IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: Potter, Kneller JJA & Chesoni Ag JA)

CIVIL APPEAL NO 50 OF 1981

BETWEEN

ISABELLA WANJIRU KARANJA .....APPELLANT

AND

WASHINGTON MALELE.....RESPONDENT

JUDGMENT

(Appeal from the judgment and decree of the High Court of Kenya at Nairobi (Sachdeva J) dated 26th March, 1979.

In

Civil Case No 1547 of 1974)

JUDGMENT OF POTTER JA

The appellant was the driver of a motor car which was involved in a collision with the respondent pedestrian on the Jogoo Road in Nairobi in Nairobi on Saturday March 17, 1973. The respondent suffered injuries and filed a plaint in the High Court on September 24, 1974. The trial commenced on February 19, 1979 and judgment was given by Sachdeva J on March 26, 1979. Finding both parties to have been negligence, and apportioning the blame 75% to the appellant driver and 25% to the respondent pedestrian, the learned judge awarded the respondent Kshs 176,016.50 with costs and interest until payment, the general damages being Kshs 165,630 the special damages Kshs 8,849.25 and the balance being interest until judgment.

The appellant driver appeals on the issues of liability and on quantum of general damages. The respondent cross appeals, claiming that the general damages should be reassessed and increased. He also seeks some corrections of the calculations concerning loss of past earnings and loss of future earning capacity.

The learned judge had a difficult task in considering the issues of negligence and contributory negligence which he discharged with considerable care. There were only three witnesses to the accident, the respondent pedestrian, the appellant driver and Inspector Kokonya, whose patrol car was patrolling on Jogoo Road and was some way (not disclosed) behind the appellant driver's car. He did not see the events leading up to the accident or the impact. The oral evidence of the witnesses was given almost six years after the event.

It is clear from the evidence that neither the deriver nor the pedestrian saw the other before the collision. The road was straight and level. The respondent pedestrian said in evidence that before crossing the road he looked to his right and saw a bus and behind it a police vehicle "quite far away" him on his side of the road. He could see no vehicle approaching. His view on the right was obstructed by the bus. He walked to the middle of the road and looked left to see if there was a car coming. He was hit by a vehicle (which came from his right which he had not seen or heard before it hit him. He was not walking fast. It was not true that he came out suddenly from between two vehicles. The parked vehicles to the right were quite far away there was a parked vehicle to his left, a long way away.

The appellant driver testified that as she was passing some parked cars on her left she heard a bang, her windscreen shattered and a man fell into the front passenger seat of her car. She was driving just a few feet away from the parked cars. In cross examination she said, as she had done in a written statement to the police after the accident that the pedestrian came from in between two cars. She then corrected this and said that she never saw the pedestrian until she heard the bang. It was this and other aspects of the evidence of the parties that led the learned judge to compare the accuracy of the evidence of the appellant driver unfavourably with that of the respondent pedestrian. It is evident that, on the evidence as recorded and having observed the demeanour of the witnesses, the learned judge was entitled to take that view.

Both appellant and respondent speak of cars parked on the side of the road from which the respondent crossed. Inspector Kokonya was on the scene in time to remove the injured respondent from the car. The inspector's first concern was to take the injured man to hospital, which he did himself. He admitted that he paid more attention to the scene of the accident after he had returned from the hospital at 6.15 pm some 35 minutes after the accident. But he did not find any car parked by the left hand side of the road. He was traveling in the same direction as the appellant driver but he did not recall seeing a parked police vehicle or any stationary bus.

The road was 30 feet wide at the scene of the accident and on the left hand side there was an additional tarmac by lane 6 feet in width which facilitated entrance into and exit from a side street and also a petrol station. When asked to mark the parked vehicles, the appellant driver drew three vehicles in the by-lane at the entrance to the side road, and indicated by an arrow that the pedestrian had come out from between two of the vehicles, and by a cross that the point of impact was some two feet into the 30 foot road and some 8 feet from the outside edge of the bye-lane.

The learned judge does not appear to have made a definite finding either way as to the presence of the parked vehicle in the by-lane, but evidently thought it unlikely that they were there. The important point is that even if the vehicles were there, they did not reduce the full width of 15 feet of the driver's left hand side of the road.

The learned judge rejected the appellant driver's evidence as to the point of impact, and I think rightly, because it conflicted with other evidence that the point of impact was nearer to the middle of the 30 foot road and further forward in the direction in which the car was traveling. The respondent was carrying some two pounds of meat when he was struck by the car, and the Inspector noted a scattering of pieces of meat on his sketch plan around the center line of the road but more on the near side than the off side. Accordingly the Inspector put the point of impact some 18 feet from the off-side edge of the road and 12 feet from the nearside of the 30 foot road, thus 3 feet from the center line. The skid marks of the car do not fully confirm this, because they do not commence until some 178 feet beyond the supposed point of impact, but they do indicate that the car traveled to the left from being close to the center of the road before coming to rest on and near the nearside edge of the 6 foot by-lane. The accuracy of the sketch plan was not challenged in crossexamination and the pedestrian's evidence does not conflict with it. The damage to the appellant's car was to the nearside wing, front nearside headlight and the windscreen. This was not inconsistent with the point of impact having been some 12 feet, or nearly so, from the nearside edge of the 30 foot road, if the appellant was driving with her off side close to the center line of the road.

The appellant admitted to driving at a speed of about 30 mph and the learned judge thought that excessive in the circumstances. It was a Saturday afternoon in a built-up area within the city. There were pedestrians on the footpath. Mr Shah has urged upon us that a driver cannot be expected to crawl along a clear

straight road, and he cited some cases where drivers have been exonerated from liability for colliding with pedestrians, including children, who have run into the road. Those cases are of no assistance to us here. There is no evidence that the respondent darted or ran into the road, or emerged suddenly from behind parked vehicles. The evidence on balance shows that he was well into the road when struck had admittedly had a few drinks, and as he was carrying a 2 pound package of meat, it would be unlikely that he was darting or dashing.

There are two elements in the assessment of liability, namely causation and blameworthiness. See Baker v Willoughby [1970] AC 467. In my opinion there can be no excuse for the driver's complete failure to see the pedestrian, or for the pedestrian's complete failure to see the car. I would not disagree with the learned judge's finding that the appellant's speed was excessive in the circumstances, but the failure to keep a proper look out would seem to be the predominant factor. I respectfully agree that the learned judge was right to apportion the blame 75 per cent to the appellant driver and 25 per cent to the respondent pedestrian.

I now turn to the matter of the general damages, and first to the component of pain and suffering and loss of amenities. The respondent was unconscious after the accident for three days, and was in hospital from March 17 to July 26, 1973, a period of over four months. He apparently suffered concussion but no fracture of the skull. Both femurs were fractured. At the time of the trial he could walk well without sticks or crutches, but a long walk tired him and he could not run. He suffered pain off and on in the right hip joint and in the site of the fracture of the right femur. His most serious injury was permanently and totally paralysed from shoulder to gingers, a clumsy and useless appendage as a surgeon described it. There was total sensory loss in the arm except for two small area near the top of the arm.

Giving judgment in a trial which ended in February 1979, the learned judge assessed the general damages for pain and suffering and loss of amenities at Kshs 160,000 (K£ 8,000). One of the grounds of appeal is that this figure is too high. By his notice of cross appeal the respondent submits that this assessment is so low as to require upward revision. The question before this court is whether the assessment which was made by the learned judge was correct in February 1979. If one considers the cases to which the leaned judge refers, and if one assumes that those cases were the only material cases to which he was referred, I would conclude that the learned judge's assessment was by no means ungenerous. There were tow English cases involving comparable injuries. In Monahan v Knowsley Engineering Ltd (No 9 - 163 in Kemp & Kemp, Vol 2, 4th Edition), a 1973 case, the, material assessment for serious injuries, principally the amputation of a left arm, was £ 6,250 by the trial judge and £ 7,500 on appeal. In Uddin v Associated Portland Cement Manufacturers (No 9 - 165 in Kemp & Kemp, ibid) a 1965 case, a man whose right arm was amputated was awarded £ 7,580 as total damages including loss of future a learning capacity. The learned judge in the case before us warned himself of the danger of following too closely the awards of foreign courts; see Kimothia v Bhamra Tyre Retreaders [1971] EA 81. The learned judge also clearly had in mind the need to take account of the continuing fall in the value of money over the material years. The learned judge then referred to two cases decided in Kenya. In Bhogal v Burbridge [1975] EA 285, the plaintiff suffered multiple injuries including fractures of a tibia, an ankle and a wrist. The material assessment for pain and suffering and loss of amenities by the court of appeal was Kshs 160,000 (K£ 8,000), the total general awarded by the High Court having been substantially reduced. On the other hand, in Mworia v Corrugated Sheets Ltd [1975] EA 240, Sir Dermot Sheridan J awarded a plaintiff, who had lost four fingers of his left hand in a factory accident and whose hand was consequently useless, Kshs 50,000 (K£ 2,500). The learned judge in this case was not to know in1979 that the measure of compensation for the loss of the use of a hand would rise in Mombasa from K£ 2,500 for a left hand in 1975 to K£ 11,250 for a right hand in 1982; see Otieno v Cabro Works Limited, Mombasa Civil Case 628 of 1978 (unreported), judgment delivered August 27, 1982).

Whatever the reason, material assessments made in other cases decided after 1979, to which we have been referred, suggest, even after making a downward allowance for inflation, that the assessment made by the learned judge was too low. Thus Wright v Bennet (Kemp ibid 9-161/1), B£ 20,000 in the case of young man whose right arm was paralysed and rendered virtually useless. In Smith v Miles Redfern (Kemp ibid 1982 supplement), April 1982, the material assessment for a totally clumsy right hand was B£ 12,000. In the case before us I would increase the assessment for pain and suffering and loss of amenities

from K£ 8,000 to K£ 10,000.

The accident occurred in March 1973. At that time the plaintiff's net earnings as an invoicing and dispatch clerk were Kshs 845 per month. In December 1973 the plaintiff was re-employed by his employers as an assistant storekeeper at a reduced wage. In March 1977 the plaintiff was suspected of pilfering and he was dismissed from his employment. As he did not contest his dismissal, it cannot be attributed to the accident.

He was still unemployed at the conclusion of the trial in February 1979. The parties are agreed that the plaintiff's actual loss of earnings between the date of the accident and the date of his dismissal were Kshs 11,256. The learned judge awarded the plaintiff 75% of that figure as special damages and in my view rightly. I do not agree with Mr Noad's submission that the plaintiff should recover some damages in respect of the period of his unemployment between March 1977 and the time of the trial. The plaintiff cannot blame the accident for his dismissal. The fact that his wages were less than at the time of the accident is irrelevant. There is no loss between March 1977 and February 1979 that he can prove to have been attributable to the accident and therefore recoverable as special damages.

In calculating general damages for loss of future earning capacity the learned judge estimated the plaintiff's loss of earnings capacity at 50%, took as the multiplier the figure of 12 years agreed by the parties, and applied those figures to the plaintiff's net salary as it was at the time of the accident, namely Kshs 845. The total figure came to Kshs 60,840 before deducting 25% for the plaintiff's contributory negligence. Mr Noad submits in his cross appeal that the general damages should be assessed at the time of the trial and that the plaintiff's net wages in February 1979 would but for the accident have been Kshs 1,480 per month. Mr Shah for the appellant submitted that the judge had no proper figure to go by. The plaintiff called as a witness one of the directors of the company which had employed him, a Mr Madan. Mr Madan said in evidence about the plaintiff's wages:

> "In 1973 his gross wage was Kshs 925 per month. If he were doing the same job now, he would roughly expect to earn Kshs 1,500 to Kshs 1,600 per month calculating at the rate of about 121/2% per annum. This is a very rough calculation and it assumes that he was doing the same job."

This witness was not cross examined.

In rejecting Mr Noad's submission, the learned judge said:

> "With respect, I do not agree with Mr Noad that I should take into consideration the prospective increases in the plaintiff's salary since those coupled with future inflation benefits (for which I am making no deductions) which the plaintiff can reasonably expect to obtain as a result of this award."

Here I think the learned judge is in error. General damages are to be assessed at the trial and on the evidence available at the trial. See Cookson v Knowles [1977] QB 913, [1979] AC 556.

The unchallenged evidence of Mr Madan was that in February 1979 the plaintiff would have been earning Kshs 1,500 to Kshs 1,600 per month. It seems clear to me from perusing the judge's notes that when Mr Shah suggested that the proper multiplier in this case was 12 years, a suggestion Mr Noad promptly accepted, Mr Shah was considering a multiplier to be applied at the time of the trial to a man then 42 years of age. At the hearing of this appeal Mr Shah did not suffer otherwise. I would take Kshs 1,500 as the appropriate figure for loss of monthly earnings, deduct Kshs 20 for Hospital Fund dues, and I would, as Chesoni Ag JA has done, add 5 percent to Kshs 1,480 to represent the employer's contribution to the plaintiff's account with the National/Security Fund. Mr Noad did not challenge the learned judge's assessment of the loss of future earning capacity at 50%. So the total figure, before deduction or contributory negligence, for loss of future earning capacity is K£ 5,598.

Accordingly I would award damages as follows:

(i) For pain, suffering and loss of amenities – K£ 7,500 (Kshs 150,000) being 75% of K£ 10,000.
(ii) For loss of future earning capacity K£ 4,198 Kshs 10 (Kshs 83,970) being 75% of K£ 5,598.
(iii) For actual loss of earnings before trial, K£ 432 Kshs 4.50 (Kshs 8,644.50) being 75% of Kshs 11,819.75.
(iv) For agreed fees for medical reports, Kshs 204.75 being 75% of Kshs 273

The total award I would make is Kshs 242,819.25. As neither party has appealed against the judge's awards of interest before and after trial, I would let those awards stand, except that the award of interest from March 26, 1979 until payment in full should be on Kshs 242,819.25 in place of the lesser sum awarded by the learned judge.

I would dismiss the appeal and allow the cross appeal to the extent indicated by the award I have proposed. I would award the costs of the appeal and cross appeal to the respondent.

As Kneller J A and Chesoni agree, it is so ordered.

JUDGMENT OF KNELLER, J A

Potter JA and Chesoni Ag JA have let me read in advance their judgments and I concur in their conclusions and Potter JA's proposed orders. I wish to add what follows, which does not, I think, needlessly echo what they say. Sachdeva J found that both Mrs Karangu, the appellant, and Mr Malele, the respondent, were at fault. Potter JA and Chesoni Ag JA have exhaustively set out the facts, which were also carefully considered by the learned trial judge and I need not repeat them. It is part of the relevant law with which I am concerned and it begins fifty years ago, in England, when Scrutton LJ held that a cyclist riding in the dark must be able to put up within the limits of his vision. Baker v Longhurst & Sons Ltd [1933] 2 KB 461, 468.

The very next year, however Lord Wright in Tidy v Bateman [1934] 1 KB 319, 322 declared:

> "Show that no one case is exactly like another and no principle of law can, in my opinion, be extracted from these cases. It is unfortunate that questions, which are questions of fact alone, should be confused by importing into them, as principles of law, a course of reasoning which has no doubt properly been applied in deciding other cases on other sets of facts."

and twelve years later Lord Greene MR pointed out that:

> "There is sometimes a temptation for judges in dealing with these traffic cases to decide questions of fact in language which appears to lay down some rule which appears to lay down some rule which users of the road must observe."

which he thought was a habit much to be deprecated. Morris v Luton Corporation [1946] 1 KB 114, 115.

Add to that the consideration that the doctrine of the "last opportunity" (to avoid the accident) has been obsolete since 1949: see Denning, LJ (as he then was) in Davies v Swan Motor Co (Swansea) Ltd [1949] 2 KB 291 322 - 4: and distinction can be drawn between negligence after seeing danger and negligence in not seeing it beforehand: Denning, LJ in Harvey v Haulage Executive [1952] 1 KB 120, 129 (CA) the two causes of the accident cannot be saved Hodson LJ (Ibid) 129: and so the trial judge was right to find both were at fault.

Furthermore, he found it was a case for contribution and in my view, we must accept that finding.

Then, in my judgment, it is unnecessary to come to any conclusion as to the precise speed which the appellant was traveling in her car and it is, instead, sufficient to say the she was going too fast to enable her to halt it in time to avoid hitting the respondent.

The trial judge saw and heard the witnesses. We have not; and, in my opinion, we are in no position to

substitute our findings of fact for those for those reached by him. See Worsford v Howe [1980] 1 WLR 1175 (CA).

So, I would not upset the trial judge's findings on liability or contribution.

When it comes to damages, costs and interest on both then I declare I agree with all that has fallen from the other members of this court and have nothing useful to add.

JUDGMENT OF CHESONI Ag. J A

The facts of this case have been fully set out in the judgment of Potter JA which I had the advantage of reading and with which I agree.

The accident in this case occurred at about 5.40 pm. It was during daytime. The appellant Isabella Wanjiru Karanja was driving a motor vehicle registration number KPB 27 and the respondent Washignton Malele was a pedestrian on and about Jogoo Road. The scene was not far from Agip Petrol station along the same road. Washington sustained fractures of both femurs and his left arm was so severely injured that it is now permanently paralysed. It has become a useless appendage. Sachdeva J who heard the case in the High Court found both parties negligent and apportioned blame between the appellant and respondent at 75% and 25% respectively. He awarded Washington General Damages of Kshs 165,630 and special damages of Kshs 8,849.25; the total sum of which is Kshs 176,016.50 which included costs of the suit and interest on the award and costs. Isabella has appealed against that judgment on eight grounds and Washington has cross-appealed on two grounds. Both the appeal and cross-appeal complain of the apportionment of liability and the quantum of damages.

The eye witnesses to the accident were three namely, Isabella, Washington and Inspector Kokonya, but only Isabella and Washington could say what happened for they were the only persons at the exact scene, inspector Kokonya having arrived there after the collision and Isabella had brought her motor vehicle to a halt. To determine the point of impact the court had to consider the evidence of the appellant and the respondent, the location where the meat Washington was carrying had failed and the sketch plan drawn by Inspector Kokonya. There were no evidentially useful skid marks for Isabella had no time to apply her brakes before the motor vehicle hit Washington. Isabella's account was that Washington emerged from her near side among parked cars, walked into her way and before she saw him he had been picked up by her motor vehicle and fallen inside it landing on the front passenger seat. In that process the windscreen of her motor vehicle broke. She did not hit him while he was at the center of the road. He was just getting into her left lane. He was drunk and heavily smelling of alcohol. Against that evidence Washington said that he had gone over Isabella's lane and was at the center of the road ready to cross the lane on her right. He looked to the left and it was clear of motor vehicles and then suddenly he was hit by a vehicle from his right side. It was Isabella's vehicle. He had not seen it when he saw a bus and police vehicle on his right side. He admitted the bus obstructed his observation father beyond it, though the police vehicle was behind that but. Both the appellant and respondent on their own word each showed that she and he was not keeping a proper lookout, and so far none of them can be said to blame more than the other.

The sketch plan drawn by inspector Kokonya was admittedly in evidence without any challenge by either party as to accuracy. It shows that Isabella was driving in her correct lane, but nearer the center line of the road when she reached Agip petrol station, and the accident occurred there. The vehicle is shown as having veered to the extreme nearside of the appellant. Pieces of meat are shown concentrated near the centerline of the road, but mostly on the appellant's near side. This only independent evidence indicates that the collision took place near the centre line rather than near the edge of the road on the appellant's near side rather than near the edge of the road on the appellant's near side.

The learned judge was in the circumstances, entitled to find as he did, that on the evidence before him the point of impact was near the middle of the road. To me that does not place onto the respondent any lesser degree of blame. Having entered the road he should have kept a proper lookout. The appellant's motor vehicle must not have been too far when he emerged onto the road or else she should have found him in the other lane and missed him. There was no evidence let alone suggestion that she drove in the right lane.

The learned Judge preferred the evidence of the respondent to that of the appellant. He had the advantage of seeing the parties and their witnesses. Isabella's demeanour did not impress him. He was entitled to say so, but even that rejection alone did not place any greater liability on Isabella than on Washington for both parties' unforgiven sin was their failure, total failure, to keep proper lookout. In my view it was not a suggestion of excessive speed, and, I do not agree that on evidence it was proved that the area was built up and there were pedestrians milling to and fro. In any event there was a zebra crossing nearby which the respondent ignored. There was nothing special about the day being a Saturday. What I find makes the distinction in their blameworthiness is the fact that Isabella had under her control a lethal machine when Washington. I agree with what Law JA said in Malde v Angira Civil Appeal No 12 of 1982 (unreported) that apportionment of blame represents an exercise of a discretion with which this court will interfere only when it is clearly wrong, or based on no evidence at all nor did he apply a wrong principle. I can find no reason for interfering with the learned judge's apportionment of liability in the proportions of 75% to the appellant and 25% to the respondent.

As to quantum of damages the respondent was earning a cross salary of Kshs 925 in 1973 when he was involved in the accident. His net salary was put at Kshs 845. General damages are in cases of this nature taken at the date of trial. In the English case of Cookson v Knowles [1977] 2 Llyod R 412, (1987) 2 WLR 978, the court of appeal said:

> "the correct way in time of inflation was to divide the award into two parts, the first part being the actual pecuniary loss up to the date of the trial and the second part being future pecuniary loss from the date of trial onwards."

The first part may be calculated arithmetically but the second part is calculated by taking the earning which the injured plaintiff would have been receiving at the date of trial and then using an appropriate multiplier. It is necessary to ascertain the plaintiff's earnings at the date of trial. No interest should be awarded on the lump sum awarded at the trial for pain and suffering and loss of amenities. I find the principles in Cookson v Knowles (supra) persuasive and would apply them here. The agreed actual pecuniary loss from the date of the accident to the date of the respondent's dismissal in March 1977 was Kshs 11,526. That figure also represents the actual pecuniary loss at the date of trial 75% of which is Kshs 8,644.50. Between March 1977 to the date of trial in 1979 the respondent lost his job because of his own fault so he gets no damages for that period. The learned judge fixed the loss of future earning capacity at 50% which was not disputed. He, however, calculated that loss on the basis of the respondent's earnings at the time of the accident. With respect to the learned Judge that was wrong as this should have been calculated by taking the earnings which the respondent would have been receiving at the date of trial which his employers put at between Kshs 1,500 and Kshs 1,600 per month. I would use the mean figure of Kshs 1,500 less the hospital Fund deductions of Kshs 20. As National Social Security Fund deductions are his savings payable to him on retirement it would be his income. So the 5% paid monthly bringing it to Kshs 1,555. The agreed multiplier was 12. Pecuniary future loss of earnings from the date of the trial is 1,555 x 12 x 50% = Kshs 111,960 (K£ 5,598). 75% of that figure is Kshs 83,970 - K£ 4,198 (Kshs 5).

The respondent's injuries were serious, certainly more serious than those in Malde v Angira ibid where the plaintiff suffered a serious injury to his right ankle, which required surgical intervention, resulting in deformity. The trial Judge's general damages of Kshs 75,000 were considered by this court in all the circumstances to be manifestly inadequate and substituted by a sum of Kshs 160,000. In Gakere & Another v Ngigi CA No 36 of 1980 (unreported) the respondent suffered comminuted fractures of the shaft of the femur, oblique fracture at the lower and of the right tibia at the ankle joint and loss of skin about the ankle. Nyarangi J's award of Kshs 198,000 being 90% of the award of Kshs 220,000 was not disturbed by this court. Gakere & Another v Ngigi (supra) was heard five years after Bhogal v Burbridge [1975] EA 283, where Mr Burbridge suffered multiple injuries in an accident, including comminuted fracture of the upper end of the left tibia, a fracture of the left ankle, a fracture of the left wrist, a cerebral concussion and a laceration of temporal region of the head. At the time of the trial some four years later not all the injuries had healed. This court reduced the general damages of Kshs 300,000 to Kshs 220,000. The present case was tried four years after the Bhogal v Burbridge (ibid) but a year before Gakere & Another v Ngigi (supra). I have given little consideration to the English cases cited on quantum of

damages because I did not find them useful to our circumstances. Considering that this case was tried in 1979; on its own circumstances and in view of the injuries sustained the award of Kshs 160,000 (£ 8,000) for general damages for pain, suffering and loss of amenities was inadequate and I would substitute it with Kshs 200,000 (£ 10,000). The respondent's entitlement of 75% is Kshs 150,000 (£ 7,500). I would not interfere with the agreed medical report fees. I would therefore award the respondent a total sum of Kshs 242,819.25 made up as follows:

a) For pain, suffering and loss of amenities 75% of Kshs 200,000 = Kshs 150,000
b) For actual pecuniary loss of earnings 75% of Kshs 11,526 = Kshs 8,644.50
c) For loss of future earning capacity 75% of Kshs 111,960 = Kshs 3,970
d) For fees on medical reports agreed 75% of Kshs 273 = 204.75

Total Kshs 242,819.25

As to interest I agree with the order proposed by Potter JA. For the reasons given I would dismiss the appeal with costs and allow the cross-appeal with costs only to the extent suggested in the above award.

Dated and delivered at Nairobi this 1st day of July, 1983.

K.D POTTER

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JUDGE OF APPEAL

A.A KNELLER

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JUDGE OF APPEAL

Z.R CHESONI

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Ag.JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR