



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL CASE NO. 2 OF 2020

BETWEEN

1. MARY NUNGARI NDURUNGI

2. DENIS NDINU NDURUNGI (*suing as the legal representatives of the Estate of*)

ALEX KARANJA NDUNG’U (DECEASED).....**PLAINTIFFS**

VERSUS

PAUL NDUNG’U.....**1ST DEFENDANT**

SIMON WAMWAKI ITHUTHU.....**2ND DEFENDANT**

PAUL NG’ANG’A NGUGI.....**3RD DEFENDANT**

JOSEPH KINYANJUI KURIA.....**4TH DEFENDANT**

LILIAN NJOKI MUHORO.....**5TH DEFENDANT**

RULING

1. The plaintiffs filed this claim against the five defendants who failed to file their appearance or defence within the prescribed time. Indeed, none of those documents have so far been filed by the defendants.

2. On the plaintiffs’ application, interlocutory judgment was entered against the defendants on 10th February, 2021 for the default of filing an appearance and defence.

3. The plaintiffs formally proved their case on 20th September, 2021. Today, this Court was expected to deliver its judgment. Judgment has however not been prepared in this matter because the documents the plaintiffs rely upon in proof of special damages are illegible. This Court is unable to determine whether the plaintiffs have, as required proved the claim for special damages. The requirement was restated in the case **JACKSON MWABILI VS. PETERSON MULELI (2020) eKLR** as follows:-

“37. And in DAVID BAGINE V MARTIN BUNDI (283 of 1996) [1997] eKLR, the Court of Appeal, referred to the judgment by Lord Goddard CJ in BONHAN CARTER V HYDE PARK HOTEL LIMITED [1948] 64 TLR 177, and again observed that:-

‘It is trite law that the Plaintiff must understand that if they bring actions for damages, it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.’”

4. At the reading of this Ruling, the plaintiffs will be required to state whether legible documents proving special damages will be supplied to the court to enable the court prepare its judgment.

RULING DATED AND DELIVERED AT KIAMBU THIS 4TH DAY OF NOVEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

COURT ASSISTANT : NANCY

FOR THE PLAINTIFFS: MS. THUKU H/B MR. KABUGU

FOR THE 1ST DEFENDANTS : NO APPEARANCE

COURT

RULING DELIVERED VIRTUALLY.

MARY KASANGO

JUDGE