

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MACHAKOS

ELRC APPEAL NUMBER 3 OF 2023

APEX STEEL LIMITED.....APPELLANT

-VERSUS

EVANS NYANDORO MAUTI.....RESPONDENT

*(Being an Appeal from the Judgment and Decree of the Hon. L. Kassan (SPM)
delivered on 31st October 2017 in Mavoko MCELRC Cause No. 645 of 2014)*

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. L. Kassan (SPM) delivered on 31st October 2017 in Mavoko MCELRC Cause No. 645 of 2014 between the parties filed a Memorandum of Appeal dated the 23rd November 2017 seeking the following orders: -
 - a. **The Appellant's Appeal be allowed with costs.**
 - b. **The Judgment of the trial court be set aside and the order allowing the Respondent's suit be substituted with an order dismissing the said suit with costs to the Appellant.**

GROUND OF THE APPEAL

2. The Honourable Magistrate erred in law and fact by totally ignoring the evidence placed before him which clearly demonstrated that no accident occurred on 29th November 2013 involving the Respondent and thereby arrived at an erroneous conclusion.
3. The Honourable Magistrate erred in law and fact by totally ignoring the evidence placed before him which clearly demonstrated that the Respondent was never injured on 29th November 2013 while in the course of employment.
4. The Honourable Magistrate showed extreme prejudice by totally ignoring the testimony of the Appellant's witness which clearly demonstrated that the Respondent's claim is fraudulent, thereby arriving at an erroneous conclusion.
5. The Honourable Magistrate misapprehended the medical evidence in material respects and thus arrived at a wrong assessment of damages.
6. The Honourable Magistrate showed extreme prejudice by totally ignoring the Appellant's counsel's submissions on issues of law and evidence and thereby arrived at an erroneous assessment.

BACKGROUND TO THE APPEAL

7. The Respondent filed suit against the Appellant vide a memorandum of claim dated the 1st of July 2014 seeking the following orders: -
 - a. General damages

- b. Special damages (Kshs. 3,000/-)
- c. Costs of the suit
- d. Interest
- e. Any other relief deemed fit to grant by this honourable court.

(pages 3-4 of Appellant's ROA dated 26th June 2024).

14. The Respondent filed his verifying affidavit sworn on 1st July 2014, list of witnesses of even date, undated witness statement, and list of documents with bundle of documents attached also dated 1st July 2014 (pages 6-19 of ROA).
15. The claim was opposed by the Appellant who entered appearance and filed a statement of defence dated 4th August 2014 (pages 21-22 of ROA). They also filed a list of witnesses of even date, witness statement of one Urbanus Musyoki dated 2nd October 2014, and a list of documents with the bundle of documents attached dated 2nd October 2014 (pages 23-25 of ROA).
16. In response to the statement of defence, the Respondent filed a reply to defence dated 8th August 2014 (page 26 of ROA).
17. The Respondent's case was heard on the 19th of October, 2015. The Respondent testified in the case, relied on his witness statement as his evidence in chief, produced the documents attached to his list of documents, and was cross-examined by counsel for the Appellant Mr. Njoroge (pages 35-37 of ROA).

18. The Appellant's case was heard on the same day with the Appellant calling one Urbanus Mboru Musyoki as its sole witness. He relied on his filed witness statement as his evidence in chief, and produced the Respondent's documents. He was cross-examined by counsel for the claimant Mr. Agwenyi (pages 37-39 of ROA).
19. The parties took directions on filing of written submissions after the hearing. The parties complied.
20. The Trial Magistrate Court delivered its judgment on 31st October 2017 assigning liability in the ratio 90:10 in favour of the plaintiff and allowing the Plaintiff/Respondent's claim to the tune of Kshs. 283,000/- comprising of general and special damages, plus costs of the suit and interest on the general damages (judgment at pages 65-68 of ROA).

DETERMINATION

21. The appeal was canvassed by way of written submissions. Both parties complied.
22. As the first appellate Court, the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. In Selle & Another -V Associated Motor Boat Co. Ltd & Others [1968] EA 123, this principle was enunciated thus: "*...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 retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions...*" The respondent brought to the attention of the court decision of the Court of Appeal in **Musera vs. Mwechelesi & Another ([2007]) KLR 159** as follows:

-“We must at this stage remind ourselves that though this is a first appeal to us and while we are perfectly entitled to make our own findings on the evidence, the trial Judge has in fact made clear and unequivocal findings and as an appellate court we must indeed be very slow to interfere with the trial Judge’s findings unless we are satisfied that either there was absolutely no evidence to support the findings or that the trial Judge must have misunderstood the weight and bearing of the evidence before him and thus arrived at an unsupportable conclusion.”

Issues for determination

23. In their submissions dated 11th September 2025, the Appellant submitted generally on the grounds of appeal.
24. Conversely, the respondent submitted on liability and damages.
25. The court taking into account the grounds of appeal, finds that the issues for determination in the appeal are as follows-
 - a. Whether the trial court erred in its finding on liability
 - b. Whether the trial court erred in its finding on quantum of damages award.

Whether the trial court erred in its finding on liability

Appellant’s submissions

26. The appellant relied on the Witness Statement by the Appellant’s Supervisor, Urbanus Musyoki dated 2nd October, 2014.(It is at Page 24 of the Record of Appeal.) Mr. Musyoki testified that the Respondent was not injured as he alleges. He testified that on 29th

November, 2013, the Respondent was at work. He reported for the night shift on 28th and 29th November, 2013 at about 6:00pm. Mr Musyoki testified that the Respondent signed in for work, worked until around 6:00am 30th November, 2013. (At Page 38, Lines 12 – 16 of ROA). During cross- examination, Mr. Musyoki confirmed that the Respondent reported to work, signed in and out personally. He confirmed that nobody was injured on the Appellant’s premises and taken to Athi River medical services on 30th November, 2013. He confirmed that the Respondent was not taken for treatment and no documents were prepared in that regard. At Page 36, Line 9 - 10, the Respondent confirmed he reported to work at left at 07.11 hrs. We humbly submit that if at all the Respondent was injured, he would not have worked and logged out at 07;11 hrs. At Page 35, line 10 -12, the Respondent testified that his colleague put a high carbon metal into the furnace. The metal exploded causing light and fluid to enter his eyes. At Page 36, Line 5, during cross examination, the Respondent confirmed he did not see who put the high carbon steel in the furnace. We humbly submit that being a Supervisor at the Appellant, Mr. Musyoki is knowledgeable on issues regarding high carbon metals. At Page 39, line 1, Mr. Musyoki confirmed that high carbon metal does not explode when put in a furnace. He confirmed that it is only quality of the metal that would be destroyed. We humbly submit that the Appellant was able to rebut the Respondent’s assertions. At Page 36, Line 11 of the Record of Appeal, the Respondent confirmed that the medical report from PCEA Kikuyu Hospital [Page 19 of the Record of Appeal] does not show he was treated on 29th November, 2013. He confirmed it does not indicate he was injured at the Appellant’s premises. At Page 36, Line 14, the Respondent was referred to his Exhibit 4, a medical Report by Dr. Ndebo. It is at Pages 13 and 14 of the Record of Appeal. He confirmed that the Report indicates he was injured on 29th October, 2013 not 29th November, 2013 as he alleges. At Page 36, in the last Line, the Respondent confirmed that he had not produced

accurate records. We humbly submit that the Respondent did not prove his claim on a balance of probabilities. The Respondent alleges that the Appellant was negligent. In proving negligence, the Plaintiff must show that the Defendant owed him a duty of reasonable care, and that it breached that duty. In Nairobi HCCA No. 152 of 2003 Statpack Industries vs. James Mbithi Munyao, Honourable Justice Alnashir Visram stated the following regarding the burden on the Plaintiff:- ‘...He must prove a causal link between someone’s negligence and his injury. The plaintiff must adduce evidence from which, on a balance of probability, a connection between the two may be drawn. Not every injury is necessarily as a result of someone’s negligence. An injury per se is not sufficient to hold someone liable for the same.’ The appellant submitted that the Respondent failed to prove culpability on the part of the Appellant.

Respondent’s submissions

27. Whether the Respondent was injured in the Course of employment-The issue of whether the Respondent was employed by the Appellant at the time of the accident is not disputed. The main issue for determination is whether the Respondent's accident was caused by the negligence. It was the evidence of the Respondent that on 29.11.2013 he was assigned duties at the furnace when his colleague fed a carbon metal to the furnace causing it to explode and enter his eyes. It is trite that in civil cases the standard of prove is on a balance of probabilities which lies with the party who alleges. The law on burden of proof under Sections 107, 108 and 109 of the Evidence Act, Cap.80 Laws of Kenya places the burden of proof as to any particular fact on the person who wishes the court to believe in its existence, unless it is provided by the law that the proof shall be on a particular person. Section 107 sets a foundation upon which the foregoing is based. It categorically provides that, "whoever desires

any court to give a judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts." In short, the onus of proving is on the person alleging. During trial it was the Respondent's evidence that on the material date of the accident he was re-assigned duties by the Supervisor one Mr. Urbanus Musyoki from his normal station as a cleaner and allocated to the furnace He also confirmed that the time of this accident was around 11pm. It was confirmed by DW-1, Mr. Urbanus Musyoki that he was indeed the supervisor at the furnace but denied that he had assigned the Respondent duties at the furnace. Your Lordship, the Respondent on the other hand produced treatment notes that confirmed that his injuries were consistent to those of a furnace exploding in his eyes. This type of injuries could not have been sustained had the Respondent been working as a cleaner. In his testimony the Respondent confirmed that he was injured on the material date at around 11.00hrs and was taken to Athi River Medical Services for first aid and produced a follow up card as P.EX I. The Appellants witness, DW-1, confirmed that indeed once employees are injured within the Appellant's premises they are usually treated at Athi River Medical Services as a matter of policy. The Appellant's supervisor alleges that the Respondent was not injured on the material date but at the same time failed to produce the Accident Register. He only produced the Wage Sheet that confirms attendance of workers. The evidence by DW-1 can be described as not very credible and not very strong since he did not even produce an accident register to show that no accident occurred on the alleged date. It was also his own testimony that the Respondent indeed clocked in at work on 29.11,2013 at 1901 hrs. and he left the Appellants premises at 10.30pm. It was his own admission that he did not witness anything that happened after he left the premises. This means that he was not a witness to the accident that occurred at 11.00pm as per the respondents account. He further stated that he left someone named Paul as acting supervisor whom he failed to call as a witness to corroborate

his testimony. Therefore, your Lordship, we pray that you disregard the allegations of the Appellant as they are only hearsay and not credible. We see no reason to interfere with this finding by the trial court taking into account this Court's decision in Michael Hubert Kloss & Another -vs- David Seroney & 5 Others - Civil Appeal No. 285 of 2005 wherein it was held: "Where in particular there is a conflict of primary facts between witnesses and where the credibility of the witnesses is crucial, the appellate court will hardly interfere with the conclusions made by the trial Judge after weighing the credibility of the witnesses."

28. Whether the accident was caused by the negligence of the Appellant-An employer has a duty of care towards the employees by providing safe environment of work and protective gear. In *Isinya Roses Limited v Ayako Nyongesa* [2016] KEHC 2702 (KLR) the Learned Judge while quoting *Wilson Clyde Coal Co. Ltd v English* [1937] 3 All E.R 68. Stated as follows.... What the authorities elucidate in the doctrine of duty of care can be summarized as follows.

"(i) Is there a relationship of proximity between the parties?

(ii) Was the injury to the claimant foreseeable?

(iii) Is it fair, just and reasonable to impose a duty?" The employer-employee relationship has already been established by the Respondent and confirmed by DW-I not only in his oral testimony but also in his statement. The question we must answer now is whether the injury was foreseeable. This duty includes the obligation to provide competent staff, adequate materials and proper system and effective supervision. The duty further includes the obligation to provide a reasonably safe place of work and access to it. This duty vicariously remains with the employer even after he delegates to another person. Consequently, in this case, the respondent owed a duty of care to the appellant when he instructed him to work at the furnace with another colleague under the supervision of Mr

Musyoki. This duty included the obligation to provide safety gear, competent and adequate staff to assist the appellant in his duties and above all, supervision to guide him and ensure that his other colleague did not throw metal to the furnace such as would be risky for them to carry without any other assistance. The said duty of care has now been codified in Kenya under section 53 of the Factories Act-Protective clothing and appliances. "Where in any factory workers are employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances, including, where necessary, suitable gloves, footwear, goggles and head coverings, shall be provided and maintained for the use of such workers.

29. In addition section 6 of the Occupational Safety and Health Act, 2007 provides that-"Every occupier shall ensure the safety, health and welfare at work of all persons working in his work. place." And proceeds to provide for the specific duties of the employer towards employees which include 2(b) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances; among others. The appellant contended in evidence that he was assigned duties at the furnace by the supervisor away from his usual duties as a cleaner. According to the appellant, his colleague suddenly threw a carbon metal in the furnace thereby causing it to fall on him and injuring him seriously He was not provided with any protective gear like gumboot, gloves or goggles. He was probably not adequately trained for duties at the furnace as that is not his usual station. That failure to provide the appellant with those protective gear and to assign competent colleagues constituted a breach of the duty of care both at common law and the Factories Act. As a result of that breach, the Respondent suffered severe bodily injuries. No evidence was adduced by the Respondent to prove that the appellant acted negligently.

Decision

30. The grounds of appeal under issue of liability were-

- a. The Honourable Magistrate erred in law and fact by totally ignoring the evidence placed before him which clearly demonstrated that no accident occurred on 29th November 2013 involving the Respondent and thereby arrived at an erroneous conclusion.
- b. Honourable Magistrate erred in law and fact by totally ignoring the evidence placed before him which clearly demonstrated that the Respondent was never injured on 29th November 2013 while in the course of employment.
- c. The Honourable Magistrate showed extreme prejudice by totally ignoring the testimony of the Appellant's witness which clearly demonstrated that the Respondent's claim is fraudulent, thereby arriving at an erroneous conclusion.

31. The respondent filed a suit on 7th July 2014 before the lower court and alleged that while in the employment of the appellant on 29th November 2013 and on duty, he was injured in his eyes following an accident at the workplace. He blamed the appellant for the unsafe workplace and lack of protective clothing. He relied on his witness statement and produced an employment contract, an attendance card at Athi River Medical Services where he stated he was treated after the accident, a medical report by Dr. Ndibo and receipt in support of special damages, a medical report and treatment card from PCEA Kikuyu hospital, and the demand letter.

32. In defence, the appellant denied liability. It relied on the witness statement of Urbanus Musyoki dated 2nd October 2024, who stated he was a supervisor employed by the appellant. He stated that he was at work on the 29th November 2013 and the respondent was also present. That the respondent reported for the night shift from 6am to 6am on 30th November 2013. That the respondent was not injured as claimed. During cross-examination, the respondent told the court he was injured on 29th November 2013 at 11pm. That a carbon steel in the furnace exploded with smoke and light, he was shown the furnace wage documents at the material time, which indicated that he did his shift from 19.00 hours to 07.11 hours. The respondent told the court that the treatment note did not indicate when he was injured.
33. RW1 was Musyoki, who adopted his witness statement. On cross-examination, he told the court that he left work at 10.30 pm. The witness told the court their documents indicated the claimant worked on the 29th and not the 30th. The witness denied that anyone was injured and taken to Athi Medical on the 30th of November 2023. He knew a Paul who was acting supervisor after 10.30 pm. He said high carbon spills do not explode.
34. The trial court found that the medical card from PCEA Kikuyu hospital indicated the respondent was treated on 30th November 2013. The court found that the treatment at PCEA Kikuyu was likely due to the accident. As to whether high carbon in the furnace could explode, the trial court held that the appellant ought to have called an expert and consequently apportioned liability 90:10 in favour of the plaintiff as against the appellant. The court re-evaluated the evidence before the trial court. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. Ltd [1968] EA 123 that:- *“The appellate court is not*

bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally." In the medical report from PCEA Kikuyu hospital dated 30th November 2013, the Ophthalmologist stated the history of the eye complaint was furnace explosion. The Respondent in the appeal, produced a follow-up card from Athi River Medical Service No. 6957/13 where he stated he was referred to PCEA Kikuyu. The court noted that the appellant did not produce the accident register, which is required by law to be kept under section 122 of the Occupational Safety and Health Act, to wit: '122. (1) There shall be kept in every workplace a register, in the prescribed form, called the general register, and there shall be entered in or attached to that register— (a) the certificate of registration of the workplace; (b) every other certificate issued in respect of the workplace by the Director under this Act; (c) the prescribed particulars as to the washing, whitewashing, colourwashing, painting or varnishing of the workplace; (d) the prescribed particulars as to every accident and case of occupational disease occurring in the workplace of which notice is required to be sent to a occupational safety and health officer under the provisions of any law for the time being in force; (e) all reports and particulars required by any provision of this Act to be entered in or kept with the general register; and (f) such other matters as may be prescribed. (2) The occupier of a workplace shall send to an occupational

safety and health officer such extracts from the general register as the occupational safety and health officer may from time to time require for the purpose of the execution of his duties under this Act. (3) The occupier of a workplace who contravenes the provisions of this section commits an offence.”

35. The very failure to produce the said register before the lower court led to the conclusion that the appellant had concealed evidence before the lower court. This being a factory the register was compulsory. The court is guided by decision in Michael Hubert Kloss & Another -vs- David Seroney & 5 Others - Civil Appeal No. 285 of 2005 wherein it was held:

"Where in particular there is a conflict of primary facts between witnesses and where the credibility of the witnesses is crucial, the appellate court will hardly interfere with the conclusions made by the trial Judge after weighing the credibility of the witnesses." The court, for the lack of an injury register as per the law and based on documents produced as proof of the accident, finds no basis to interfere with the finding of the trial court on the liability decision.

Whether the trial court erred in its finding on quantum of damages award.

Appellant's submissions

36. Notwithstanding the dismissal of the Plaintiff's Suit, your Honour is obligated to assess the damages that should have been awarded had the Plaintiff proven his case. The Plaintiff alleges that he was treated at Kikuyu Hospital. He was subsequently examined by Dr. Faith Masila who prepared a Medical Report dated 30th November 2013. According to the Report, the Plaintiff sustained severe conjunctivas of both eyes, with photophobia. He was given medication and eye drops to both eyes. We re-iterate our Submissions in the Lower Court.

They are at Pages 53 -64 of the Record of Appeal. We humbly submit that assessment of General Damages at Kshs 80,000 would be reasonable in the circumstances. We are guided by the High Court's decision in Nairobi HCCA No 161 of 2011; C & P Shoe Industries v Albert Maina Kalii (Judgement delivered in 2014). At Paragraph 5, it is clear that the Plaintiff in that decision sustained eye injuries with permanent incapacity of 5%. At Paragraphs 1 and 14 of the decision, the High Court upheld the lower Court's award of Kshs 80,000 as General Damages and directed it be subjected to the apportionment of liability.

Respondent's submissions

37. Whether the Learned Magistrate erred in law and fact in awarding damages for the respondent's injuries- the principles of awarding damages were laid down in Rahima Tayab & Others v. Anna Mary Kinanu., Civil Appeal No. 29 of 1982 (1983) KLR; IKAR 90 where the Court of Appeal held that:-Whereas in awarding damages, the general picture, the whole circumstances, and the effect of injuries on the particular person concern must be looked at, some degree of uniformity must be sought, and the best guide in this respect is to have regard to recent awards in comparable cases in the local courts. It is eminently desirable that so balance between endeavoring to award the plaintiff a just amount, so far as money can ever compensate, and entering the realms of very high awards, which can only in the end have a deleterious effect." According to the medical records produce by the Respondent from PCEA Kikuyu and Dr. Ndeti's medical report he suffered conjunctivitis of both eyes. Taking into account the severity of the injuries sustained by the Respondent we humbly submit that the amount of Kshs 280,000/= awarded by the Learned Magistrate was sufficient. We further rely on the following authorities wherein claimants sustained similar injuries. Civil Appeal 58 of 2018 - West Kenya Sugar Co. Ltd v ENW (Minor suing through next friend, guardian and

father SWS) wherein the claimant sustained injuries traumatic conjunctivitis to the left eye, blunt injuries to the left side of the face and nose. The Learned Judge upheld the decision of the trial court to award Kshs 280,000/=. Savannah International Ltd v Ruth Asuko Olusala [2021] KEHC 2159 (KLR) wherein the claimant sustained injuries sustained chemical conjunctivitis of the right eye. The Learned Judge upheld the decision of the trial court to award Kshs 300,000/-.The trial court considered the submission by the parties with the appellant's proposal of Kshs. 80000 and the respondent's 350000 and awarded 280000. The appellant relied on the decision in High Court's decision in Nairobi HCCA No 161 of 2011; C & P Shoe Industries v Albert Maina Kalii (Judgement delivered in 2014), in which it said that the injuries were comparable. At paragraph 5 of the said judgment, the injuries were stated as follows- 'PW1, Dr. Okere produced a medical report, receipts for the medical report for KShs. 1,500/= and court attendance fees for KShs. 5,000/= (P. Exhibit 1 (a) (b) and (c). He testified that the respondent suffered a chemical burn of 5% permanent incapacity to the eye leaving. His prognosis was that the respondent's eyes are very sensitive to light.' In the instant case, the medical report stated the respondent suffered major conjunctivitis of both eyes and may never recover.

38. Conversely, the respondent relied on the decision in Civil Appeal 58 of 2018 - West Kenya Sugar Co. Ltd v ENW (Minor suing through next friend, guardian and father SWS) wherein the claimant sustained injuries traumatic conjunctivitis to the left eye, blunt injuries to the left side of the face and nose. The Learned Judge upheld the decision of the trial court to award Kshs 280,000/=. Further respondent relied on the decision in Savannah International Ltd v Ruth Asuko Olusala [2021] KEHC 2159 (KLR) wherein the claimant sustained injuries sustained chemical conjunctivitis of the right eye. The injuries in the said decision were –

‘The Respondent’s medical report indicates that she suffered a permanent disability of 20% due to partial vision in the right eye.’

39. The court, taking into account the foregoing, finds that the decision cited by the appellant in C & P Shoe Industries v Albert Maina Kalii (Judgement delivered in 2014) was the most comparable with injuries suffered by the respondent, including photophobia of both eyes and pain. The court finds that the award was excessive as it was based on precedent case of more severe injuries. The court, taking into account Kenya shilling inflation from 2014 to 2017, finds that a substitute award of Kshs. 150,000 is fair and comparable award of injuries in C & P Shoe Industries v Albert Maina Kalii . The court tempered with the decision of the trial court on quantum based on the injury diagnosed which were comparable to injuries in C & P Shoe Industries v Albert Maina Kalii and took into account the pain the respondent continued to suffer. In Butt vs Khan (1977) 1KAR Law JA stated that-

“An appellate court will not disturb an award for damages unless it is 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 arrived at a figure which was either inordinately high or low.”

CONCLUSION

40. The appeal is partially allowed. The liability apportionment of 90:10 in favor of the respondent against the appellant is upheld. The Judgment and Decree of the Hon. L. Kassin (SPM) delivered on 31st October 2017 in Mavoko MCELRC Cause No. 645 of 2014 is set aside and substituted as follows-

Judgment is entered for the plaintiff against the respondent as follows-

- a. General damages of Kshs. 150,000 less 10% liability with interest at court rate from date of judgment.
 - b. Special damages Kshs. 3000 with interest at court rate from date of filing suit.
 - c. Costs to the plaintiff.
41. On costs in the appeal, the appeal succeeded only on quantum. Each party to bear own costs in the appeal.
42. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH
DAY OF DECEMBER, 2025.**

**J.W. KELI,
JUDGE.**

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – absent

Respondent - absent