loss of expectation of life, Kshs.60,000 was sufficient compensation given that the deceased was aged 63 years at the time of his death. Reliance was placed on the cases of *Patricia Mona & Another v Samuel Opot Omondi & 2 others* [2014] e KLR and *Zachary Abusa Magoma v Julius Asiago Ogentoto & another* [2020] eKLR.

13. On the award under pain and suffering, it was submitted that the deceased died the same day the accident occurred and an award of Kshs 20,000 is fair and reasonable under this head. The Appellant relied on the case of *Hyder Nthenya Musili & Another v China Wu Yo Limited & Another* [2017] e KLR and *Lawrence Theuri Mwangi (suing as the personal representative of the estate if the estate of the late Benson Mwangi Theuri (deceased) v Thomas Mutunga Musau t/a Tenoji Motors Limited & Another* [2019] e KLR.

14. Under the head of Loss of dependency, the Appellant proposed ⅓ was the proper dependency ratio as opposed to 2/3 and a multiplier of 2 years supported by the cases of *Chania Shuttle v Mary Mumbi [*2017] eklr, *Omar Sharif & others v Edwin Matias Nyonga & another* [2020] e KLR, *Mary Kina v Nenengai Oil Refineries Limited & Another* [2009] e KLR and *Joseph Kahiga Gathii and another v World Vision Kenya and 2 others* [2014] e KLR.

15. On the deceased's earnings, it was submitted that Plaintiff exhibit 4 indicated the net pay as Kshs 10,061 and not Kshs 15,521 as indicated by the learned magistrate in the judgment. Therefore, it was submitted that Kshs 80,488 as sufficient.

16. On special damages, it was contended that the same must be specifically pleaded and proved. The expenses especially food expenses were not proven and some receipts were not legible to prove special damages and therefore the same ought not to have been awarded to the respondent. The appellant prayed that this appeal be allowed and the award be reduced as proposed in the submissions.

Respondent's Submissions

17. The respondent filed their appeal on 23rd January 2023. They submitted that the judgment being challenged was delivered on 11th November 2019. The memorandum of appeal was not filed until 10th

January 2020. The appeal was filed out of time and without leave of the court. It expressly contravened provisions of Section 79G of the *civil procedure Act* and the same ought to be dismissed. Reliance was placed on the citation of *New Age Developers & construction co ltd v Samauel Wambugu Kahiga* (2019) eKLR and *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* (2014) eKLR.

18. The respondent further submitted that the appellants never called any witness to challenge the evidence of the respondent's witnesses, who testified as to how the accident occurred. Their evidence remains uncontroverted and the finding on liability thus cannot be faulted. Reliance was placed on the court of appeal case in *John Wainaina Kagwe v Hussien Dairy Limited* {2013} eKLR.

19. As regards the issue of quantum, the respondent submitted that, the memorandum of appeal did not specify areas of concern, the basis upon which quantum could be interfered with. The appellant only made a general statement that the award was exorbitant. The respondent further submitted that there was no error of principal demonstrated, nor did the appellant show which factors the trial magistrate failed to consider or which irrelevant factors she considered to be said to have arrived at a wrong decision. They submitted that the award was appropriate, fair and reasonable and should not be disturbed.

20. The respondents prayed that this appeal be dismissed with costs.

Determination

21. I have considered the pleadings, evidence presented and submissions of the parties in this appeal, this court first and foremost is enjoined to subject the whole proceedings to fresh scrutiny and make its own conclusions.

22. As held in *Selle & Another v Associated Motor Boat Co ltd & others* (1968) EA 123 where it was stated that;

> " I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the high court is by way of retrial and the principals 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 conclusion 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 if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally. (*Abduk Hammed saif V Ali Mohammed Sholan*(1955), 22 E.A.C.A 270

23. In *Coghlan V 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 material before the judge with such other material 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 the other 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 witness. But there may obviously be other circumstance's 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 had not seen.

24. Guided by the above cases, it is clear that the duty of the appellate court is cut out and the Court has a solemn duly to delve at some length into factual details, and revisit the evidence presented in the trial court, analyze the same, evaluate it and arrive at its own Independent conclusion, but always remembering and giving allowance for it, that the trial court have the advantage of hearing the parties.

25. The first issue to be preliminarily dealt with is whether the appeal was filed within the prescribed time of 30 days as provided for under provisions of Rule 79G of the *Civil procedure Act*. The judgement being challenged was delivered on 11th November 2019, while the notice of appeal was filed on 10th January 2020.I have looked at the primary file and the record of appeal. The thirty days within which the appellant was to file the appeal lapse on 11th December 2019.

26. There is nowhere in the proceedings where the appellant filed an application for extension of time to have the appeal filed regularized. The application for stay of execution filed on 11th August 2020 did not have any prayer for extension of time and the consent filed in court on 26th August 2020 also did not address this issue.

27. Section 79 G of the *Civil Procedure Act*, Cap. 21 Laws of Kenya provides that ;

> " Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order:
>
> Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time".

28. In interpreting this provision of the law, the Honourable Court in *New Age Developers & Construction Co Ltd v Samuel Wambugu Kahiga* [2019] eKLR expressed itself thus;

> " In my view, Section 79 G of the Act governs the period within which appeals from the subordinate court to the high court should be filed and how that time should be computed. It provides that such appeals should be filed within 30 days from the date on which the order or decree appealed from was issued and where an aggrieved party was unable to file an appeal within the prescribed time, the court is empowered to extend the time so prescribed if good and sufficient cause is shown why the appeal was not filed on time. In the computation of the 30 days period limited for filing of appeals, any period which the lower court certifies as having been necessary for the preparation and delivery of a copy of the decree or order appealed against should be taken into account. In other words, an appeal should be filed within 30 days of the order or decree appealed against or within the period extended by a certificate of delay"

29. Also in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR it was held thus;

> " No appeal can be filed out of time without leave of the Court. Such a filing renders the 'document' so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court's Registry. This is irregular as the document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time the much he can do is to annex the draft intended petition of appeal for the Court's perusal when making his application for extension of time and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court's Record."

30. I do find that this appeal was filed out of time and without leave of court and is therefore a nullity abinition. The same is thus stuck out with costs to the respondent. Be that is may the law still requires that I do consider the other grounds of appeal as raised.

31. It is not disputed that the accident occurred. On the first ground of appeal the Appellant seeks to have the finding of liability reversed and it be apportioned appropriately.

Section 107(1) of the *Evidence Act* provides that;

> " whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts must prove that those facts exist."

Section 108 of the *Evidence Act* further provides that;

> " The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given by the other side."

32. In the supreme court case of *Raila Amolo Odinga & others v IEBC & 2 others* [2017] eKLR it was stated inter-alia that;

> " Though he legal and evidentiary burden of establishing he facts and contentions which support a parties case is static and remains constant through a trial with the plaintiff, however depending on the effectiveness with which he or she has discharged this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would loss if no further evidence were to be introduced."

33. I also refer to The *Halsbury's laws of England*, 4th Edition, Volume 17 at para 13 and 14 where it states that;

> " The legal burden is the burden of proof which remains constant through a trial; it is the burden of establishing the facts and contentions which will support the parties case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied in respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is essential to his case. There may therefore be separate burdens in a case with separate issues.

{16} The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both legal and evidential burden initially rests upon the appellant, the evidential burden may shift in the course of trial depending on the evidence adduced. As to weight of evidence given, by either side during the trial varies; so will the evidential burden shift to the party who would fail without further evidence."

34. PW1 testified and relied on the occurrence book report. The accident occurred when the driver of the 1st suit motor vehicle veered off its lane towards the right and collided with the second suit motor vehicle, heading towards the opposite direction. The accident caused fatal injuries to both drivers. The 1st suit motor vehicle also due to impact of the accident, further veered off the road and rammed into other motor vehicles that were parked outside Bombay Restaurant and partially destroyed its butchery. The person blamed for the accident was the driver of the 1st suit motor vehicle.

35. PW3 was an eye witness. He was the turn boy in the 2nd suit motor vehicle as was the deceased herein, who was the driver thereof. It was his evidence that the deceased was driving at moderate speed at Bombay inn area along Kenol- Makuyu, when the 1st suit motor vehicle travelling in the opposite direction suddenly veered off its lane, onto the one they were travelling in and violently crushed into the 2nd suit motor vehicle thereby causing fatal injuries to the deceased. He blamed the driver of the 1st suit motor vehicle for causing the accident. He was driving at high speed, veered off his correct lane and collided onto their vehicle which was in the correct lane. No evidence was produced to controvert this evidence.

36. The issue of apportionment of liability was also discussed in *Khambi and another v Mahithi and another* (1968) E.A 70 where it was held that;

> "It is well settled that where a trial judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial judge." Similar decisions have been reached in *Mahendra M Malde v George M Angira* Civil Appeal No 12 of 1981.

37. The Appellant's did not call any witness to rebut, the strong and uncontroverted evidence placed before court by the Respondent. In the absence of that evidence, there is no basis to alter the finding of by the trial court on liability. It was the appellant's who had the evidentiary burden to discharge but failed to do so. I thus find no reason to interfere with the liability apportionment by the Trial Court.

38. The second issue that was raised by the appellant was his family that of Quantum. The Respondent died as a result of the accident and sought various reliefs under different headings.

39. The Court of Appeal in *Catholic Diocese of Kisumu v Sophia Achieng Tete* Civil Appeal No. 284 of 2001[2004] eKLR 55 set out circumstances under which an appellant court can interfere with an award of damages in the following terms:-

> "It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have awarded a different figure if it had tried the case in the first instance. The appellate court can justifiably interfere with quantum of damage's awarded by the trial court only if it is satisfied that the trial court applied the wrong

principles, (as by taking into account some irrelevant factors or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate".

40. Similarly, in *Jane Chelagat Bor v Andrew Otieno Oduor* [1988] – 92] eKLR 288[1990-1994] EA47 the Court of Appeal held that:-

> " In effect, the court before it interferes with an award of damages, should be satisfied that the judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damages suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked, if the Appellate Court is to interfere, whether on the ground of excess or insufficiency."

41. Under the head of pain and suffering, I am guided by the case of of *Hyder Nthenya Musili & Another v China Wu Yi Limited & Another* [2017] eKLR, the Court stated as follows-

> " As regards damages awarded under the *Law Reform Act*, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death.... 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."

42. From the evidence of PW1, the deceased herein died on the spot according to the occurrence book. According to PW2, his father succumbed to the injuries sustained on the same day at Thika Level 5 Hospital where he had been rushed for management - treatment. PW3 on the other hand stated that the deceased died at the hospital. According to the death certificate issued on 10.4.2016, the place of death is Thika Level 5 hospital. This therefore means that the deceased suffered some pain before he passed away. The Trial court awarded Kshs 50,000 under this head. The deceased did not die immediately on impact and must have suffered excruciating pain while being extracted from the accident motor vehicle and enroute to hospital, where he died. There is no cross appeal, but what was awarded was low and this court would have increased the same to Kshs 100,000/=.

43. Under the head of loss of expectation of life, the court awarded the deceased Ksh.120,000/=.The appellant submitted that the same should be reduced to Kshs 60,000/= as the deceased was 60 years old. That maybe so, but the said deceased was still strong and able to work and driver a lorry. There is no indication that he was about to slow down or stop working any time soon. Guided by the various citation's relied on by the appellant, I would have reduced this award from Ksh.120,000/= to Ksh.100,000/=.

44. On the issue of Loss of Dependency, the Trial court awarded Kshs 1,241,680 taking into account the evidence presented. The Appellant submitted that the basic the basic salary was Kshs 17,000 and the net income was Kshs 10,061. The formula for calculation of the dependency ratio was discussed by Ringera J in the in *Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another* Nairobi HCCC No. 1638 of 1988 (UR) where he stated as follows;

> 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. The court should then multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependent's and the chances of life of the deceased and dependent's. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature.

45. Thus the net salary is what is available to the dependents and is what should be used in such a calculation. The Trial court made an error in that respect. As regards the age of the deceased, according to the death certificate, he was 63 years and from the evidence presented, he was working as a driver at Mully Children's Family Home thus could work beyond 60 years. The trial magistrate therefor erred to use a multiplicand of Ksh.15,521/=. As for 10 years multiplier I do again find that the same should be reduced to 7 years given the nature of the job he was undertaking. I therefore reduce the award as follows Kshs 10,061x 7 years x 12 months x 2/3 = Kshs 563,416.

46. As regards special damages, the trial court awarded Kshs 150,865. It is trite law that special damages must be pleaded and proven. The total special damages pleaded was Kshs 160,315. Food expenses being Kshs 50,000/= was not proved as the respondent did not have receipts to prove purchase of the same, thus no award could be given under this head. The same was thus wrongly awarded. Further Kshs 10,000/= pleaded as expense for acquiring motor vehicle search was reduced from Ksh.10,000/= to Kshs 550. I do therefore reduce the special damages proved to Kshs 100,315, plus Ksh.550 as per the amendments made during the proceedings. The total award under special damages is reduced to Ksh.100,865/= which was sufficiently proved.

Disposition

47. Having exhaustively analyzed all the issues raised in this appeal I find that the appeal would have been partially successful on the issue of quantum, but would have failed on the issue of liability. Judgement therefore would have been entered in favour of the Respondent as follows;

    Liability 100%

    Special Damages Ksh.100,865/=

    Loss of expectation of life Ksh.100,000/=

    Pain and suffering Kshs 100,000/=

    Loss of Dependency Kshs 562,416/=

    Total Kshs 863,281/=

48. But since the appeal was filed out of time and without leave of court, this appeal is a nullity abinitio and the same is struck out with costs to the Respondent.

49. The costs are hereby assessed at Ksh.150,000/= all inclusive.

50. It is so ordered.

JUDGEMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 14TH DAY OF JUNE 2023.

RAYOLA FRANCIS OLEL

JUDGE

Delivered on the virtual platform, Teams this 14th day of June 2023.

In the presence of;

.....for Appellant

.....for Respondent

.....Court Assistant