

REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL NO. E078 OF 2024

GEORGE HENRY AKOKO

APPELLANT

VERSUS

HOTENSIA KANINI NDEKE

RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the Hon. S.N. Mutava given on 30.10.2024 in Rongo CMCC No. E170 of 2021. The appellant was a plaintiff in the lower court while the sole Respondent Hotensia Kanini Ndeke was a second defendant. The suit against George Onyango Odero (deceased) was withdrawn, and as such, he is not a party. His name is accordingly struck out from the proceedings herein. There was no basis for inclusion as a first respondent.
2. The trial court heard the Appellant's witnesses, who were duly cross-examined. The Respondent did not tender any evidence in defence. Upon considering the matter, the court nevertheless dismissed the Appellant's suit with costs to the

Respondent. The appellant filed this appeal and set forth the following grounds of appeal:

- a) The learned trial magistrate erred in law and in fact in finding that the plaintiff was not entitled to general or special damages as against the defendants.
- b) The learned magistrate erred in law and in fact in failing to apportion blame to the 2nd defendant, being the 2nd respondent herein.
- c) The learned trial magistrate erred in law and in fact by failing to consider the Appellant's evidence and submissions.

3. The appellant filed submissions dated 27.10.2025. They set out the duty of this court as set out in the case of **Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)**. It is important to note that the same has since been reviewed by the Supreme Court in *Imanyara & 2 others v Attorney General [2022] KESC 78 (KLR)*. In the former decision, the Court of Appeal posited as follows:

This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High 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

though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. See **Selle and Another v Associated Motor Boat Company Limited and others** [1968] EA 123 and **Williamson Diamonds Ltd. V. Brown** [1970] E.A.L.

As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in **Peters -vs- Sunday Post Ltd** [1958] EA 424. In its own words: -

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide ...”

4. The appellant indicated that there were two issues, that is, the finding of liability and the failure to award quantum. They submitted that the court placed undue reliance on the police evidence and disregarded the appellant's testimony. They submitted that the police investigations cannot bind the court. Reliance was placed on the decision of DAS Majanja in *Platinum Car Hire and Tours Limited v Samuel Arasa Nyamesa & another* [2019] KEHC 8796 (KLR) that:

No doubt in coming to the conclusion that both parties were to blame the trial magistrate had in mind the decision of the Court of Appeal in Berkley Steward Limited v Waiyaki [1982-1988]1 KAR where it cited with approval the decision in Baker v Market Harborough Industrial Co-operative Society Ltd [1953] 1 WLR 1472, 1476 where Denning LJ., observed inter alia as follows:

Everyday, proof of collision is held to be sufficient to call on the defendants for an answer. Never do they both escape liability. One or the other is held to blame, and sometimes both. If each of the drivers were alive and neither chose to give evidence, the court would unhesitatingly hold that both were to blame. They would not escape simply because the court had nothing by which to draw any distinction between them

11. In other cases, where the court is unable to determine who is to blame it has apportioned liability equally as illustrated by the Court of Appeal in Hussein Omar Farah v Lento Agencies CA NAI Civil Appeal 34 of 2005 [2006] eKLR where the it observed that:

In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this situation, the question arises whether both drivers should be held responsible. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.

12. At the end of the day and after evaluating the entirety of the evidence, I too come to the conclusion that following the collision, the appellant and 2nd respondent must share culpability in the absence of any other evidence exonerating one or either party.

5. The appellant submitted that there was uncontroverted evidence on general and special damages which the court failed to award.
6. The respondent filed submissions dated 18.12.2025. They supported the lower court judgment. On the duty of this court, reliance was placed on the case of **Charterhouse Bank Limited (Under Statutory Management) v Frank N. Kamau [2016] KECA 153 (KLR)**, where the court of appeal [**Makhandia, Ouko & M'Inoti, JJ.A**] held as follows:

We are obliged to reconsider the evidence that was adduced by the single witness, re-evaluate and reappraise the same and come to our own independent conclusions on the same. We are however equally obliged to bear in mind that on matters touching on the credibility of that witness and the believability of the evidence that he tendered, we do not have the same advantage as that enjoyed by the trial judge, who saw and heard him as he testified. We must accordingly defer to the conclusions of the trial court unless there are compelling reasons to differ with those conclusions. (*See Selle Another v. Associated Motor Boat Co Ltd & Others [1968] EA 123*).

7. They submitted that grounds were generally against all the respondents and no specific one against the current respondent, or the driver. They submitted that the Respondent had specifically blamed the former first Respondent, and the parties were put to strict proof to the contrary. The respondent stated that the appellant blamed both vehicles, but no evidence was tendered to that effect. A police officer also testified about the accident and demonstrated that the former first Respondent was to blame. Though they did not call any evidence, it was the duty of the appellant to prove his case. Reliance was placed on the case of **Phyllis Wangui Ktavi & Simon Kibaki Kang'ethe v Stephen Parasho Kaito [2021] KEELC 661 (KLR)**, where Wabwoto J posited as follows:

16. Although the suit was undefended, the Plaintiffs have a duty to formally prove their case on a balance of probabilities as is required by law.

17. In the case of Kirugi and Another Vs Kabiya & 3 others (1987) KLR 347 the Court of Appeal held that;

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

18. Similarly, in the case of Gichinga Kibutha Vs Caroline Nduku (2018) eKLR the Court held that;

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.

8. They stated and correctly so, that whoever asserts must prove. Reliance was placed on the persuasive authority of **Evans Mogire Omwansa v Benard Otieno Omolo & another [2016] KEHC 7139 (KLR)**. where the court, JANET MULWA, J held as follows:

The Appellant was under a duty to prove his case on a balance of probability notwithstanding that the respondents did not testify...

The provisions of the Evidence Act came to play that he who asserts must prove. It was the appellants duty to tender satisfactory evidence to discharge the burden placed upon him. It is not enough to say that since the opposing part has not testified, my testimony must be taken as truthful. It must be proved. The Respondents in their written submissions stated correctly that though they did not testify, there was enough rebuttal evidence during cross-examination.

9. The respondent's submission was that there was no proof of liability. Regarding quantum, the Respondent submitted that the appellant failed to prove negligence and is therefore not entitled to damages.

Analysis

10. 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 it 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.”

11. The Court is to bear 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.

12. 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...”

13. The most surprising aspect of the judgment is that both parties agreed on the position of law but could not juxtapose the same with available facts. The only difficulty the parties face is determining who asserted. Based on the evidence, the appellant, one of the two eyewitnesses to the accident, blamed both vehicles. The other eyewitness was the lorry driver. The evidence on record is that he fled the scene of the accident.
14. This is not a criminal trial. It is a civil trial where the court has to find for one party or another on a balance of probabilities. The question as to what amounts to proof on a balance of probabilities was discussed by Kimaru, J in **William Kabogo Gitau vs. George Thuo & 2 Others** [2010] 1 KLR 526 as follows:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have

established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

15. This was further enunciated in the case of **Palace Investments Limited v Geoffrey Kariuki Mwenda & Dollar Auctions [2015] KECA 616 (KLR)**, where the Court of Appeal [J Karanja, GG Okwengu, CM Kariuki, JJA] stated as follows:

The burden of proof is placed upon the appellant and is to be discharged on a balance of probabilities. Denning J. in Miller -vs- Minister of Pensions [1947] 2 ALL ER 372 discussing the burden of proof had this to say:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘We think it more probable than not’, the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

16. The burden of proof on the appellant was to prove that the accident occurred due to the respondents' negligence. It was

not the duty of the court to apportion liability on the two tortfeasors. His duty or the duty on whoever asserts is set out in sections 107-109 of the Evidence Act as follows:

107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

17. It follows that the initial burden of proof lies on the Plaintiff on the matters they assert and on the defendant on the matters they assert. The evidential burden can shift to the other side and crystallize if not rebutted. Therefore, the burden is not on the Plaintiff or the Defendant. It is on the party who alleges. That is essentially the place of pleadings. Whereas parties tend to have generic particulars of negligence, it is incumbent upon a party raising specific issues to prove them. As such, the burden of proving negligence is on the plaintiff, while contributory negligence is on the

defendant. In **Evans Nyakwana -vs- Cleophas Bwana Ongaro [2015] eKLR** it was held that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the Evidence Act, Chapter 80 Laws of Kenya. Furthermore, the evidential burden...is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side.”

18. The appellant's duty was discharged to the extent that he proved that the accident occurred due to the negligence of both vehicles. The respondent blamed the deceased. He had a duty to prove the particulars of negligence against the party he claims against. Any particulars of contributory negligence or negligence must be proved by the party asserting. In this case, the question of apportionment between the two tortfeasors lay with the defendant. The court, for some strange reason, found the deceased 1st defendant to be at fault. Secondly, he absolved the respondent from blame. This is not borne by both evidence and pleadings.

19. The first *raison d'être* was finding that the court was plainly wrong in blaming the deceased first defendant, as the 1st defendant deceased was not a party to the suit. A court cannot apportion liability with non-parties. In the case of *JNM (Suing as the legal representative of the Estate of SGG - Deceased) v Kenya Power & Lighting Co. Ltd (Civil Appeal E032 of 2022) [2025] KEHC 11984 (KLR) (28 July 2025) (Judgment)* the court held as follows:

More fundamentally, the Rural Electrification and Renewable Energy Corporation is not a party to this suit. The court cannot find Rural Electrification and Renewable Energy Corporation liable without the same being a party to the suit. The Respondent did not bother to take out third-party proceedings if they wished to join the said entity. In the case of *Stella Nasimiyu Wangila & another v Raphael Oduro Wanyamah [2016] KEHC 1666 (KLR)*, the court, Janet Mulwa held that:

18. The owner and driver of the said pick-up Registration No. KAY 651A are not parties in this case. The defendant had an option and opportunity to enjoin that party to the suit - See Order 1 Rules 15 of the Civil Procedure Rules. He did not do so. A court cannot adjudicate on issues touching a party or pass judgment against a party who is not a party in a suit. Failure to join the party that the defendant blames for the accident as a third party or a necessary party and or seek indemnity from that party has a legal consequences as held in

the case Jemimah Wambui Njoroge -vs- Philip Mwangi (2001) e KLR. The defendant has only himself to blame.

20. The Respondent's driver was an eyewitness and an actor. He had firsthand experience but chose not to testify. What then can this court infer from the refusal to testify? In the case of **Nesco Services Limited v CM Construction [EA] Limited [2021] eKLR**, Justice G V Odunga as he then was, stated as follows:

"In my view, the fact that the document in question was authored by the Appellant's agent and was produced by consent of the parties themselves entitled the learned trial magistrate to rely on it. The Court of Appeal in Ephantus Mwangi and Another vs. Duncan Mwangi Civil Appeal No. 77 of 1982 [1982-1988] 1KAR 278 had this to say on the issue:

"Where documents are put in by consent, as for example an agreed bundle of correspondence, the usual agreement is that they are admitted to be what they purport to be (so as to save the necessity for formal proof of each document)."

41. Since the said author was for reasons unknown to the Court not called to testify and dispute its authenticity, adverse inference could be made thereon. In Kenya Akiba Micro Financing Limited vs. Ezekiel Chebii & 14 others [2012] eKLR the court stated as follows:

"Section 112 of the Evidence Act Chapter 80 of the laws of Kenya provides:

‘In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proofing of disproving that fact is upon him.’

Where a party has custody or is in control of evidence which that party fails or refuses to tender or produce, the court is entitled to make adverse inference that if such evidence was produced, it would be adverse to such a party. In the case of *Kimotho -vs- KCB* (2003) 1 EA 108 the court held that adverse inference should be drawn upon a party who fails to call evidence in his possession.”

21. The failure of the driver to testify means that this court must make a negative inference. The defence and particulars of contributory negligence remained bare without any testimony. Therefore, the court erred in finding on liability.
22. The next question is whether the court overly relied on the evidence of the police officer. The police officer who testified was not the investigating officer. His evidence contradicted the contents of the police abstract, and he purported to apportion blame to the deceased without any factual or investigative basis. Such testimony was speculative and unsupported by the record. The police abstract showed that the matter was pending under investigation. It is only another document that can contradict this. In **Fidelity & Commercial Bank Ltd V Kenya Grange Vehicle Industries Ltd (2017)eKLR**, the Court of Appeal, [Ouko, Kiage and Murgor JJA] held as doth;-

“Courts adopt the objective theory of contract interpretation, and profess to have the overriding aim of giving effect to the expressed intentions of the parties when construing a contract. This is what sometimes is called the principle of four corners of an instrument, which insists that a document's meaning should be derived from the document itself, without reference to anything outside of the document (extrinsic evidence), such as the circumstances surrounding its writing or the history of the party or parties signing it. ✓

23. In Gerald Dworkin, *Odgers' Construction of Deeds and Statutes* (5th edn, Sweet & Maxwell 1967), the learned author at p. 106 states as follows:

“Parol Evidence and written documents. It is a familiar rule of law that no parol evidence is admissible to contradict, vary or alter the terms of a deed or any written instrument. The rule applies as well as deeds as to contracts in writing. Although the rule is expressed to relate to parol evidence, it does in fact apply to all forms of extrinsic evidence.

As it stands this is not a rule of interpretation but of law, and means that the interpretation of the document must be found in the document itself with the addition if necessary of such evidence as we have previously seen is admissible for explaining or translating words and expressions used therein”

24. In any event, a police abstract is not proof of how an accident occurred or of liability. It merely confirms that an accident was reported to the police. It cannot, without more, be relied upon as evidence of negligence or culpability. In the

case of **Linus Nganga Kiongo & 3 Others V Town Council Of Kikuyu** [2012] KEHC 3881 (KLR), Odunga, J (as he then was), it was stated as follows:

What are the consequences of a party failing to adduce evidence? In the case of Motex Knitwear Limited vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No. 834 of 2002 Justice Lesiit, citing the case of Autar Singh Bahra and Another vs. Raju Govindji, HCCC No. 548 of 1998 stated:

“Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the defence rendered by the 1st plaintiff’s case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail”.

Again in the case of Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001 the learned judge citing the same decision stated that it is trite that where a party fails to call evidence in support of its case, that party’s pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is uncontroverted and therefore unchallenged.

25. The court did not triangulate the evidence of the police officer. Who gave him the information he had? In the circumstances, I agree with the appellant that the court unduly gave unnecessarily more weight to the police officer. The said evidence was as good as confirming that the accident involving two vehicles was reported. It cannot be the basis for holding anyone liable. Given the inference already made and the appellant's evidence that both vehicles were to blame, I cannot find the finding of not holding the respondent liable plainly wrong. In the case of **Warutumo v Kinyua & another** (Civil Appeal E058 of 2022) [2024] KEHC 16257 (KLR) (20 December 2024) (Judgment), the court held that:

A police abstract, really does not show who is to blame. It is the police officer's preliminary view on the cause of accident. A sketch plan gives a more succinct view of the accident.

26. In **Peter Kanithi Kimunya v Aden Guyo Haro** [2014] KEHC 1547 (KLR), the court, held as follows:

As I have stated earlier, a police abstract is not proof of occurrence of an accident but of the fact that following an accident, the occurrence thereof was 'reported' at a particular police station.

27. Whereas there were two vehicles, the owner of the other vehicle is not in court. The court cannot apportion liability

against non-parties. The court, therefore, cannot wade into apportionment with non-parties. It is not in dispute that the appellant was a passenger and did not contribute in any way to the accident. If the Respondent was of the considered view that the suit against the 1st defendant in the lower court was wrongly withdrawn, he had refuge in Order 1 rule 15 of the Civil Procedure Rules. The same provides 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, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.

(2) A copy of such notice shall be filed and shall be served on the third party according to the rules relating to the service of a summons.

28. Short of complying with the said rule, the respondent was non suited as regards liability. The court is not expected to apportion liability to a non-party or even consider the defence blaming the non-party.
29. Lastly on the issue of liability, I found the submissions by the respondent hilarious. He complained that the appellant should have been very specific against the respondent specifically. There is no requiring them to do so. The duty to prove liability is not as strict as proof of special damages.
30. The legal burden of proof lies upon the party who invokes the aid of the law and asserts an issue based thereon. In **Anne Wambui Ndiritu -vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, the Court of Appeal held that:

“As a general proposition under Section 107 (1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

31. In this case the driver of respondent’s vehicle not only did he not testify but also fled the scene. An innocent person does not flee a scene of accident. The court is entitled to infer that he was on the wrong. The

respondents were driving the suit motor vehicle. They had special knowledge on what transpired. By failing to testify and fleeing the scene, there is no other conclusion the court can reach other than that the respondent was to blame. Section 112 of the Evidence Act is handy in that regard:

In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.

32. This section was not displaced. The court was invited to rely on the conclusion by the police to find the deceased 1st defendant liable. This statement has difficulties. The finding of liability is an exclusive preserve of the court as it is a judicial function. Any recommendation of guilty or otherwise remains a recommendation. If the court were bound by the police recommendation, it will not only surrender its judicial function but also place the judicial function in the police, and the results will be disastrous. If the police recommendation were binding, there will be no acquittal in traffic and criminal cases. It must be recalled that vehicles properly driven by well qualified drivers do not involve themselves in accidents.

33. The court therefore sets aside the dismissal order and replaces it with an order finding the Respondent 100% liable.
34. The appellant raised in his submissions questions of quantum posing that the court erred in not awarding quantum. This kind of submission is false. The court below, appreciated the duty of the court to assess damages even when the suit is dismissed.
35. Indeed the court awarded general damages of Ksh. 500,000/= and special damages of Ksh. 172,164/=. The arguments by the court on quantum were balanced and there is no faulting the same. The parties did not also raise questions regarding the amounts. Having been awarded, the court cannot interfere with the same in absence of an appeal on the amount. The amounts awarded by the court therefore stands.

Determination

36. In the circumstances, I make the following orders:-
- a) The name of the First respondent is struck off the suit and the appeal as his case was withdrawn. Hotensia Kanini Ndeke is the only respondent in this matter.
 - b) The appeal on liability is merited and therefore allowed. Judgment on liability is set aside. In lieu thereof the court enters judgment for the appellant against the respondent, Hotensia Kanini Ndeke at 100% liability.
 - c) The awards on quantum by the lower court remains undisturbed, that is:

- i. general damages for pain, suffering and loss of amenities - Ksh 500,000/=
 - ii. Special damages Ksh - 172,164/=.
 - iii. Special damages shall attract interest from 16.12.2021, the date of filing.
 - iv. General damages to attract interest at court rates from 28.08.2024, the date of judgment in the court below.
- d) The appellant shall have costs of the suit in the court below.
- e) The appellant shall have costs of Ksh. 75,000/= for the appeal.
- f) 30 days stay of execution.
- g) The file is closed.

DELIVERED, DATED and SIGNED at NYERI on this 16th day of February, 2026. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

Represented by: -

Mr. Opondo for the Appellant

Ms. Anyango for the Respondent

Court Assistant - Michael

ORIGINAL