





proved. The trial court was wrong to find that the Respondent's case on liability had been proved on balance. With this determination it would be futile to discuss the issue of quantum.

The appeal is allowed with costs. The judgment of the lower court is set aside and in its place there shall be a judgment dismissing the Respondent's suit with costs.

Dated, signed and delivered at Bungoma this 2<sup>nd</sup> day of October, 2012.

**A. O. MUCHELULE**  
**JUDGE**