**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**APPELLLATE SIDE**

**(Coram: Odunga, J)**

**CIVIL APPEAL NO. 214 OF 2013**

**KYOGA HAULERS LIMITED.....APPELLANT**

**VERSUS**

**GLADYS KAVINYA NJUGUNA (**the administratix of the estate of

**PETER NJUGUNA WAMBUGU-DECEASED).....RESPONDENT**

**[An appeal from the Judgment of Hon. Gesora (Senior Principal Magistrate) delivered on 27th September, 2013 in Civil Case No. 912 of 2011 before the Chief Magistrate's Court at Machakos]**

**BETWEEN**

**GLADYS KAVINYA NJUGUNA (**the administratix of the estate of

**PETER NJUGUNA WAMBUGU-DECEASED).....PLAINTIFF**

**VERSUS**

**KYOGA HAULERS LIMITED.....DEFENDANT**

**JUDGEMENT**

1. According plaint filed in the subordinate court, the respondent was the legal representative of the driver of Motor Vehicle Registration Number KBA 750z/ZC 8129 and the appellant was the registered owner of a Motor Vehicle registration number KBK 302H/ZD 2718. While the deceased was driving motor vehicle KBA 750z/ZC 8129 0n 23rd January, 2011 along Machakos-Nairobi Road at Shalom High School the appellant's driver and or agent drove the vehicle KBK 302H/ZD 2718 that it hit the motor vehicle KBA 750z/ZC 8129 as a result of which the deceased fatal injuries. The respondent claimed damages from the appellant and pleaded negligence as particularized in Paragraph 4 of the Plaint. The respondent sought special and general damages under the ***Fatal Accidents Act*** and the ***Law Reform Act***, interest and costs of the suit.

2. In their defence, the Appellant admitted that an accident occurred between motor vehicle KBK 302H/ZD 2718 and other motor vehicle registration numbers KBA 750z/ZC 8129, 62 UN 120K and KBH 443Z but denied that the same was caused by its negligence. It further denied the injuries pleaded and averred that the accident was caused or substantially contributed by the negligence of Motor Vehicle 62 UN 120K and by the deceased driver of motor vehicle KBA 750z/ZC 8129 as particularized in the defence. They further denied the particulars of dependency and loss and damage in the plaint and prayed that the suit be dismissed with costs.

3. At the hearing of the suit, the Respondent, an eye witness and the Police Officer **Christine Ngala** testified after which the Appellant closed its case without calling any witnesses.

4. According to the appellant who testified as PW1, she was the wife of the deceased and she exhibited receipts in respect of payments for mortuary expenses and presented the death certificate of the deceased. She further exhibited a copy of the search of the motor vehicle as well as receipts. On cross examination she told court that she did not have the marriage certificate and she had nothing to show that the deceased gave her Kshs 15,000/-.

5. Pw2, the turn boy of KBA 750Z testified that a trailer which was going zigzagging left its side of the road rammed onto the vehicle he was in. It was his testimony that the police blamed a UN vehicle but he never saw the vehicle. On cross examination he told court that he could not tell why the trailer went zigzag.

6. Pw3, **Cpl Christine Nyala**, testified that she had an abstract in respect of an accident that occurred on 23rd January 2011 that involved several vehicles. She testified that KBK 302H trailer was moving from Mombasa to Nairobi when RAV 4 vehicle 62 UN 120K emerged from the right and entered the road. As a result, the trailer hit the said RAV 4 at the rear and hit another trailer KBA 750z/ZC 8129, driven by the deceased while the deceased's vehicle hit a Toyota Fielder KBH 443Z. In her evidence, the initial accident was caused by motor vehicle KBK 302H trailer as a result of which the driver died on the spot while the driver of KBA 750z/ZC 8129 also died. On cross examination she testified that she could not tell who was at fault but the OB extract blames RAV 4 vehicle 62 UN 120K for the accident. On re-examination she told court that KBK 302H had no right to hit the RAV 4. The respondent closed their case and the appellant closed their case without calling witnesses.

7. In his judgement, the learned trial magistrate found the appellant 100% liable and proceeded to award the Respondent damages amounting to Kshs. 1,071,075.00.

8. In this appeal it was submitted that the respondent failed to discharge its burden of proof of negligence and that the trial magistrate failed to appreciate the evidence given by Pw3, the police officer that the accident involved several vehicles and that it was motor vehicle 62 UN 120K that was to blame for the accident. According to the appellant, based on the evidence the respondent sued the wrong party. It was submitted that the trial court ought to have dismissed the respondents claim or apportioned liability to the appellant at 50%. It was further submitted that the inconsistencies in Pw2's testimony vis-à-vis written statement shows that the appellant is not to blame for the accident. The appellant relied on the case of **Mbugua David & Another v Joyce Gaathoni Wathena & Another (2016) eKLR** and submitted that the Pw1 failed to prove her claim for loss of dependency and did not produce birth certificates and any document to show that she was married to the deceased. Accordingly, the dependency ratio of 2/3 was unjustified. According to counsel, since the trial court ignored the appellant's submissions and authorities cited on the issue of liability and quantum, the court should allow the appeal as prayed and set aside the finding on liability and damages for loss of dependency and substitute the same with either an orders dismissing the suit or apportion the appellant 50% liability.

9. In opposing the appeal, it was submitted on behalf of the Respondent that the findings of the trial court were proper. The Respondent submitted that the eyewitness proved that it was the negligence of the Appellant in driving at an excessive speed in the circumstances, driving on the wrong side of the road, failing to apply brakes and failing to take adequate care of other road users that caused the accident. It was contended that the Respondent therefore proved its case on the required standard of a balance of probabilities. According to the Respondent, since the Appellant never called any witnesses to counter the Respondent's witness testimonies, it cannot therefore claim not to have been responsible for the accident without adducing any evidence to that effect. In support of her case, the Respondent relied on section 107 of the ***Evidence Act*** as well as **Ephantus Mwangi & Geoffrey NguyoNgatia vs Dancun Mwangi Wambugu [1982-88] KAR 278** as quoted in **Edith Gicuku Mungai v John Njiru Njeru & Another [2019] eKLR** and **Edith Gicuku Mungai v John Njiru Njeru & another [2019] eKLR**.

10. The Court was therefore urged to decline the Appellant's invitation to interfere with the trial court's decision holding the appellant 100% liable as the decision was premised on concrete evidence.

**11.** Regarding the quantum, it was submitted that the fatal injuries caused on the deceased warranted the award issued by the trial court. According to the Respondent, the deceased was a 50 year old family man who had a wife and two children that depended on him. He was in good health and lived a happy and vigorous life. Counsel urged the **Court to sustain the damages of Kshs.1,071,075/= awarded by the trial magistrate.**

**Determination**

12. I have considered the issues raised in this appeal. This being a first appellate court, it was held in **Selle vs. Associated Motor Boat Co. [1968] EA 123** that:

> **"The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the 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 demeanour of a witness is inconsistent with the evidence in the case generally."**

13. Therefore, this Court is under a duty to delve at some length into factual details and revisit the facts as presented in the trial Court, analyse the same, evaluate it and arrive at its own independent conclusions, but always remembering, and giving allowance for it, that the trial Court had the advantage of hearing the parties.

14. On the power to interfere with factual findings of the trial court, it was therefore held by the then East African Court of Appeal in **Ramjibhai vs. Rattan Singh S/O Nagina Singh [1953] 1 EACA 71** that:

> **"This Court will not disturb a finding of a trial Judge merely because of an irregularity in the format of the judgement if it thinks that the evidence on the record supports the decision."**

15. However, in **Peters vs. Sunday Post Limited [1958] EA 424**, it was held that:

**"Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law an appellate court has jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstances that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given…Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion. The appellate court may take the view that, without having seen or heard the witnesses it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question…It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not be disturbed. This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgement of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong."**

16. It was therefore held by the Court of Appeal in **Ephantus Mwangi and Another vs. Duncan Mwangi Civil Appeal No. 77 of 1982 [1982-1988] 1KAR 278** that:

**"A member of an appellate court is not bound to accept the learned Judge's findings of fact if it appears either that (a) he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."**

17. In this appeal, it is clear that its determination revolves around the question whether the respondent proved her case on the balance of probabilities. That the burden of proof was on the respondent to prove her case is not in doubt. In **Evans Nyakwana vs. Cleophas Bwana Ongaro (2015) eKLR** it was held that:

**"As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(i) of the Evidence Act, Chapter 80 Laws of Kenya. Furthermore the evidential burden … is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person…The appellant did not discharge that burden and as Section 108 of the Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side."**

18. The question then is what amounts to proof on a balance of probabilities. **Kimaru, J** in **William Kabogo Gitau vs. George Thuo & 2 Others** [2010] 1 KLR 526 stated that:

**"In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred."**

19. In **Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another (2015) eKLR**, the judges of Appeal held that:

**"Denning J. in Miller Vs Minister of Pensions (1947) 2 ALL ER 372 discussing the burden of proof had this to say;-**

**"That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties…are equally (un)convincing, the party bearing the burden of proof will loose, because the requisite standard will not have been attained."**

20. The only evidence on record was that adduced on behalf of the Respondent. According to PW2, on 23rd January, 2011 he was in motor vehicle reg no. KBA 750Z ZC 8129 in which the deceased was on their way towards Mombasa along Mombasa Road at around 6.00pm. His evidence was that the weather was clear and he could see 100 metres ahead. He stated that they were going uphill when the appellant's trailer from Mombasa started zigzagging, came onto their path and hit them on the left side of the road. It was his evidence that they were driving at 50 kilometres per hour. According to him, there was nowhere to serve. As a result, he sustained injuries while his colleague died on the way. His evidence was that the driver of the other vehicle was charged and he blamed the said vehicle since the deceased was not over-speeding as they were going uphill.

21. That was the evidence of the only eye witness who testified in the case.

22. Section 107(1) of the ***Evidence Act***, Cap 80 Laws of Kenya 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.***

23. This is called the legal burden of proof. There is however evidential burden of proof which is captured in sections 109 and 112 of the same Act as follows:

> ***109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.***
>
> ***112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.***

24. The two provisions were dealt with in **Anne Wambui Ndiritu vs. Joseph Kiprono Ropkoi & Another [2005] 1 EA 334,** in which the Court of Appeal held that:

> **"As a general proposition under section 107(1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the Court to believe in its existence which is captured in sections 109 and 112 of the Act."**

25. It follows that the initial burden of proof lies on the plaintiff, the respondent in this appeal, but the same may shift to the defendants, the appellant in this appeal depending on the circumstances of the case.

26. The appellant did not adduce any evidence to controvert this testimony which was made on oath. I agree that the Court of Appeal's position in **Daniel Toroitich Arap Moi –vs- Mwangi Stephen Muriithi & another [2014] eKLR** espouses the correct legal position that:

> "**It is a firmly settled procedure that even where a defendant has not denied the claim by filing of defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of a rebuttal by the other side**…"

27. As stated in **Daniel Toroitich Arap Moi –vs- Mwangi Stephen Muriithi & Another [2014] eKLR** (supra) where the evidence adduced by the plaintiff falls far short of what is expected in a civil suit, in that the plaintiff's evidence does not meet the 51% threshold, the Plaintiff's case will fail notwithstanding the failure by the Defendant to adduce evidence. In other words, the failure by the Defendant to adduce evidence cannot be a basis for propping up an otherwise hopeless case by the Plaintiff. However, where there is credible evidence from the Plaintiff, the failure to adduce any evidence by the defence may well mean that the Plaintiff has attained the standard prescribed in civil proceedings.

28. Based on the only evidence of the eye witness evidence adduced before the Court, it is my finding that the Learned Trial Magistrate was entitled to make findings of fact based on the material before him. I have myself considered that evidence and I cannot fault the learned trial magistrate for arriving at the said finding based on the evidence on record. This court does not interfere with the decision of the trial court merely because had it been the trial court it would have arrived at a different decision. In my view there was evidence on the basis of which the trial court could perfectly arrive at the decision it did. The fact that it chose to believe the evidence of PW2 and not any other witness is not a ground for interfering with his decision.

29. As regards the quantum of damages, I agree with the position of Court of appeal in **Cecilia W. Mwangi & Another –vs- Ruth W. Mwangi [1997] eKLR**, as follows:

> "**It has been quite often pointed out by this court that awards of damages must be within limits set by decided cases and also within limits that Kenyans can afford. Large awards inevitably are passed on to members of the public, the vast majority of whom cannot afford the burden, in the form of increased costs for insurance cover or increased fees…we would commend to trial judges the following passage from the speech of Lord Morris of Borth-y-Gest in the case of West (H) & Son Ltd –vs- Shephard [1964] AC 326 at page 345**:
>
> '**But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.**'
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> **The approach of Lord Morris to the matter of compensatory damages was supported by Lord Denning MR in Lim Pho Choo**

**v Camden and Islington Area Heath Authority [1979] 1 ALL ER 332 at page 339 and this approach was also adopted by this court in the case of Tayab v Kinanu [1982-88] 1 KAR 90.**

**Lord Denning MR said:**

**'In considering damages in personal injury claims, it is often said: "the defendants are wrongdoers so make them pay in full. They do not deserve any consideration." That is a tedious way of putting the case. The accident, like this one may have been due to a pardonable error much as may befall any of us. I stress this so to remove the misapprehension, so often repeated that the plaintiff is entitled to be fully compensated for all the loss and detriment she has suffered. That is not the law. She is only entitled to what is in the circumstances, a fair compensation, fair both to her and to the defendants. The defendants are not wrongdoers. They are simply the people who foot the bill. They are, as the lawyers say, only vicariously liable. In this case it is in the long run the tax payers who have to pay.'**

**The reason why this passage is referred to by us is to show that damages ought to be assessed so as to compensate, reasonably the injured party but not so as to smart the defendant**."

30. However, the Court of Appeal in **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55** set out the circumstances under which an appellate 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 at first instance. The appellate court can justifiably interfere with the quantum of damages 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 factor 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."**

31. It was therefore held by the same Court in **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457** that:

**"The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect…A member of an appellate court when naturally and reasonably says to himself "what figure would I have made?" and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other Judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own…The Judges of both courts should recall that inordinately high awards in such cases will lead to monstrously high premiums for insurance of all sorts and that is to be avoided for the sake of everyone in the country."**

32. The principles which ought to guide a court in awarding damages were set out by the Court of Appeal in **Southern Engineering Company Ltd. vs. Musingi Mutia [1985] KLR 730** where it was held that:

**"It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated… The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment…It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award…it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."**

33. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency was dealt with by **Ringera, J** (as he then was) in **Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989** where it was held that:

**"The court must find out as a fact what the annual loss of dependency is and in doing so, it must bear in mind that the relevant income of the deceased is not the gross earnings but the net earnings. There is no conventional fractions to be applied, as each case must depend on its own facts. When a court adopts any fraction that must be taken as its finding of fact in the particular case and in considering the reasonable figure, commonly known as the multiplier, regard must be**

**considered in the personal circumstances of both the deceased and the defendant such as the deceased's age, his expectation of working years, the ages of the dependants and the length of the dependant's expectation of dependency. The chances of life of the deceased and the dependants should also be borne in mind. The capital sum arrived at after applying the annual multiplicand to the multiplier should then be discounted by a reasonable figure to allow for legitimate concerns such as the widow's probable remarriage and the fact that the award will be received in a lump sum and if otherwise invested, good returns can be expected."**

34. The same Judge in **Beatrice Wangui Thairu –vs- Hon. Ezekiel Barngetuny & Another – Nairobi HCCC. No.1638 of 1988 (unreported)**, in which **Ringera J.** as he then was, held at page 248 that:

**"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 purchases. 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 dependants and the chances of life of the deceased and dependants. 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."**

35. In his judgement, the learned trial magistrate awarded the Respondent Kshs 20,000/= for pain and suffering, Kshs 120,000/= for loss of expectation of life, applied a multiply of 8 years with a multiplicand of Kshs 14,000/- and dependency ratio of 2/3rds. Having considered the evidence on record, I find the award reasonable in the circumstances and does not warrant any interference.

36. In the premises this appeal fails and is dismissed with costs to the Respondent.

37. It is so ordered.

**Read, signed and delivered in open Court at Machakos this 22nd day of October, 2019**

**G V ODUNGA**

**JUDGE**

**Delivered the presence of:**

**Mr Nzioka for Miss Wanjiru for the Appelant**

**Mr Kamanda for Miss Wamuyu for the Respondent**

**CA Geoffrey**