REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

HCCOMMA NO. E950 OF 2024

GAUDENCIA LUYAHI TUSU ..... 1ST APPELLANT

SHARON OCHIENG WABUSHI ..... 2ND APPELLANT

VERSUS

NELLIUS WAITHERA WANJIRU ..... 1ST RESPONDENT

NIPPON IMPORTS LIMITED 2NDRESPONDENT

[Being an appeal from the orders of Hon. B.M. Cheloti (PM) in Nairobi MCCOMMSU No. E2672 of 2020 and 2693 of 2020, dated on 09.08.2024]

JUDGMENT

1. This is an appeal from the orders of Hon. B.M. Cheloti (PM) in Nairobi MCCOMMSU No. E2672 of 2020 and 2693 of 2020, dated on 09.08.2024. The court dismissed the consolidated suits whereupon the appellant filed a memorandum of appeal dated 16.08.2024 on 20.08.2024.

2. The appellant having being aggrieved by the said order set forth the following grounds of appeal:
    a. The learned magistrate erred by dismissing the appellants' suits.
    b. The learned magistrate erred by failing to carefully consider the evidence adduced by the appellants.
    c. The learned magistrate erred by failing to apply the correct legal principles applicable to the matter before her hence reaching an erroneous decision on the evidence adduced or misunderstanding the evidence and the law.
    d. The learned magistrate erred by failing to apply the balance of probabilities
    e. The learned magistrate erred by failing to correctly assess damages or making awards that were too low.

3. The appeal is repetitive and raises only two questions, that is the prove of liability and award of quantum of damages that were inordinately low as to amount to an erroneous estate of damages. It is not edifying to repeat one ground into four grounds by changing the nomenclature grammar and rhetoric. Order 42 Rule 1 of the Civil Procedure Rules provides are doth: -

    (1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading. (2) The memorandum of

appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

4. The Court of Appeal had this to say about compliance with Rule 86 of the Court of Appeal Rules (which is pari materia with Order 42 Rule 1 of the Civil Procedure Rules) in the case of **Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat (2020) JELR 93219 (CA)[2020] eKLR**:

> We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See Abdi

Ali Dere v. Firoz Hussein Tundal & 2 Others [2013] eKLR) and Nasri Ibrahim v. IEBC & 2 Others [2018] eKLR. In the latter case, this Court lamented:

> We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric…A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs. The 18 grounds of appeal presented by the appellant, Robinson Kiplagat Tuwei against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues…

5. The rest of the issues are ancillary, repetitive, prolix and a waste of judicial time.

Evidence

6. To be able to do this, I need to consider similar injuries, take into consideration inflation and other comparable awards. The court called for the physical file for number 2693 of 2020 but has not received the same. The court has to make do with the

records available in terms of order 42 rule 13 of the civil procedure Rules.

7. The proceedings in MCCC E2672 of 2020, were as commenced on 15.11.2021 when Dr. Wokabi testified and produced the medical report for the appellants as exhibit 1a and b for the 1st appellant and 2a and 2b for the 2nd respondent. On cross examination, he stated that he expected the appellants to have healed by then.

8. On 13.03.2023 Sharon Ochieng testified as PW1. She testified that she was a rider of KMEM 498Q. On 26.08.2019 she was involved in an accident along Naivasha road. Riding from Kawangare to Uthiru. She was carrying a passenger Gaudencia. she suffered a fracture on the left foot and had a mental plate fixed. She produced her evidence in chief. On cross examination, she stated that she overtook from the right side. The accident was reported by the defendant and her spouse.

9. The first appellant testified and adopted her statement evidence in chief. She was seeking Ksh 10,000/= per month. She stated that she was a pillion passenger.

10. The first respondent testified as DW1. She adopted her statement as evidence in chief. She stated that her vehicle was hit by a motor vehicle and she reported at Kabete police

station. She was alone in the vehicle. She stated that she could not remember the motor cycle Registration Number.

11. DW2 PC 65918, Raphael Mutu testified that he was stationed at Kabete police station. He produced a police abstract. He stated that the motor cycle was blamed for the accident. He stated that the he had not seen an abstract from the victim.

12. The matter was concluded and the court delivered its judgment and awarded as follows:
    a. The suits were dismissed with costs to the Respondent.
    b. The 1st Respondent was awarded Ksh. 120,000/=.
    c. The 2nd Responded was awarded a sum of Ksh 600,000/=

Analysis

13. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In the case of **Mbogo and Another vs. Shah [1968] EA 93** where the Court stated:

> ...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it

has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.

14. The duty of the first appellate Court was settled long ago by Clement De Lestang, VP, Duffus and Law JJA, in the locus Classicus case of **Selle and another Vs Associated Motor Board Company and Others [1968] EA 123**, where the law looks in their usual gusto, held by as follows; -

> .. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally.

15. The Court is to bear in in mind that it had neither seen nor heard the witnesses. It is the trial court that has observed the demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot

read into those documents matters extrinsic to them. In the case of **Peters vs Sunday Post Limited [1958] EA 424**, the court therein rendered itself as follows: -

> It is a strong thing for an appellate court to differ from the findings on a question of fact of the judge who had the advantage of seeing and hearing the witnesses… But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion…

16. The court found that neither appellant had proved their respective cases and consequently treated them as standing on the same pedestal. However, this was not an accurate reflection of the parties' positions. The dispute between the 1st Appellant and the Respondents did not involve the owner of the motorcycle. The consolidation of the suits did not alter the distinct procedural and evidentiary postures of the claims.
17. The court cannot apportion liability to the rider who is a party to another case and not the case where Gaudencia is the plaintiff. There was no third-party notice issued to the 2nd appellant in the suit. *Ipso facto*, the court cannot apportion blame to the second appellant in respect of the 1st appellant's case. The first appellant gave evidence on who is to blame. The evidence tendered was against the second appellant, who is not a party in MCCC 2672 OF 2020. It is a time-honored principle that courts cannot apportion liability with non-

parties. In **Stapley –v- Gypsum Mines Limited (2)** (1953) A.C 663 at P. 681, Lord Reid reasoned that:

> To determine what cause 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.

18. Parties are bound to plead their cases fully. In the case of **Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR**. A C Mrima stated as doth: -

> 11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of **Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR** which cited with approval the decision of the Supreme Court of Nigeria in **Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002** where Adereji, JSC expressed himself thus on the importance and place of pleadings: -
>
> *.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the*

pleadings goes to no issue and must be disregarded……

…In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.

In the case of **Malawi Railways Ltd vs Nyasulu [1998] MWSC 3**, **Malawi Supreme Court of Appeal** stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled The Present Importance of Pleadings published in [1960] Current Legal Problems at p 174 whereof the learned author posited that: -

As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadings …….for the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon

any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice….

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called Any Other Business in the sense that points other than those specific may be raised without notice.

19. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on *inter alia* scrutiny in the case of **Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR** found and held as follows in an election petition: -

In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled

> legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings...

The question that arises is how to apportion liability between the first appellant and the second appellant. the second appellant was not a party to the case filed by the first appellant. There were no third-party proceedings against the rider of motorcycle registration number KMEM 498Q, who has her own case, MCCC 2693 of 2020. In the case of **Abbay Abubakar Haji Patuma Ali Abdulla Vs Freight Agencies Ltd [1984] KECA 14 (KLR)** it was held that:

> The trial judge rightly applied to the facts before him the relevant law enunciated by Spry, V P in **Lakhamshi v Attorney General,** (1971) E A 118, 120 for such cases which -

It is not settled law in East Africa that where the evidence relating to a traffic accident is insufficient to establish the negligence of any party, the court must find the parties equally to blame. A judge is under a duty when confronted by conflicting evidence to reach a decision on it. In the case of most traffic accidents it is possible on a balance of probabilities to conclude that one other party was guilty or both parties were guilty of negligence. In many cases as for example where vehicles collide near the middle of a wide straight road in conditions of good visibility with no courses, there is in the absence of any explanation, an irresistible inference of negligence on the part of both drivers, because if one was negligent in driving over the center of the road, the other must have been negligent in failing to take evasive action. Although it is usually possible, but nevertheless often extremely difficult, to apportion the degree of blame between two drivers both guilty of negligence, yet where it is not possible it is proper to divide the blame equally between them. Where, however, there is a lack of evidence, the position is different. It is difficult to see how a party can be found guilty of negligence if there is no evidence

that he was in fact negligent and if negligence on his part cannot properly be inferred from the circumstances of the accident.

20. In the absence of the third party, the trial magistrate could not apportion liability to the rider of motorcycle registration number KMEM 498Q. Liability could only be apportioned in MCCC 2693 of 2020. Further, in the case of **EN v Hussein Dairy Limited & 3 others [2020]** KEHC 5366 (KLR)**,** P.J.O. Otieno, J stated as follows in regard to the attribution of negligence to a nonparty, like the unknown Nissan herein:

> **17)** I agree with the Appellant's submissions that this point was moot and given that in the absence of the third party, the trial magistrate could not apportion liability in the manner he did. This position was similarly adopted in the case of **Pauline Wangare Mburu v Benedict Raymond Kutondo NKU HCCC No. 210 of 2003 [2005] eKLR** where the court observed as follows,
>
> The defendant did not deem it necessary to issue a third party notice to enjoin the owner of motor vehicle registration number KAH 129 V to this suit. In the circumstances therefore, it would be moot for this court to apportion liability to a

> person who is not a party to this suit. The defendants shall therefore bear 100% liability.

21. If the first Appellant was able to prove her case to the required standard, it was the duty of the Respondents to prove contributory negligence. There could be no liability against an alleged third party driving the alleged Nissan matatu, who was not a party to the proceedings, as no fault was established against him. In the case of **Kiema Muthuku v Kenya Cargo Handling Services Ltd** (1991) 2 KAR 258, the court of appeal posited as doth:

> There is, as yet, no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence.

22. It was the duty of the Appellant to take out third-party proceedings against a party she wished to take up liability. The Appellant did not issue a Third-Party Notice to the rider of motorcycle registration number KMEM 498Q. The first appellant was a pillion passenger. the respondent did not show how she was to blame. Consequently, I find the respondents, jointly and severally 100% liable for the accident in respect of only Nairobi MCCOMMSU No. E2672 of 2020. The Respondent ought to have invoked the provisions of Order 1 Rule 15 of the Civil Procedure Rules as follows:

(1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)-

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them.

23. It is irrelevant that there was a related suit that was consolidated. Consolidation of suits does not create issues not pleaded.

24. Due to failure to join a third party for the rider of motorcycle registration number KMEM 498Q. There were no directions on the apportionment of liability. Contributory negligence could not be shifted to a third party who was not a party to the proceedings. In the case of **Mac Drugall App V Central Railroad Co. RBR** 63 *CAL 431* the court held that:

> In an action to recover damages for a personal injury alleged to have been received through the negligence of the defendant, contributory negligence on the part of the plaintiff is a matter of defence, and it is an error to instruct the jury that the burden of proof is on the plaintiff to show that the injury occurred without such negligence.

25. Turning to liability in MCCOMMSU No. 2693 of 2020, the court notes that the two alleged tortfeasors were parties. The dispute over the accident's occurrence became an issue since they blamed each other. There was no sketch plan to show how the accident occurred. This was the 2nd appellant’s word against the Respondent’s word. The evidence tendered by the police officer did not help. there was thus doubt on how each contributed. they blamed each other for overtaking and or turning. When there is doubt of which of the two drivers or the driver and rider, the best order is to have them equally to blame.

26. Consequently, I apportion liability between the 2nd appellant and the Respondents at 50:50.

27. On the issue of quantum, the appeal challenges only the award of general damages. General damages are damages at large, and the court is required to do the best it can to arrive

at an award that reasonably reflects the nature, extent, and gravity of the injuries sustained. As D. S. Majanja J. observed in **Nyambati Nyaswabu Erick v Toyota Kenya Limited & 2 others [2019] KEHC 9928 (KLR):**

> General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same.

28. The duty of the court regarding damages is settled that the state of the Kenya economy and the people generally and the welfare of the insured and injury public must be at the back of the mind of the trial Court. The foregoing was settled in the cases of **Butter Vs Butter Civil Appeal No. 43 of 1983 (1984) KLR** where the Court of Appealed held as follows:

> In awarding damages, a Court should consider the general picture of all prevailing circumstance and effect of the injuries of the claimant but some degree of uniformity is to be sought in the awards, so regard would be paid to recent awards in comparable cases in local Courts. The fall of value of monies generally, the levelling up and

> down of the facts of exchange between currencies…should be taken into consideration.

29. Finally, in deciding whether to disturb the quantum given by the Lower Court, the Court should be aware of its limits. Being an exercise of discretion, the exercise should be done judiciously, considering the circumstances, to ensure that the award is not too high or too low as to be an erroneous estimate of damages. The Court of Appeal succinctly pronounced itself on these principles in **Kemfro Africa Ltd v Meru Express Service. A.M Lubia & Another 1957 KLR 27** as follows: -

> The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.

30. Therefore, for me to interfere with the award, it is not enough to show that the award is high, or had I handled the case in the subordinate court, I would have awarded a

different figure. So, my duty as the appellate court is threefold regarding quantum of damages: -

a. To ascertain whether the Court applied irrelevant factors or left out relevant factors.
b. To ascertain whether the award is too high as to amount to an erroneously assessment of damages.
c. The award is simply not justified from evidence.

31. On quantum, the court awarded a sum of Ksh. 120,000/= for minor soft-tissue injuries. The Appellant pleaded that she suffered a sprain on the right ankle and a cut wound on the left ankle. The medical report by Dr. Wokabi does not reveal any dislocation or fracture. The injuries were treated symptomatically.

32. The award was slightly on the higher side. The award cannot be considered inordinately low. The appeal on quantum in respect of the first appellant is dismissed. In *Rege v LA (Minor suing through her father and next friend GAA)*, Civil Appeal No. E111 of 2021 [2022] KEHC 16634 (KLR), the High Court set aside an award of Kshs. 300,000/= for blunt trauma to the neck, chest and abdomen and substituted it with an award of Kshs. 80,000/=.

33. The second respondent was awarded Ksh. 600,000/=. There is no demonstration of how these were on the higher side. The appeal on quantum for the second appellant is accordingly

dismissed. In the case of **Kiama vs. Mutiso [2024]** KEHC 5135, (KLR), where a claimant suffered, a fracture of the left tibia bone (upper 1/3) and a blunt injury to the left leg and thigh. The trial court awarded Kshs. 700,000/=, which was reduced to Kshs. 400,000/= by DAS Majanja on 13.04.2024.

34. The award was for more serious injuries. In the circumstances the award of Ksh. 600,000/= is not inordinately low.

35. The next question is costs. The issue of costs is governed by Section 27 of the Civil Procedure Act, which provides as follows:

> (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or

issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

36. Costs are generally discretionally. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR)** had this to say:

> "It is our finding that the position in law if that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

37. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR**, as follows:

> 18.It emerges that the award of costs would normally be guided by the principle that “costs follow the

event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

38. The first Appellant substantially succeeds and is awarded costs of Ksh. 45,000/=. The second Appellant, though partially successful, is awarded costs of Ksh. 55,000/=. The Appellants shall also have the costs of the suit in the lower court.

Determination

39. The upshot of the foregoing is that I make the following orders:

a) The appeal on liability is allowed in the following terms.

b) The dismissal of the 1st appellant's suit is set aside and substituted with 100% liability as against the Respondents.

c) The dismissal of the 2nd appellant's suit is set aside and substituted with an apportionment of 50:50 between the second appellant and the respondents jointly and severally.

d) The award of Ksh 120,000/= as general damages for the first appellant is upheld. The appeal against the said amount is dismissed.

e) The award of Ksh 600,000/= as general damages for the second appellant is upheld. The appeal against the said amount is dismissed.

f) The first Appellant shall have costs of Ksh. 45,000/= for the Appeal.

g) The second Appellant shall have costs of Ksh. 55,000/= for the Appeal.

h) The Appellants shall also have the costs of the suit in the lower court.

i) 30 days stay of execution.

j) Right of appeal 14 days.

k) The file is closed.

DELIVERED, DATED and **SIGNED** at **NYERI** on this **20th** day of **November, 2025**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Ms. Mbugua for the 1st Respondent

No Appearance for the 2nd Respondent

No Appearance for the Appellants

Court Assistant – Michael