



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 212 OF 2009**

**LONGONOT HORTICULTURE LIMITED.....APPELLANT**

**VERSUS**

**ANTHONY KIHARA MWANGI.....RESPONDENT**

*(Appeal from judgment of the Principal Magistrate dated 23<sup>rd</sup> day of September 2009, in Naivasha Senior Principal Magistrate's Court Civil Case No. 178 of 2003).*

**RULING**

In an application dated 19<sup>th</sup> June 2015 brought under order 45 Rule 1 and 51 rule 1 of the Civil Procedure Rules, the Appellant has requested the court to correct an apparent error appearing in the Judgment of this court dated and delivered on the 11<sup>th</sup> June 2015.

In the Lower Court's judgment appealed from – (**SPMC case No. 178 of 2005**), the General damages awarded was KShs.150,000/= subject to 20% contributory negligence. In my judgment referred to above, I mistakenly alluded to General damages by the trial court as KShs.280,000/= instead of KShs.150,000/=.

The application is not opposed. Mr. Gekonga Advocate for the Respondent confirmed that General damages in the lower court were KShs.150,000/= and urged the court to proceed to adjust the figures.

Pursuant to the provisions of Section 99 of the Civil Procedure Act and Order 45 rule 1(b) and of Civil Procedure Rules that provides for correction of clerical and/or arithmetical errors in Judgments, decrees and orders apparent on the face of the record, and having found that indeed there was an error as to the amount of general damages awarded to the Respondent by the trial court, I now proceed to correct and adjust the error.

The trial court had awarded general damages in the sum of KShs.150,000/=. This court in its Judgment set aside the award on general damages and substituted the same with an award of KShs.180,000/= as appears in the Judgment. The correct amount that the court found reasonable was KShs.80,000/= but mistakenly typed and indicated KShs.180,000/= which was a genuine clerical error which escaped my notice. It is regretted.

Accordingly, this court's judgment dated and delivered on the 11<sup>th</sup> June 2015 is corrected as follows:

1. That Judgment of the trial court dated 23<sup>rd</sup> September, 2009 is set aside.
2. That liability is apportioned equally between the Appellant and the Respondent at 50:50 basis.
3. That the award on general damages to the Respondent is reviewed downwards to KShs.80,000/=. The Appellant shall pay KShs.40,000/= being 50% contributory negligence.
4. Interest shall apply on general damages from the date of the Judgment in the lower court.

Special damages shall attract interest from the date of filing of the suit in the lower court.

5. Each party shall bear its own costs of the appeal, and in the lower court.

**Dated, signed and delivered in open court this 2<sup>nd</sup> day of July 2015**

**JANET MULWA**

**JUDGE**