Mutunga v Mukadili (Civil Appeal E104 of 2024)
[2025] KEHC 13940 (KLR) (6 October 2025) (Judgment)

Neutral citation: [2025] KEHC 13940 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E104 OF 2024

RN NYAKUNDI, J

OCTOBER 6, 2025

BETWEEN

RODNEY MUTUNGA ..... APPELLANT

AND

MOSES MUKADILI ..... RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. P.N Areri SPM delivered on 30/04/2024 in Eldoret CMCC No. E1011 of 2021)

JUDGMENT

Background

1. The background of this Appeal is that the Respondent sued the Appellant vide an Amended Plaint dated 11th November 2021 seeking compensation in terms of general damages for pain, suffering, loss of amenities and future medical expenses and special damages of kshs. 7,650 for personal injuries suffered following a road traffic accident and moreover sought costs of the suit and interest at court rates. The Respondent's case was that on and or about the 6/5/2021, Appellant's driver/agent/servant and/or employee so negligently and carelessly drove, managed and/or controlled motor vehicle registration number KBN 964F/ZE 0316 Mercedes Benz causing it to hit motor tractor KBN 431F/ZB 6387 New Holland from behind causing injuries to the Respondent who was the driver of the said motor tractor. The Respondent averred that he sustained serious bodily injuries and suffered loss and damage. The Respondent listed the following injuries sustained; blunt injury to the scalp, deep cut wound on the forehead, blunt injury on the face, avulsion of one lower incisor tooth, fracture right femur, blunt injury to the right leg and the then complains about pain on the right lower limb.

2. The Appellant filed a Statement of Defense dated 4th April 2022 traversing all the allegations of fact contained in the amended plaint and put the Appellant to strict proof thereof. The matter proceeded for a full trial and judgement was entered on 30th day of April 2024. In terms of liability, the trial

Magistrate held that, "on the basis of that evidence, I am satisfied that the Plaintiff has proved his case on a balance of probability that the defendant is liable and I will apportion liability at the ratio of 10:90 in favour of the Plaintiff against the defendant and hold the defendant liable at 90%." In terms of quantum, the trial Magistrate held that, "I therefore enter judgement for the Plaintiff against the Defendant for kshs. 1,007, 650/= with interests thereon from the date of judgement plus the costs of the suit."

3. The Appellant herein being aggrieved and dissatisfied with the judgement and decree delivered on 30/04/2024 by Hon P.N. Areri (SPM) preferred this appeal vide a Memorandum of Appeal dated 9th day of May 2024 based on 6 grounds as follows: -

    a. That the learned trial magistrate erred in law and fact in finding and/or holding the appellant 90% liable without considering the fact that the Respondent did not prove his case on a balance of probabilities.

    b. That the learned trial magistrate erred in law and in fact in failing to analyze the facts and the evidence on record in making a determination on the issue of liability thereby arriving at an erroneous decision on liability.

    c. That the learned trial magistrate erred in law and fact in adopting the wrong principles in making a determination on the general damages payable to the Respondent.

    d. That the learned trial magistrate erred in law and fact in failing to take into account relevant factors and/or be guided by relevant authorities with comparable injuries to the injuries sustained by the respondent thereby awarding general damages that were manifestly excessive in the circumstances.

    e. That the learned trial magistrate erred in law and in fact in awarding Kshs. 900,000/=for general damages which is inordinately high in view of the injuries sustained by the respondent.

    f. That the learned trial magistrate erred in law and fact by failing to consider the appellant's submissions on both liability and quantum thereby arriving at an erroneous decision.

4. The Appellant sought the following prayers from his memorandum of appeal: -

    a. This appeal be allowed.

    b. That the subordinate court's judgment on liability be set aside and substituted with an order dismissing the respondent's case with costs to the appellant.

    c. That without prejudice to (b) above, this Honourable Court be pleased to set aside the general damages awarded to the respondent herein and/or re-assess the same downwards.

    d. The costs of this appeal be awarded to the Appellant.

5. The Appeal was canvassed by way of written submissions.

Appellants Written Submissions.

6. The learned counsel for the Appellant, Mr. Onyinkwa, submitted that the suit filed in Eldoret CMCC No. E1011 of 2021 revolved around an accident involving the appellant's motor vehicle registration KBN 964 F/ZE 0316 and the respondent's motor vehicle registration KBN 431F/ZB 6387 (tractor). The respondent alleged that the appellant's vehicle was negligently driven and hit the tractor from behind, causing him bodily injuries. The appellant denied the allegations of negligence. Both parties presented witnesses giving their respective versions.

7. On appeal, counsel condensed the grounds into two issues: (i) whether the trial court was right in apportioning liability at 90%:10% in favour of the respondent, and (ii) whether the trial court applied correct principles in awarding damages and whether the award was manifestly excessive. Counsel reminded the Court of its duty as a first appellate court, citing Selle & Another v Associated Motor Boat Co. Ltd (1968) EA 123 and Peters v Sunday Post Ltd (1958) EA 424.

8. On liability, counsel submitted that the respondent testified he was driving the tractor when he was hit from behind but admitted under cross-examination that he could not tell what happened. PW2, a police officer, testified that the tractor was attempting to join a feeder road while the appellant's vehicle was overtaking, and the collision occurred on the right lane. The appellant's driver testified that he saw the tractor 100 metres ahead, it had stopped and was offloading people, and as he overtook, the tractor suddenly drove into his path.

9. The trial magistrate, however, held the appellant 90% liable without proper consideration of the evidence, despite noting that the tractor had stopped on the road while loaded with sugar cane. Counsel argued that overtaking is not an offence and that the accident was caused by the tractor suddenly moving into the appellant's path. The respondent's own witness (PW2) corroborated this. Counsel faulted the trial magistrate for failing to give a reasoned decision, citing Isaac Kimani Kanyeki v Reuben K. Musyoka & Another (2021) eKLR. He maintained that the respondent was wholly to blame, or at least 90% liable.

10. On quantum, counsel submitted that the respondent pleaded injuries including blunt injury to the scalp, deep cut wound on the forehead, blunt injury to the face, avulsion of one tooth, fracture of the right femur, and blunt injury to the right leg. However, medical reports by Dr. Sokobe and Mr. Z. Gaya indicated the injuries were recovering well with no permanent incapacitation. The award by the trial court was therefore inordinately high. Citing Butt v Khan (1981) KLR 349 and Kenya Power & Lighting Co. Ltd v Kemei (2017) eKLR, counsel urged that a fair award would be between Kshs. 300,000/= and Kshs. 350,000/=, referring to comparable cases such as Reamic Investment Ltd v Joaz Amenya Samuel (2021) eKLR, Rayan Investment Ltd v Jeremiah Mwakulcgwa Kasha (2017) eKLR, and Ibrahim Kalewa Hewa v Estieel Company Ltd (2016) eKLR.

11. In conclusion, counsel submitted that the appeal is merited and should be allowed, the respondent's suit dismissed with costs, and the appellant awarded costs of the appeal.

Respondent's submissions

12. The learned counsel for the Respondent, Mr. Nyolei, submitted that the twin issues for determination are: -

    a. Whether the trial magistrate erred in holding the appellant 90% liable, and

    b. Whether the award of Kshs. 900,000/= in general damages was inordinately high to warrant interference by this Honourable Court.

13. On liability, counsel argued that the respondent had testified that the appellant's driver failed to keep a safe distance and to drive cautiously in a busy market centre, and that the accident would have been avoided had he exercised reasonable care. PW2, the police officer, corroborated this by blaming the appellant's driver, noting that the tractor was ahead and was hit from behind while attempting to join a feeder road. Counsel emphasized that traffic laws require a safe distance at all times and, given the appellant had seen the tractor 100 metres ahead, he ought to have slowed down. The respondent had discharged his burden of proof, and the apportionment of liability at 90% against the appellant was proper and justified.

14. On quantum, counsel submitted that the award of Kshs. 900,000/= was not inordinately high given the nature and severity of the injuries sustained, including blunt injuries to the scalp, face and leg, a deep cut wound on the forehead, an avulsed tooth, and a fractured femur. These amounted to grievous harm, and the trial court properly exercised its discretion. Counsel relied on Odinga Jackson Ouma v Maureen Achieng Odera (2016) eKLR which emphasized that comparable injuries should attract comparable awards and on authorities such as Henry Ngila v HK (minor) [2021] eKLR, Ndungu & Another v Munene [2022] KEHC and Jackson Mbaluka Mwangangi v Onesmus Nzioka & Another [2021] eKLR where awards in the range of Kshs. 600,000/= to 800,000/= were granted. Considering inflation and the gravity of injuries, the award of Kshs. 900,000/= could not be termed excessive.

15. In conclusion, Mr. Nyolei urged this Honourable Court to dismiss the appeal with costs, uphold the trial court's findings on both liability and damages and prevent the appellant from frustrating the respondent's enjoyment of the fruits of his judgment.

Analysis and Determination

16. The duty of an appellate court, especially when dealing with a first appeal, is to undertake a comprehensive and independent re-assessment of the evidence presented before the trial court and to arrive at its own conclusions. While it is not bound by the factual findings of the trial magistrate and may reach different conclusions where the trial court misapprehended the evidence or failed to consider relevant circumstances and probabilities, the appellate court must nonetheless remain mindful that the trial court had the distinct advantage of directly observing the witnesses' demeanor and hearing their testimony firsthand as elucidated in the cases of Mbogo and Another v Shah [1968] EA 93 & Selle and Another Vs Associated Motor Boat Co. Ltd (1968) EA 123.

17. I have read and considered the memorandum of appeal and the parties' submission. The crux of this appeal is purely based on two (2) limbs being on liability and quantum. I will deal with the issue of liability first.

Liability

18. The appellant has argued that the trial Court misdirected itself at apportioning liability against the Appellant at 90% despite overwhelming evidence to the contrary. At the point of filing suit, by dint of Section 107(1) and 108 of the *Evidence Act* Cap 80 Laws of Kenya, the burden of proof lay with the Plaintiff who had sought the relief of this Court. He then tendered his evidence and blamed the Appellant for the accident. The burden of proof then shifted to the Appellant to rebut the plaintiff's case. Upon perusal of the proceedings, it is not in dispute that the said accident occurred on 6th May 2021.

19. During the course of trial, I note that PW1 Moses Mukadili, the Respondent herein testified as follows; "I used to be a tractor driver. On 6.5.2021, I do recall I was coming from Magut carrying care seedlings heading to Lwandeti. I was driving tractor. When I got to Mukhonje market, I was hit from behind. I wrote a statement which I ask the court to adopt. I was hit by a lorry trailer. I did a search to find out the owner.... I have seen the statement of the driver of the track. It was not raining and I had not stopped in the middle of the road." In cross examination, PW1 testified as follows; "I was driving a tractor. It was about midday. I was heading to webuye. I was on the left side of the road. The trailer which hit me was behind me, I just heard a bang behind the tractor. I lost consciousness and woke up in hospital. I found the trailer at the police station, I cannot tell what happened. The accident occurred at the market, it was a Thursday and there were many people. None of them has come forward to be my witness."

20. PW2 IP Assah Poghone testified as follows in the trial court, "I am No. 237974 IP Assah Poghone. I am based at Turbo Traffic Base. I am here in respect of a road traffic accident which occurred on 6.5.2021 at around 3.30 p.m. at Mukhonje area along the Eldoret–Webuye road. It involved motor vehicle Reg. No. KBN 431F New Holland Tractor hauling trailer Registration Number ZB 6387 belonging to West Kenya Company Limited and motor vehicle Reg. No. KBX 964F Scania hauling trailer Reg. ZE 0316. Both vehicles were heading in the same direction. The tractor was ahead and the Scania was following it from behind. The tractor was attempting to join a feeder road on the right side of the road while facing Webuye direction. Unfortunately, the Scania was trying to overtake it. The two vehicles collided on the right lane on the right side of the road and in the process, Moses Kwalanda was injured and was rushed to hospital, treated, and he later came and recorded his statement. He was issued with a P3 form and later he was issued with a Police Abstract which I wish to produce before this Court. The driver of the Scania lorry was to blame for the accident. During Cross-examination PW1 testified as follows; I am not the investigating officer. I am here to produce the Police Abstract. The investigating officer was transferred. I did not witness the accident. I have the O.B extract. I do not have the sketch plans. No one was charged. The matter was pending under investigations at the time the Police Abstract was issued. I do not know if investigations were concluded."

21. The evidence tendered by DW1 Paul Mbithi was as follows, "I recorded and filed my statement. I wish to adopt the same as my evidence in chief. I was the driver of the defendant's vehicle at the time of the accident. I had a valid driver's licence. I had enough experience to drive. I also filed a copy of my ID Card. I produce the D/Licence and copy of ID Card as Defence Exhibits 1 and 2. I blame the driver of the tractor for the accident. I hooted but he still drove on until he hit me and threw me off the road. That is all." During cross examination, DW1 testified as follows, "I confirm the accident happened. I was the one driving the lorry. I saw the tractor about 100 metres before the accident. It was drizzling. The road was wet. I knew I had to drive with care. I was with my turn boy. The turn boy did not record a statement in this case. I did not hit the tractor from behind. Police from Turbo also lied that I hit the tractor from behind. I have not produced the inspection report for the vehicle I was driving. It is with Rodney Mutunga Senga. I do not know why the inspection report and the turn boy were not availed before court. I was not driving at a high speed. I was not to blame for the accident. I know the plaintiff was injured in the accident. I saw him." During re-examination DW1 testified as follows; "I saw the tractor for more than 100 m. It had stopped. It was carrying other people on top. It was as if it was to offload the other persons on top. It is not true that I hit the tractor from behind. The tractor driver was in front and the trailer carrying sugarcane was at the rear."

22. To establish negligence in a Road Traffic Accident, claim in Kenya, a claimant or a plaintiff must prove duty, breach, causation and injury which is capable of being compensated by an award of damages. Evidence is crucial with courts assessing the credibility of witnesses and the cogency of facts presented by both the plaintiff's testimonies and the defendant's answer to the claim. The burden of proof rested on the claimant or plaintiff to prove negligence on a balance of probabilities. With regard to this, in a tort of negligence, the onus is upon the claimant to prove his claim. In the case of Stephen Kanjabi Wariari Vs Dennis Mutwiri Muriuki & another [2022] eKLR, where the Court held that: -

> The Court has analyzed the pleadings and evidence before the trial Court, and has considered the grounds of appeal filed herein and the appellant's written submissions. As I have already noted, the appellant's case (as was before the trial Court) was premised on the tort of negligence. That being the case, the appellant had a duty to prove that the accident was caused by the negligence of the respondents herein. In so doing, the appellant had a duty to prove the elements of negligence. The elements of the tort of negligence which must be proved for an action in negligence to succeed are (a) there was a duty of care owed to him,

(b) the duty has been breached, and (c) as a result of that breach he or she has suffered loss and damage (See Donoghue v Stevenson (1932] A.C.562.)"

23. The requirements of negligence which the claimant must proof should be in consonant with section 107 (1), 108, and 109 of the *Evidence Act*. The learned Authors Book Clerk and Lindsell on Torts expounded the requirements as follows:

a. The existence in law of a duty of care situation.

b. Careless behavior by the defendant.

c. A casual connection between the defendant's careless conduct and the damage.

d. Foreseeability that such conduct would have inflicted on the particular claimant the particular damage of which he complains; (Once (a) to (d) are satisfied the defendant is liable in negligence and only then the next two factors arise).

e. The extent of the responsibility for the damage to be apportioned to the defendant where others are also held responsible.

f. The monetary estimate of that extent of damage

24. The question of liability in road traffic cases was discussed by the Court of Appeal in the case of Michael Hubert Kloss & Another v David Seroney & 5 Others [2009] eKLR thus;

> " The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in Stapley v Gypsum Mines Ltd (2) (1953) A.C. 663 at p. 681 as follows:
>
> "To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...
>
> "The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally."

25. On the record before me, the trial court could rationally have resolved the conflicts in evidence in favour of the plaintiff. The police abstract although offered through a non-investigating officer supports an inference that the overtaking maneuver by the Scania while the tractor was joining a feeder road contributed significantly to the collision. PW2's account that the tractor was attempting to join the feeder road while the Scania attempted to overtake is consistent with a classic dangerous overtaking scenario in which the overtaking driver fails to ensure sufficient clearance or misjudges the intentions of the vehicle ahead. Equally, DW1's account that the tractor had stopped and then "drove on" into his path suggests a negligent maneuver by the tractor driver. Where two plausible scenarios exist blame can be shared. In the circumstances of this case, there is evidence supporting both contentions that the Scania was overtaking while the tractor joined the feeder road as per the police abstract and that

the tractor performed a sudden movement into the overtaking lane (DW1). Given the uncertainties, a finding of shared culpability is reasonable.

26. Apportionment of liability refers to the legal process of determining the share of responsibility for a tortious act among multiple parties involved in causing harm. This concept is crucial when there are multiple causes for an injury or when more than one party is at fault, as it helps in assigning appropriate levels of compensation based on each party's degree of negligence or fault. In the comparative jurisprudence of the English court in Stapley Vs Gypsum Mines Limited (2) (1953) A.C 663 at P. 681 Lord Reid reasoned as follows: -

> " To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law, this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the fact of each particular case. One may find that a matter of history, several people have been at fault and that if anyone of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes, it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly cause the accident. I doubt whether any test can apply generally."

27. Did the trial magistrate err in quantifying the share at 90%:10%? Apportionment of liability is a fact-sensitive exercise requiring assessment of each party's relative culpability. The trial magistrate gave reasons for his view and anchored his decision on the evidence he believed. In terms of liability, the trial Magistrate held that, "on the basis of that evidence, I am satisfied that the Plaintiff has proved his case on a balance of probability that the defendant is liable and I will apportion liability at the ratio of 10:90 in favour of the Plaintiff against the defendant and hold the defendant liable at 90%." The appellant has not demonstrated that the trial magistrate misapprehended the evidence or acted on wrong principles. I therefore find that the trial magistrate's conclusion that the defendant, the Appellant in this appeal was primarily at fault and liable to the extent of 90% was open on the evidence and does not amount to a conclusion the appellate court should upset. The conflicts were properly for the trial court to resolve. I will uphold the trial court's finding on liability.

Quantum

28. Generally, assessment of damages is not an easy task. A court is supposed to give a reasonable award which is neither extravagant nor oppressive as it is guided by factors such as previous awards for similar injuries and the principles that have been developed by the courts over the years. What constitutes a reasonable award is really an exercise of the courts discretion and will depend on the peculiar facts of each case.The trial court awarded general damages of Kshs 900,000/= (the judgment sum indicates total Kshs 1,007,650/=; special damages being Kshs 7,650 with the balance being general damages). The Appellant contends the award is inordinately high in view of the medical evidence which, he says, shows the injuries were recuperating well and produced no permanent incapacitation.

29. The general principle to be observed by an appellate court in deciding whether to disturb quantum of damages were set out in the case of Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini Vs

AM Lubia and Olive Lubia (1982-88) 1 KAR 727 and restated by the Court of Appeal in the case of Arrow Car Ltd Vs Elijah Shamalla Bimomo & 2 Others (2004) eKLR that: -

> " The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that, short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

30. Moreover, in the case of Butt v Khan [1978] KECA 24 (KLR), the court held as follows: -

> An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low. This, with respect, is what I think happened in this case. The learned judge attached undue importance to the likelihood of epilepsy developing in the future.

31. I take note that it is not sufficient for this court to substitute its own figure merely because it might have awarded a different amount had it been the trial court. There must be a demonstrable error in principle or a manifestly erroneous assessment. In the case of Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55:

> " 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."

32. The medical evidence produced by Dr. Sokobe showed that the Respondent suffered the following injuries; blunt injury to the scalp, deep cut wound on the forehead, blunt injury on the face, avulsion of one lower incisor tooth, fracture right femur, blunt injury to the right leg and the then complains about pain on the right lower limb. In assessing whether the award of Kshs. 900,000/= was appropriate, I must consider comparable awards made in similar circumstances while bearing in mind that no two cases are exactly alike and that awards must reflect current economic realities including inflation. Both parties have cited various authorities in support of their respective positions, and I have carefully considered these authorities alongside others that I find relevant to the assessment.

33. I take cognizance that it must be shown in the assessment of damages, the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure, which was either inordinately high or low. The Court must be satisfied that either the Judge, in assessing the damages, took into account an irrelevant factor or left out of account a relevant one or that, short of this, the amount is so inordinately high that it must be a wholly erroneous estimate of the damages.

34. I have considered the Appellants injuries and compared the same with past authorities in which the claimants suffered almost similar injuries as follows: -

a. In Joseph Mwangi Thuita Vs Joyce Mwole [2018] eKLR, the plaintiff was awarded Kshs. 700,000 as general damages for fractured right femur, compound fracture (r) tibia and fibula, shortening right led and episodic pain (r) thigh with inability to walk without support.

b. In Jackson Mbaluka Mwangangi Vs Onesmus Nzioka & another [2021] eKLR Odunga J. (as he then was) awarded Kshs 600,000/- for general damages where the Appellant sustained blunt injury to the right shoulder and fracture of the left femur.

c. In Kihara & another v Mutuku (Civil Appeal 27 of 2018) [2022] KEHC 15626 (KLR) (17 November 2022) the court upheld an award of Kshs. 700,000/= for blunt injuries to the chest, blunt injuries on the left thigh which developed into ecchymosis, bruises on forearms and Fracture of the right femur.

d. In Pestony Limited & another Vs Samuel Itonye Kagoko [2022] eKLR where the court set aside an award for Kshs. 1,400,000= and substituted it with an award of Kshs. 800,000/= for a fracture of the left femur (mid-shaft) and swollen left tender thigh.

35. Considering the nature of the injuries, the period of hospitalization and treatment, the seriousness of a fractured femur and the comparable precedents I find that the award of Kshs. 900,000/= for general damages was fair, reasonable, and not inordinately high. In my view, the compensation is neither too low nor too high in the circumstances and I see no reason to disturb this finding. The same is accordingly upheld.

36. On Special damages, kshs. 7,650/= was pleaded and was strictly proved through receipts this being money spent on the motor vehicle search and medical report and P3 form. As was held in the case of Hahn vs. Singh, Civil Appeal No. 42 of 1983 [185] KLR 716, by the Court of Appeal; -

> " Special damages must not only be specifically claimed (pleaded) but also strictly proved... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves."

37. In this regard, special damages are now hereby upheld as awarded at Kshs. 7,650/=. In light of the foregoing, I am of the finding that the Appeal lacks merit and the same is dismissed in its entirety with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIA CTS THIS 6TH DAY OF OCTOBER 2025

.....

R. NYAKUNDI

JUDGE