



REPUBLIC OF KENYA



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Trans- National Bank Limited & 3 others v Kangwana & 5 others (Civil Appeal 94 of 2019) [2025] KECA 1590 (KLR) (3 October 2025) (Judgment)

Neutral citation: [2025] KECA 1590 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 94 OF 2019
W KARANJA, M NGUGI & JM NGUGI, JJA
OCTOBER 3, 2025**

BETWEEN

**TRANS- NATIONAL BANK LIMITED 1ST APPELLANT
KANES LIMITED 2ND APPELLANT
CHEMUSIAN LIMITED 3RD APPELLANT
MODERN KONDOO LIMITED 4TH APPELLANT**

AND

**JARED BENSON KANGWANA 1ST RESPONDENT
COMMUNICATIONS CENTRE HOLDINGS LIMITED 2ND RESPONDENT
SAMKOLIT LIMITED 3RD RESPONDENT
KAN LIMITED 4TH RESPONDENT
LOSPUK LIMITED 5TH RESPONDENT
EUROPA HOLDINGS LIMITED 6TH RESPONDENT**

(Being an appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (Msagha, J.) dated 31st July 2018 in H.C. Petition No. 2825 of 1997)

JUDGMENT

A. Introduction

1. This appeal arises from a long-running commercial dispute that was, at its core, about control of Kenya Television Network Limited (“KTN”) and ownership of certain radio and television equipment acquired for KTN’s use. The parties sought to settle the dispute by executing three instruments, all dated 11th March 1997:



- (i) a Memorandum of Agreement (“the Memorandum”);
 - (ii) Agreement No. 1; and
 - (iii) Agreement No. 2. These agreements are described in detail below.
2. Two decades later, based on a theory of breach of the three agreements, the High Court entered judgment for the 1st and 2nd respondents (the plaintiffs at trial) for KShs 127,089,425 “as prayed in the plaint plus costs and interest,” holding the 1st – 3rd and 5th defendants (the appellants herein) liable “jointly and severally.”

B. Background and the High Court Decision

3. The record shows that on 11th March, 1997 the parties executed the three settlement instruments as follows:
- a. The Memorandum of Agreement: It was executed by the shareholders of Trans-National Group Limited (including Kanes, Chemusian, Europa, Modern Kondoo, Losupuk, Kenyerere, Samkolit and Kan Limited) of the first part; by Trans-National Bank Limited (“the Bank”) of the second part; by Trans-National Group Limited of the third part; and by Europa Holdings Limited of the fourth part. Among other things, Clause B(ii) provided a final settlement package under which the Bank would write off part of interest due from shareholders and related companies, subject to specified payments, with “consideration of the Bank’s ownership of KTN which is the subject of a supplementary agreement.”
 - b. Agreement No. 1: It was between the two plaintiffs (Jared Benson Kangwana (JBK), Kenyerere Ltd and Communication Centre Holdings Ltd (CCH)) on the one hand and KTN, the Bank and Trans-National Group Limited on the other. Clause C(1) stipulated that KTN would within three months pay KShs 50,000,000 to JBK or Kenyerere or CCH, subject to conditions. It is not disputed that this KShs 50 million was eventually paid (albeit late and with interest for late payment) and that there was mutual withdrawal of proceedings as contemplated.
 - c. Agreement No. 2: It was between the shareholders (including Kanes, Chemusian, Europa, Modern Kondoo, Losupuk, Kenyerere, Samkolit and Kan Limited) of the first part, the two plaintiffs of the second part, and KTN of the third part. Its Clause B provided that “in furtherance of Agreement No. 1, the Shareholders shall within the next three (3) months pay to JBK or Kenyerere or CCH in kind a sum of KShs 127,089,425... subject to the conditions outlined in Clause C(1) of Agreement No. 1.” Agreement No. 2 expressly recited the disputes around KTN’s ownership and the equipment, and appended Agreement No. 1.
4. The plaintiffs later sued, claiming KShs 127,089,425 (the balance contemplated in Agreement No. 2) “together with interest thereon at 4% per month from 11th June, 1997 until payment in full,” damages for breach, and costs.
5. In defence, the Bank (the 1st appellant herein) and the shareholder-companies (2nd – 3rd appellants herein) pleaded, among other things, that
- (i) the Bank was not a party to Agreement No. 2;
 - (ii) the shareholders had no capacity to bind the Bank; and
 - (iii) the “in kind” clause was uncertain/unworkable and, thus, unenforceable.



6. After hearing, the High Court found that the three instruments were intended to be read together; that the plaintiffs had performed their obligations (withdrawal of suits, return of equipment, relinquishment of interests in KTN); that KTN had paid the KShs 50 million under Agreement No. 1; and that the Bank was “central to the entire transaction” as the ultimate beneficiary. The Court concluded that the shareholders acted through implied authority to commit the Bank under Agreement No. 2. On “in kind consideration,” the Court held the clause was not uncertain, given the specific figure and timelines and the partly performed nature of the overall settlement.
7. The learned Judge then entered judgment “in favour of the plaintiffs against the 1st, 2nd, 3rd and 5th defendants jointly and severally in the sum of KShs 127,089,425 as prayed in the plaint plus costs and interest.” A formal decree was later issued awarding interest at 4% per month from 11th June 1997 until payment in full.

C. The Appeal and Submissions of the Parties

8. Aggrieved, the present appellants lodged this appeal. During the pendency of the appeal, the 1st appellant and the two plaintiffs (1st and 2nd respondents) executed a Deed of Settlement dated 24th December, 2019 (“the Deed”). Clause 2.2 of that Deed contains what appears to be a mutual release cast in broad terms and became a pivotal issue in this appeal.
9. The appeal was argued by way of written submissions followed by oral highlights. The oral hearing was in two sessions. The first plenary session was on 24th March, 2025 when Mr. Ohaga, Senior Counsel, appeared together with Mr. Isaac Keeche, for the appellants while Mr. Kiragu, Senior Counsel, appeared together with Mr. Koyyoko for the 1st and 2nd respondents. During that session, the Court learnt, for the first time, about the Deed of Settlement. Counsel for the 1st and 2nd respondents undertook to make it available to the Court, and he did. Hearing resumed on 2nd April, 2025 when the advocates addressed the effect of the Deed. The appearances were the same during the resumed hearing.
10. The appellants ultimately invited us to allow the appeal principally on five points: first, that the High Court erred in finding that Trans- National Bank Limited (the 1st appellant) was bound by Agreement No. 2 on the basis of “implied authority” of its shareholders; second, that the agreements were too indefinite to be enforced; third, that the High Court erred in granting a decree “jointly and severally” when the pleadings sought relief “jointly”, and parties are bound by their pleadings; and fourth, that even if liability stood, the award of “4% per month from 11 June 1997” was erroneous because neither statute nor contract provided such pre-suit interest, and the phrase “plus costs and interest” in the dispositive paragraph could only mean interest at court rates under section 26 of the [Civil Procedure Act](#) from the date of suit. Finally, although not in their original grounds of appeal, the appellants argued that Clause 2.2 of the Deed released all claims not only against the 1st appellant but, by its wording and in light of the pleadings, also as against the remaining appellants.
11. Importantly, on the first ground initially raised in the appeal — whether the learned Judge erred in holding that the 1st appellant was bound by Agreement No. 2 through “implied authority” of shareholders because it was the “ultimate beneficiary” — counsel for the appellants expressly conceded that ground before us during the oral hearing. Given the dispositive effect of the Deed, we record the concession and refrain from pronouncing on that question.
12. On the first issue, the appellants stressed that the Bank was not a signatory to Agreement No. 2 and that its shareholders had no capacity to bind it. They relied on the doctrine of separate legal personality established in *Salomon v. Salomon & Co. Ltd* [1897] AC 22 (HL) and the principle in *Macaura v. Northern Assurance Co Ltd* [1925] AC 619 (HL), that a company is distinct from its shareholders.



- Only duly authorized directors or agents could bind the Bank. No such authority or ratification was shown. They further cited the doctrine of privity as laid out in *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] AC 847 (HL) and *Scruttons Ltd v. Midland Silicones Ltd* [1962] AC 446 (HL), as well as the Kenyan authority of *Agricultural Finance Corporation v. Lengetia Ltd & Another* [1985] eKLR, to argue that one cannot sue or be sued on a contract to which it is not a party.
13. On the second issue, the appellants contended that Agreement No. 2 was unenforceable because it required the shareholders to pay KShs 127,089,425 “in kind,” a phrase so vague as to be incapable of creating binding legal obligations. Consideration in law, they emphasized, must be real and certain. They relied on *Chitty on Contracts* (28th ed.), and cases such as *Barclays Bank Ltd v. Patriotic Guards Ltd* [1971] EA 396 (CAK), and *King’s Motors (Oxford) Ltd v. Lax* [1946] KB 322, for the principle that courts will not enforce agreements that are uncertain in their essential terms. In their view, the agreement lacked clarity and certainty, and thus failed for indefiniteness.
 14. On the third issue, the appellants submitted that the award of interest at 4% per month from June 1997 was both punitive and without legal foundation. Agreement No. 2 contained no interest clause, and the respondents had not proved any statutory, contractual, or customary entitlement to such interest. Section 26 of the *Civil Procedure Act* confers discretion on the court only to award reasonable post-suit interest, usually at court rates, unless a specific contractual entitlement is proved. They cited *Gulam Hussein Nazerali Kassam v. French Somaliland Shipping Co Ltd* [1960] EA 128 (CA), *Alba Petroleum Ltd v. Total Marketing Kenya Ltd* [2016] eKLR, and other authorities for the principle that pre-suit interest must be specifically pleaded and proved. The High Court’s reliance on the omnibus phrase “as prayed in the plaint plus costs and interest” could not justify importing the exorbitant 4% monthly rate claimed.
 15. The appellants further argued that the High Court erred by entering judgment against them “jointly and severally” for the decretal sum of KShs 127,089,425 when, in fact, the plaintiffs’ pleadings had only sought joint relief. The plaint, they contended, had consistently framed the claim as a single joint demand against the defendants and had not prayed for liability to be apportioned or imposed in the alternative. By departing from the relief sought and issuing a decree in a different form, the trial court overstepped its remit and granted relief outside the scope of the pleadings.
 16. They stressed the well-established principle that parties are bound by their pleadings and that a court must pronounce judgment only on issues that arise from the pleadings and evidence. A court cannot rewrite or recast the case for the parties. In support of this principle, they relied on authorities such as *Independent Electoral and Boundaries Commission & Another v. Stephen Mutinda Mule & 3 Others* [2014] eKLR and *Galaxy Paints Co. Ltd v. Falcon Guards Ltd* [2000] eKLR, which emphasize that a trial court’s duty is circumscribed by the pleadings. On this basis, they argued that the decree of “joint and several liability” was not only unpleaded but also prejudicial, as it exposed each appellant to the full burden of the judgment, contrary to the manner in which the claim had been framed.
 17. However, during the oral hearing of this appeal, counsel for the appellants expressly abandoned the first ground relating to the Bank’s liability under Agreement No. 2. The appellants, instead, placed their strongest reliance on the Deed of Settlement executed in 2019 between the 1st appellant and the plaintiffs, particularly Clause 2.2, which they argued released all the appellants from liability by virtue of its broad and inclusive language.
 18. The 1st and 2nd respondents supported the judgment of the High Court and urged that it should be upheld. Their central argument was that the three instruments executed on 11th March, 1997 — the Memorandum of Agreement, Agreement No. 1, and Agreement No. 2



- formed a composite settlement arrangement intended to resolve the disputes between the parties over control of KTN and related assets. In their view, the documents had to be construed together, and when so read, they established binding obligations enforceable against the appellants.
19. On the question of the Bank’s liability under Agreement No. 2, the respondents submitted that although the Bank was not a formal signatory, the transaction was for its benefit and was structured with its knowledge and participation. They invoked exceptions to the doctrine of privity, citing *Agricultural Finance Corporation v. Lengetia Ltd & Another* [1985] eKLR and *Beswick v. Beswick* [1968] AC 58 (HL), to argue that third parties can, in appropriate cases, enforce contracts made for their benefit. The Bank, they argued, was the “ultimate beneficiary” of the overall arrangements and could not evade liability by standing behind its shareholders.
 20. On the alleged uncertainty of Agreement No. 2, the respondents contended that the agreement was not void for indefiniteness. The sum of KShs 127,089,425 was expressly stipulated; and the mode of performance “in kind” was not too vague to defeat enforcement, especially since the agreement was partially performed. They pointed out that the KShs 50 million under Agreement No. 1 had been paid, that they had surrendered equipment and withdrawn legal proceedings, and that the appellants had enjoyed the benefits of these acts. Partial performance, they argued, confirmed that the obligations were sufficiently certain to be enforceable. In this regard, they relied on general principles of contract law as restated in *Chitty on Contracts* and cases such as *Courtney & Fairbairn Ltd v. Tolaini Bros (Hotels) Ltd* [1975] 1 WLR 297, stressing that a court should avoid defeating commercial bargains merely because some terms are open-textured.
 21. On the issue of interest, the respondents defended the High Court’s award. They argued that they had pleaded interest at 4% per month in their plaint, and the learned Judge, in granting judgment “as prayed,” was entitled to award it. They cited *Gulam Hussein Nazerali Kassam v. French Somaliland Shipping Co Ltd* [1960] EA 128 and *Prem Lata v. Peter Musa Mbiyu* [1965] EA 592 for the proposition that courts have discretion in awarding interest, including pre-suit interest, where it has been specifically claimed and justified. They further submitted that since the appellants had withheld payment for more than two decades, the high rate was justified as compensation for the time value of money.
 22. Turning to the appellants’ criticism of the form of relief granted by the High Court, the respondents maintained that the High Court was right to hold the appellants “jointly and severally” liable. They argued that the appellants had collectively participated in the agreements and shared responsibility for their performance. In such a case, the court was entitled to frame the decree in a way that gave full effect to the obligations undertaken. According to the respondents, the appellants could not evade liability by pointing to the language of the plaint, since the substance of the agreements and the evidence established collective responsibility.
 23. The respondents also emphasized that the appellants had approached the matter with unclean hands, benefiting from the agreements while refusing to honour their obligations. In their view, equity and justice required the enforcement of Agreement No. 2 in its entirety, with the Bank and the shareholder companies held liable for the balance of KShs 127,089,425 plus the interest prayed.
 24. Finally, the respondents dismissed the appellants’ reliance on the Deed of Settlement executed between the 1st appellant and the 1st and 2nd respondents. They argued that this Deed was limited to those parties and could not discharge the other appellants from liability. Clause 2.2, they maintained, should be construed strictly and not extended to shield other companies or individuals who were direct parties to the High Court suit.



D. Issues and Standard of Review

25. From the record, the arguments, and the subsequent Deed, four issues arise for our determination:
- i. Whether the agreements under litigation and particularly Agreement No. 2, were too indefinite to be enforced as contracts.
 - ii. What is the effect of Clause 2.2 of the Deed of Settlement, read with the form of the pleadings and relief at the High Court?
 - iii. Whether the High Court erred in granting judgment “jointly and severally” where the plaintiff sought joint relief only.
 - iv. The proper construction of the High Court’s award of “plus costs and interest,” and, specifically, whether 4% per month from 11 June 1997 was lawfully awardable.
26. We do not reach or determine the now-conceded ground on
- “implied authority,” nor do we make any determinations that would pre-empt any future applications between parties not before us on any distinct issues.
27. Being a first appeal, this Court is enjoined to re-evaluate the evidence on record and the law, and to arrive at its own independent conclusions. In doing so, we remain mindful that the trial judge had the advantage of seeing and hearing the witnesses and thus of assessing their credibility and demeanor (*Selle v. Associated Motor Boat Co. Ltd.* [1968] EA 123). At the same time, this Court will not lightly interfere with findings of fact by the trial court unless it is shown that such findings were based on no evidence, were grounded on a misapprehension of the evidence, or that the trial judge demonstrably acted on wrong principles in reaching them (*Jabane v. Olenja* [1968] KLR 661).

E. Analysis

a. Indefiniteness and Uncertainty of the Agreements

28. The appellants argued that Agreement No. 2, and in particular the “in kind” clause, was void for uncertainty and incapable of enforcement. They pointed to the words requiring the appellants’ shareholders to pay the sum of KShs. 127,089,425 “in kind” within three months as creating an uncertain obligation.
29. We are not persuaded that the arrangements were void for uncertainty. Even if the phrase “in kind” might, in isolation, appear imprecise or vague, the settlement architecture was already being performed: Agreement No. 1 was implemented (the KShs 50 million was paid with late-payment interest), the parties withdrew suits, equipment was returned, and control over KTN shifted consistently with the Memorandum. Partial performance of a bargain can crystallize the parties’ commercial intention and supply the practical content to terms that might otherwise look open-textured and indefinite. The law has long recognized that partial performance strengthens the enforceability of an agreement, even where certain clauses might otherwise appear vague. Courts are reluctant to declare contracts void for uncertainty where the parties’ conduct demonstrates mutual understanding of obligations. That approach is reflected in the well-known English authorities often treated as persuasive in our courts: *Hillas & Co Ltd v Arcos Ltd* [1932] All ER Rep 494 (past dealings and performance used to give business efficacy to an apparently loose option) and *Foley v Classique Coaches Ltd* [1934] 2 KB 1 (long performance under an agreement to agree on price led the court to imply a reasonable term rather than strike the bargain down). Read as a composite and in light of what the parties actually did, the figure



(KShs 127,089,425), the timelines, and the matrix of obligations render Agreement No. 2 sufficiently certain to enforce. In short, partial performance here cures any arguable vagueness; the parties' conduct demonstrates a concluded bargain, not an inchoate negotiation.

30. Further, the contra proferentem rule dictates that any ambiguity should be construed against the drafter of the contract. The agreements here were prepared under the appellants' direction; they cannot rely on alleged uncertainty of their own making to escape liability.
31. We, therefore, agree with the respondents that the agreements were not void for uncertainty or indefiniteness. They were sufficiently clear, were intended to be read together, and were partly executed in ways that left no doubt about their meaning and effect.

b. The Effect of the Deed of Settlement

32. As we alluded to earlier, after the appeal was lodged, the 1st appellant (the Bank) and the two plaintiffs executed a Deed of Settlement dated 24th December, 2019. The Deed of Settlement was not part of the Record of Appeal but was made available to the Court during a mention of the appeal after the oral arguments had been heard. Both parties were given an opportunity to address the impact of the Deed of Settlement on the appeal.
33. Clause 1 of the Deed provided for payment of KShs 267,000,000 by 31st January, 2020. Clause 2.1 recorded that, subject to payment, each side "does not have any claim whatsoever or right of action of any kind against each other." Clause 2.2 then stated (emphasis added) that, subject to clause 2.1, to the extent any such claim or right of action exists or may exist, "each of the Plaintiffs and TNB irrevocably and unconditionally waives such claim or right of action and releases and forever discharges each other, their current shareholders, directors, officers, agents, assigns and employees from all and any liability in respect thereof." Clause 7 provided that "each Party shall bear its own costs and expenses arising from the High Court case and the Civil Appeal and in connection with the negotiation, preparation and performance of the Deed."
34. The Deed is between the 1st and 2nd respondents and the 1st appellant. The payment obligation is theirs inter se. Clauses 2.1 and 2.2 are, however, cast widely: each side (the 1st and 2nd respondents on the one hand and the 1st appellant, on the other) not only release "each other" but also "their current shareholders, directors, officers, agents, assigns and employees" from "all and any liability" in respect of claims that either side has or may have "in connection with" the High Court judgment and decree.
35. Two points are decisive. First, this suit, as pleaded, was a joint claim by the two plaintiffs (the 1st and 2nd respondents) and the relief — on liability for the KShs 127,089,425 — was sought jointly. The decretal sum was not pleaded as severable between defendants. The form of pleading matters. Where a claim is framed and prosecuted jointly, and the plaintiffs thereafter compromise that claim with one defendant through a release that — by its own breadth — extends to that defendant's "current shareholders, directors, officers, agents, assigns and employees," the court should, absent contrary contractual or statutory constraint, give the settlement business efficacy and avoid fragmenting the very joint cause of action the plaintiffs chose to advance.
36. Second, Clause 2.2 of the Deed on its plain text is not confined to TNB (the 1st appellant) alone. It extends the release and discharge to TNB's "current shareholders, directors, officers, agents, assigns and employees." On the trial record, the 2nd – 4th appellants were both participants in the suite of settlement instruments and stakeholders situated within the transactional structure that culminated in TNB's ownership/control position over KTN. The Deed itself was negotiated and executed after the High



Court judgment and expressly settles “any and all claims the Plaintiffs have or may have against TNB in connection with the High Court Judgment and High Court Decree” and then, via Clause 2.2, forever discharges not only TNB but also those within the enumerated relationship classes. Put differently: the release is drafted to be derivative, capturing those whose liability, if any, was alleged to arise with or through TNB in relation to the same controversy.

37. The 1st and 2nd respondents elected, for their own commercial reasons, to define the release broadly. They cannot now say it binds TNB (the 1st appellant) alone but leaves intact the same joint claim against actors included within the enumerated classes, while at the same time insisting on a joint recovery they pleaded as indivisible. Courts should, as a matter of principle, uphold accord and satisfaction and compromise that conclusively resolves litigation, avoids inconsistent or duplicative liabilities on a single controversy, and respects the parties’ own drafting.
38. We, therefore, hold that, by virtue of Clause 2.2 and the joint framing of the claim and relief, the Deed extinguished the 1st and 2nd respondents’ claim as against all appellants in this appeal. In the alternative, and reaching the same practical result, to the extent that the High Court judgment had imposed liability in a form (“jointly and severally”) that the respondents had not pleaded, the joint nature of the pleaded claim means that compromise with one in the terms of Clause 2.2 satisfies and discharges the entirety of that claim in this suit.
39. For completeness, Clause 7 of the Deed provides that each Party (i.e., the 1st and 2nd respondents and the 1st appellant) shall bear its own costs and expenses arising from the High Court case and the appeal and in connection with the Deed. We give effect to that covenant as between those Parties.

c. Whether the Liability was “Joint and Several”

40. We have already alluded to this issue above. On this issue, the appellants argued that the High Court fell into error by entering judgment “jointly and severally” when the plaint had only prayed for relief in joint terms. They stressed that this amounted to granting a form of liability that was not pleaded. The respondents, for their part, contended that the decree properly reflected the nature of the obligations under the agreements and that, in any event, no prejudice was occasioned.
41. We find merit in the appellants’ challenge. The plaint expressly sought judgment for the sum of KShs. 127,089,425 jointly against the defendants; there was no prayer for a decree in “joint and several” terms. It is trite that parties are bound by their pleadings and a court has no jurisdiction to grant a relief that was neither sought nor proved. This principle has been consistently affirmed by this Court: see *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR, where the Court emphasized that “a court of law will not and cannot determine an issue which was not the subject of pleadings”; and *Galaxy Paints Co. Ltd v Falcon Guards Ltd* [2000] eKLR, which held that “it is trite law that issues for determination in a suit generally flow from the pleadings and a court cannot pronounce judgment on an issue that has not been pleaded.” By granting a “joint and several” decree where only joint liability had been pleaded, the learned Judge stepped outside the parties’ own case. That was an error, and it reinforces our conclusion that the decree as framed cannot be sustained.

d. “Plus costs and interest”: pre-suit and post-suit interest

42. Even if liability could stand (and we have reached the conclusion that it could not, given the Deed), we would, in any event, agree with the 1st appellant’s construction of the interest award.
43. Section 26(1) of the *Civil Procedure Act* provides that, where and in so far as a decree is for the payment of money, the court may order interest at such rate as it deems reasonable on the principal sum adjudged



from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period before the institution of the suit, and further interest thereafter.

44. Two propositions follow. First, pre-suit interest must rest on a substantive law foundation — typically contract, statute, or trade usage — and must be pleaded and proved. Second, absent such foundation, the court’s discretion is to award post-suit interest (usually at court rates) from the date of suit.
45. Here, Agreement No. 2 did not stipulate any interest rate, let alone 4% per month (48% p.a.). The respondents did not prove any contractual, statutory, or customary basis for such pre-suit interest from 11th June, 1997. The learned Judge’s omnibus phrase “as prayed in the plaint plus costs and interest” cannot properly be read as a judicial adoption of the pre-suit rate claimed in the plaint without evidential underpinning. Properly construed, and consistently with section 26 of the *Civil Procedure Act*, it would only sustain post-suit interest at a reasonable rate (court rates) from the date of filing to the date of payment.
46. Our conclusion on the issue of interest is, therefore, that, had liability stood, the award of 4% per month from 11th June 1997 was not maintainable in law based on the record. Given our determination above, this issue is moot, anyway.

F. Disposition

47. For the reasons given above, this appeal succeeds:
 - i. The Judgment and Decree of the High Court (A. Mbogholi Msagha, J., as he then was) dated 31st July 2018 in HCCC No. 2825 of 1997 are set aside.
 - ii. In their place, and giving effect to the Deed of Settlement executed on 24th December, 2019 between the 1st appellant and the 1st and 2nd respondents, it is ordered that the suit as against all the appellants herein is marked as settled/compromised and is hereby dismissed, the plaintiffs/1st and 2nd respondents having, by Clause 2.2, released and forever discharged the appellants from “all and any liability” in connection with the High Court judgment and decree.
 - iii. For the avoidance of doubt, and in the alternative, the High Court’s formulation of liability “jointly and severally” was in error as it was not pleaded; the claim having been framed and prosecuted jointly, the compromise reached with the 1st appellant extinguishes that joint claim against all the appellants in this appeal.
 - iv. On interest, we hold (obiter) that an award of 4% per month from 11th June, 1997 lacked a legal foundation on the record and could not be sustained; “plus costs and interest” in the dispositive paragraph, properly construed under section 26 of the *Civil Procedure Act*, would bear only post-suit interest at court rates from the date of suit.
 - v. On costs, in line with Clause 7 of the Deed of Settlement, as between the 1st appellant and the 1st and 2nd respondents, each party shall bear its own costs in the High Court and in this appeal. As between the 2nd – 4th appellants and the 1st and 2nd respondents, and given the global compromise and our findings and conclusions above, we order that each side shall bear its own costs in the High Court and in this appeal.
48. Those shall be the orders of the Court.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2025.

W. KARANJA



.....
JUDGE OF APPEAL

MUMBI NGUGI

.....
JUDGE OF APPEAL

JOEL NGUGI

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

