

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
KERUGOYA
ELCA NO.E015 OF 2023

DANSON MURIUKI KIBARA
APPELLANT

VERSUS

BERNARD WANJOHI MIANO
RESPONDENT

*[Being an appeal from the judgment of Hon. E. H. Keago, SPM,
delivered on 17th May 2019 in Baricho SPMC Case No. 100 of
2017]*

JUDGMENT

1. Aggrieved and dissatisfied by the judgment delivered by the learned Trial Magistrate on the **17th May 2019** in **Baricho SPMC Case No. 100 of 2017**, the appellant, who was the plaintiff before the trial court, lodged this appeal vide the memorandum of appeal dated 12th May 2023, raising five grounds that, the learned trial magistrate erred both in law and fact:

***1. By declaring the sale agreement dated 31st May
2017 null and void.***

- 2. By holding that the parties had entered into an agreement for subdivision of the suit land and not for sale, despite the absence of evidence to support such a finding.*
- 3. By failing to consider and apply the provisions of **Section 7 of the Land Control Act.***
- 4. By failing to find that the consideration of Kshs.400,000/= paid by the appellant was recoverable as a debt from the respondent.*
- 5. By basing the judgment on extraneous matters not pleaded, and ultimately rendering a decision unsupported by the evidence on record and the relevant law.*

The appellant prays for this appeal to be allowed; that the judgment and decree of the learned Trial Magistrate be set aside, and be substituted it with an order allowing the appellant's claim as pleaded in the plaint; and for the costs of this appeal and in the lower court to be borne by the respondent.

2. The court gave directions that the appeal be canvassed through written submissions on the 17th February 2025, 13th May 2025 and 30th June 2025.

The learned counsel for the appellant filed written submissions dated 8th May 2025 on three issues that is, whether the sale agreement dated 30th May 2017 was lawful and valid; what remedies are available to the parties, and the costs.

On the first issue, counsel argued that the impugned sale agreement met all the statutory requirements for validity under **Section 3(3) of the Law of Contract Act**, which mandates that contracts for disposition of an interest in land must be in writing, signed by the parties, and attested. He relied on the decision in **Kukal Properties Development Ltd versus Tafazzal H. Maloo & 3 Others**, where it was held that, for a land sale agreement to be enforceable, it must comply with the requisite formalities.

Counsel submitted that the agreement dated 30th May 2017 satisfied these conditions, as it was reduced into writing, was duly executed by both parties, and attested before C.S. Macharia, Advocate.

The counsel further submitted that the respondent's defence and counterclaim dated 14th September 2017 did not contain any particulars of fraud, misrepresentation, coercion, or undue influence as mandated by **Order 2 Rule 4(1) of the Civil Procedure Rules**. In the absence

of such particulars, counsel argued, the allegations were bare and incapable of meeting the threshold for pleading or proving fraud. The testimony of C.S. Macharia Advocate, who attested to the execution of the agreement, was described as uncontroverted, and counsel emphasized the professional integrity attached to the advocate's testimony, referencing **Abraham Lincoln's** saying that ***"a lawyer's word is his bond."***

Counsel also faulted the trial court for finding that the sale agreement could not be sustained because of the encumbrance on the title. He averred that *Clause 6* of the sale agreement expressly placed that obligation on the respondent. He referred to a letter authored by the Deputy County Commissioner, Kirinyaga, dated 8th June 2017 addressed to the Land Registrar, which directed removal of the restriction on the property, arguing that this demonstrated compliance with the agreement.

With regard to a letter written in **Criminal Case No. 288 of 2017**, counsel submitted that the correspondence emanated from the firm of Mwangi Kinyua Advocates, not from the appellant's advocates on record, and that any issues of conflict of interest ought to have been raised during the pre-trial stage. Counsel maintained that the respondent's allegations of fraud were vague, unsubstantiated, and unsupported by evidence, and that the counterclaim ought to have been dismissed.

On the second issue concerning remedies, counsel submitted that the suit property is agricultural land, and the transaction required the consent of the relevant Land Control Board, to be obtained within six months, failing which the sale agreement became void under the provisions of the **Land Control Act**. Counsel therefore urged the Court to set aside the judgment delivered on 17th May 2019 and substitute it with an order directing the respondent to refund the appellant Kshs.400,000/=, together with interest at 35% per annum from 30th May 2017 until payment in full. Counsel also prayed that the appellant be allowed to continue holding the title as a lien until full payment of the refund.

On the final issue of costs, counsel urged the Court to award the appellant costs of both the lower court suit and this appeal.

3. The learned counsel for the respondent filed their written submissions dated 27th June 2025, addressing two broad issues: that is whether the trial magistrate erred in law and fact in declaring the sale agreement dated 30th May 2017 invalid; and whether the trial magistrate erred in failing to find that the sum of Kshs.400,000/= was recoverable as a debt.

On the first issue, the learned counsel for the respondent maintained that the respondent never intended to sell his land and was fraudulently induced to sign the purported sale agreement.

Counsel submitted that it was not in dispute that the respondent was illiterate, a fact which rendered him incapable of understanding the contents or legal effect of the written agreement. He argued that the respondent's understanding was that the appellant would finance the subdivision of the land into eight portions, and that the respondent would, in return, give the appellant one portion as compensation for facilitating the subdivision process. Counsel contended that the appellant's actions and representations were inconsistent with this understanding and amounted to misrepresentation, a recognised vitiating factor in contract law.

It was submitted that the respondent signed the agreement on the belief that it reflected the arrangement discussed, but the document presented to him allegedly conveyed a completely different transaction, namely, a sale of land. Considering the respondent's illiteracy and the circumstances leading to the signing of the agreement, counsel argued that the trial court was correct in concluding that the contract was invalid.

On the second issue, counsel submitted that the appellant failed to produce any documentary proof of the alleged payment of Kshs.400,000/=, or any evidence to support the assertion that a transaction involving that sum ever occurred between the parties. He therefore argued that the trial magistrate properly rejected the claim for recovery of the alleged amount as a debt.

The counsel further submitted that the trial court reached a fair and just determination on both issues, and urged this Court to uphold the judgment in its entirety.

4. From the record of appeal and submissions filed by the learned counsel for the appellant and respondent, the following issues arises for determinations by the court:

- a. Whether the trial court erred in finding that the sale agreement dated 30th May 2017 was invalid and unenforceable.*
- b. Whether the trial court erred in declining to grant the appellant the alternative remedy of a refund of Kshs. 400,000/=.*
- c. Whether the trial court properly allowed the respondent's counterclaim.*
- d. Who should bear the costs?*

5. The court has carefully considered the grounds on the memorandum of appeal, record of appeal, submissions by

the learned counsel, superior court decisions cited thereon and come to the following determinations:

- a. The dispute before the trial court arose from a claim instituted by the appellant on 29th August 2017. In his plaint, the appellant sought an order compelling the respondent to transfer to him a quarter acre portion out of **Land Parcel Mwerua/Kithumbu/895**, or in the alternative, a refund of Kshs. 400,000/= together with interest, pursuant to a sale agreement dated 30th May 2017. He also prayed for the costs of the suit with interest.

The appellant averred that, by a sale agreement dated 30th May 2017, the respondent agreed to sell to him a portion of the suit property at a total purchase price of Kshs. 500,000/=. According to the appellant, he paid Kshs. 400,000/= at the time of executing the agreement, which sum the respondent duly acknowledged, with the balance of Kshs. 100,000/= being payable upon the issuance of the Land Control Board consent to facilitate transfer.

It was the appellant's case that, in blatant breach of the agreement, and after receiving the said sum of Kshs. 400,000/=, the respondent became unreachable and failed to sign the requisite transfer documents or to cooperate in obtaining the Land Control Board consent. The appellant contended that

repeated efforts to secure the respondent's participation were futile.

As a result, he sought from the trial court an order compelling the respondent to transfer the agreed quarter-acre portion to him, or in the alternative, a refund of the Kshs. 400,000/= paid, together with interest as provided in the agreement.

- b. The respondent filed his defence and counterclaim on 14th September 2017, in which he denied the contents of the appellant's plaint in their entirety. He asserted that the appellant was not entitled to the reliefs sought, contending that the purported sale agreement was procured through fraud and misrepresentation.

In his counterclaim, the respondent affirmed that he is the registered proprietor of **Land Parcel Mwerua/Kithumbu/895**. He stated that although an agreement dated 30th May 2017 existed, the appellant had, through misrepresentation, induced him to execute it, purporting that it was an agreement for the sale of a quarter-acre portion of the suit property. The respondent maintained that he had no intention whatsoever of selling his land to the appellant.

According to the respondent, the true position was that on or about 30th May 2017, he approached the appellant seeking financial assistance to facilitate the subdivision of his land, as he lacked the means to undertake the process. He averred that the parties agreed that the appellant would finance the subdivision of **Parcel Mwerua/Kithumbu/895** into eight portions measuring **0.05 hectares** each, and in return, the respondent would give the appellant one **0.05-hectare** portion as reimbursement for the costs incurred in subdivision and issuance of titles. He stated that this understanding was reduced into writing on 30th May 2017 at the offices of C.S. Macharia, Advocate, and that he was induced to sign the agreement on the representation that its contents reflected what they had mutually agreed. He added that he surrendered his national identity card, PIN certificate, and the original title deed for the suit land to facilitate the subdivision and processing of new titles.

The respondent further averred that in December 2017, he was arrested and charged with the offence of obtaining money by false pretences, which came as a shock to him as he had not received any money from the appellant and had never intended to sell his land.

He was charged in court on 5th July 2017, and it was during those proceedings that he first came to learn of the actual contents of the agreement dated 30th May 2017. He contended that he had unknowingly signed a document that was materially different from the agreement he believed they had entered into.

He further stated that he subsequently instructed the firm of Ngigi Gachoya Advocates, who wrote to the Office of the Director of Public Prosecutions, leading to the withdrawal of the criminal charges. On this basis, the respondent maintained that the impugned agreement was null and void for misrepresentation. In his counterclaim, he sought for the revocation of the sale agreement dated 30th May 2017; and an order compelling the appellant to release the original title deed for **Mwerua/Kithumbu/895** to him, together with the costs of the counterclaim.

- c. The matter proceeded to full hearing on 26th September 2018 and 28th November 2018, during which both parties testified and called their respective witnesses. The trial court thereafter considered the parties' pleadings, testimonies and documentary evidence and delivered the impugned judgment.

In her judgment, the Learned Trial Magistrate identified three issues for determinations, being whether there existed a valid land sale agreement between the plaintiff and the defendant; If so, whether the said agreement was still valid and enforceable against the defendant; and whether there had been an attempt to fraudulently dispose of the defendant's land, the remedies available to the parties in respect of their claims, and liability for costs.

On the first issue, the trial court held that no valid sale agreement existed between the parties. The Magistrate noted that, at the time the alleged agreement was entered into, there was a restriction registered on the title by the defendant's wife. The court found that such an encumbrance rendered the contract incapable of being validly entered into, stating that *"there would have been no valid contract between the two parties with the encumbrances so registered. That being the scenario the plaintiff could not have entered into any valid contract."*

Concerning the second issue, the Trial Court observed that, based on the parties' testimony, the defendant had refused to procure the Land Control Board's consent necessary for the transfer. The court

therefore held that no valid contract existed that could be enforced against the defendant.

Concerning the third issue, the Learned Magistrate accepted the respondent's assertion that he had been induced to sign a document whose contents had not been explained to him. The learned trial magistrate noted that the sale agreement did not contain a clause confirming that its contents had been explained to the respondent.

The court further questioned the credibility of the appellant's evidence, observing that when asked to explain his source of the Kshs.400,000/=, he had merely stated that he *"had cash in the house and the rest was from sale proceeds"*, but did not prove that he possessed such funds at the material time. The court also noted that the appellant did not explain how he learned that the respondent was selling the land and highlighted the advocate's evidence that the parties were merely *"walk-in clients"* unknown to him.

The Learned Trial Magistrate further took issue with the fact that the same firm of advocates who acted for the appellant in the civil suit had previously represented the respondent in the related criminal proceedings and had actively urged that the criminal

case be terminated on grounds of fraud. The court observed that *“there is no explanation how again they became advocates for the plaintiff, the complainant in the criminal case,”* and found that this failure to disclose a conflict of interest undermined the plaintiff’s case. The court also observed that the advocate who prepared the agreement had not produced evidence that he was paid to prepare it.

In conclusion, the trial court found that the appellant had not proved the payment of Kshs.400,000/=, and dismissed his claim in its entirety.

On the counterclaim, the trial court accepted the respondent’s position that he had reported the matter to the police alleging fraud, but was nonetheless charged with obtaining money by false pretences. The court found that the appellant had not rebutted the respondent’s evidence on the circumstances leading to the criminal charge. The court therefore dismissed the plaintiff’s claim and entered judgment in favour of the respondent on his counterclaim for appellant to release to the respondent the original title deed for **Land Parcel Mwerua/Kithumbu/895**, and costs in the suit and counterclaim.

d. This being a first appeal, the duty of this Court is to re-evaluate the evidence afresh and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses. This principle was stated in **Selle & Another versus Associated Motor Boat Co. Ltd & Others [1968] EA 123**, where the **Court of Appeal** held:

“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... 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 allowance in this respect.”

e. On the validity of the sale agreement dated 30th May 2017, it is important to start by observing that the law prescribes that agreements that purport to create, assign or dispose of an interest in land must satisfy the specified statutory formalities. Under **Section 3 (3) of the Law of Contract Act**, the settled test is that such an agreement must be in writing, signed by the parties, and attested. Superior courts have repeatedly treated these requirements as constituting the formal threshold for the

enforceability of agreements affecting land. Even where the formal requirements are satisfied, a contract may be vitiated by proof of recognised defects in consent or formation. The principal vitiating factors are, fraud, misrepresentation, mistake, undue influence, coercion/duress, illegality, and incapacity, including lack of capacity through mental incapacity or extreme illiteracy in circumstances creating a duty to explain.

- f. Fraud or misrepresentation is not to be pleaded in vague or in general terms. **Order 2 Rule 10(1)** of the **Civil Procedure Rules** require ***“particulars of any allegations of misrepresentation, fraud breach of trust, wilful default or undue influence on which the party pleading relies”*** on to be included in the pleadings. The reasons for this requirement are practical and fair, as it allows the opposing party to know the case he has to meet. It also allows the court to know the precise allegations to be tested at trial, and that way, it is able to determine which of those have been proved in its determinations.

Although in civil claims proof is on a balance of probabilities, the courts require clear, cogent, and convincing evidence where allegations of fraud are

raised to succeed. The stricter evidential requirement recognises the gravity of the fraud allegation.

- g. The effect of a vitiating factor to misrepresentation, if proved, results to the contract becoming voidable at the option of the innocent party, or sometimes void *ab initio*, depending on the nature of the defect. Remedies in such situations include rescission, restitution, repudiation, and/or damages. The precise remedy in each instance depends on the nature and timing of the relief sought and whether third-party rights have intervened.

Transactions in agricultural land require consent under the **Land Control Act**, and failure to obtain the required Land Control Board consent within the statutory time renders the transaction unenforceable. The sale under such unenforceable contract cannot be registered, and the prospective transferee will generally be left with a claim for recovery of consideration of purchase price paid, rather than a right to specific performance.

- h. Applying the above analysis to the pleadings and evidence presented before the trial court, the first question this Court must ask and answer is whether the impugned agreement meets the formal statutory test. Factually, there is a written document dated 30th

May 2017, executed by both parties and attested by an advocate. On its face, the agreement therefore met the statutory formalities for a land disposition and was prima facie valid.

The second question that this Court should ask and answer is whether fraud/misrepresentation was raised with the requisite particulars. The respondent did plead fraud/misrepresentation in the defence and counterclaim. However, the pleading did not contain the particulars required by **Order 2 Rules 4 (1) and 10(1) of the Civil Procedure Rules**, as no precise details of who said what, when, the exact misrepresentation, how he was induced, and the loss occasioned were set out. The absence of particulars is material, as it prevented the appellant from being put on proper notice of the exact case he had to meet and hampered the trial court's capacity to confine the contest to clear tested facts.

- i. The legal consequence of an un-particularised allegation of fraud amounts to an inadequate pleading. The court should either have required particulars to be provided, during the pre-trial, or tested any general allegation against the evidence presented, but in doing so, the court must be careful not to treat un-pleaded matters as decisive without

allowing the parties to address them. In any case, parties are bound by their own pleadings.

j. In considering whether misrepresentation was proved, the court must note the following core evidential threads:

i. The respondent in his testimony claimed *inter alia* that he is illiterate; that he intended the appellant to finance subdivision of the land only, but he was induced to sign a document that was in fact a sale agreement instead. That he surrendered his identity card and the original title of the land to be used in furtherance of the subdivision process, and that he only came to discover the true contents of the agreement later.

ii. The correspondence relied on, including the letter by Ngigi Gachoya advocates on their letterhead, apparently prepared for the respondent, restating the respondent's position that his intent was to have the land subdivided and that he was misled, supports the respondent's testimony before the trial court.

- iii. The criminal proceedings in which the respondent was charged, before the charge(s) were withdrawn, by the prosecution following correspondence done through counsel, was invoked an evidential context that supports the respondent's claim that he was duped into signing the sale agreement.

- iv. The Appellant in his evidence supported the existence of the sale agreement, that itself expressly acknowledges payment of a sum of Kshs. 400,000/=, by him to the respondent. It was attested by an advocate testified that he saw the money exchanged.

- v. The claim of conflict of interest of PW2, attesting advocate, for reasons of representing the respondent in correspondence leading to the withdrawal of the criminal charges, and then representing the appellant in the suit is evidently a matter that was not raised during the pre-trial conference. Further, no evidence has been placed before the court to establish the relationship between PW2 and the firm of Ngigi Gichoya advocates.

- k. From the evidence tendered as summarised above, it prima facie shows that the respondent presented both oral and documentary factual materials indicating that he believed the transaction, subject matter of the agreement he thumb printed, was for subdivision, and not sale agreement. The fact of his illiteracy, and the letter written on his behalf resulting to the criminal charges preferred against him being dropped/withdrawn, are important facts that without more, would create reasonable doubts to the appellant's claim that the respondent knew the contents of the agreement before he signed it, and could prima facie appear as adequate evidence of misrepresentation.
- l. The allegations of fraud/misrepresentation were never particularised in the pleadings, in violation of **Order 2 Rules 4(1) and 10(1) of the Civil Procedure Rules**. This failure meant that the appellant did not face properly framed claim of fraud/misrepresentation to defend himself against. Secondly, the court did not have before it a properly framed fraud/misrepresentation from which an appropriate issue would arise to be addressed and determined. The absence of particulars on fraud/misrepresentation created a procedural gap that undermined the trial court's reliance on the general allegation. The provision of the law cited

above demands that the material facts constituting the fraud/misrepresentation be clearly pleaded, including the content of the representation, its maker, and how it induced the party in the execution of the agreement. In this case, the respondent's pleading contained only a general assertion that he was misled, without setting out the specific representation, the circumstances in which it was made, or the causal link to his execution of the agreement.

- m. The mere fact that the respondent is illiterate does not automatically render the agreement void. Being illiterate is a contextual fact that heightens the duty to explain the contract, but it does not replace the need for specific misrepresentation or fraud to be proven. Moreover, the agreement was executed in the presence of a legal practitioner, and the respondent had the opportunity to seek explanation or interpretation before signing.

Taken together, the failure to plead the necessary particulars of fraud, the vague generality of the claim of misrepresentation, the absence of independent evidence supporting the respondent's claim that the agreement he signed was for appellant to finance the subdivision and not for sale, and the formal presence of an attesting advocate all demonstrate that the

respondent did not discharge the legal threshold required to vitiate the written sale agreement.

n. Further, for the relief rescission or declaration of nullity of an otherwise valid agreement to be invoked, the court must be satisfied that the fraud/misrepresentation occurred and induced the execution of the document. That requires clear evidence of the fraud/misrepresentation, its maker, and reliance. In this instance, the evidence presented is mixed. Even though no independent documentary proof was presented, and the respondent's testimony and supporting correspondence appears reasonable, the testimony by PW2, who was the attesting advocate, that money actually changed hands from appellant to respondent, and the presence of an executed written agreement that acknowledges receipt of Kshs. 400,000/=, as part of the consideration, amounts to strong counter-indicator to the respondent's contestations.

On balance of probabilities, though there is evidence that show that the respondent's claim of fraud/misrepresentation by the appellant, the absence of precise particulars of the allegations creates significant evidential doubt to his contestations.

o. In its judgement, the trial court found there was a restriction on respondent's title at the time of the agreement and reasoned that a valid contract could not have been entered. The court also accepted that the respondent had been induced to sign a document he did not understand, placing weight on the absence of a clause stating its contents had been explained to him. It further criticised the appellant's explanation on the source of the Kshs. 400,000/=, and raised concerns about the advocate's failure to produce receipts to confirm payment for the service he rendered.

The court considered the correspondence over the criminal matter and the role of the advocates as supporting the respondent's narrative that he had signed the agreement through misrepresentation, and dismissed the appellant's claim for refund of Kshs. 400,000/=. The court then proceeded to allow the respondent's counterclaim.

p. From the evidence tendered at trial, the learned trial magistrate was right to scrutinise the circumstances of execution of the agreement, where an illiterate person signs a document that allegedly misstates the parties' agreement, as the court has a duty to ensure the consent was genuine. The trial court was also entitled to consider the correspondence and the

criminal episode as contextual evidence. However, the trial Court departed from the correct principles when it treated a restriction registered against the suit property's title as making the contract incapable of formation, as that is legally incorrect. A registered restriction affects registration of a disposition document and therefore completion of a sale agreement, but does not by itself, negate the validity of a contract otherwise validly executed. The proper legal consequence of a registered restriction is that a disposition/transfer cannot be registered until the restriction is first removed, but does not prevent a party from contracting about the land. It is important to appreciate that the parties to the agreement were aware of the restriction and through *clause 6* of the agreement, they placed the obligation to remove the restriction on the respondent. That was a contractual allocation of responsibility the trial court should have considered it as such, and not as a ground to declare that no contract existed.

- q. The trial court relied heavily on matters of fraud/misrepresentation that were not particularised in the pleadings, for example, the source of Kshs. 400,000/= that the appellant paid respondent; the absence of a receipt for services rendered by PW2, and the alleged conflict of counsel, in arriving at its decision. Those matters are procedurally extraneous

and cannot be the basis of the court's decision without first placing them before the parties and according them an opportunity to be heard. The fact that the trial court relied on factual matters not pleaded and addressed by the parties during trial was a legal and procedural misstep, and contradicts the fact that parties are bound by their own pleadings.

- r. While the trial court reached to a practical result, the pathway to that result by holding the agreement as unenforceable and vitiated by misrepresentation, without ensuring that the correct evidential standard for particularizing and proving fraud/misrepresentation were adhered to. The net effect of the trial court's approach is that it reached a result that may be supportable on other grounds, for example, the agreement being unenforceable because Land Control Board consent was not obtained, but the reasoning it used, in invalidating the contract on the basis of a restriction, and relying on un-particularised allegations of fraud/misrepresentation, and extraneous considerations, was not strictly in accordance with procedural or substantive law.

Having considered the basis or reasoning of the trial court in arriving at its decision, the court finds it was flawed for the reasons set out above. The sale agreement was valid but unenforceable, and the appellant is entitled to the refund of the Kshs. 400,000/= he paid and receipt acknowledged under the said agreement. To hold otherwise would be tantamount to allowing the respondent unfairly enrich himself. That while the court finds the appeal has merit, the appellant has failed to present a reasonable basis for interest at 35 percent to be considered. Interest will be allowed at courts rates.

- s. **Section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya** provides that costs shall ordinarily follow the event unless the court, for good reason, orders otherwise.

The court in the case of **re Estate of Monica Wanjiru Macharia (Deceased) (Family Appeal 15 of 2023) [2024] KEHC 14780 (KLR)** held that:

“Section 27 of the Act is clear that it lies in the discretion of the court to award costs in a suit. This discretion must be exercised judiciously.”

In the circumstances of this appeal, the court finds no reasons to deviate from the edict in the above legal provision on costs.

6. Flowing from the above conclusions in this appeal, the court finds and orders as follows:

a. The appeal has merit and is allowed, and the respondent's counterclaim is dismissed.

b. That the judgment and decree of the learned trial magistrate delivered on 17th May 2019 is hereby set aside, and substituted with an order allowing the appellant's alternative claim for refund of Kshs. 400,000/= as pleaded in the plaint with interests at court rates.

c. That the respondent to bear the appellant's costs in the appeal and the trial court.

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON
THIS 18TH DAY OF FEBRUARY 2026.**

S. M.

Kibunja

ELC

JUDGE

In the presence of:

Appellant

Respondent.

Kinyua - Court Assistant.

S. M.

Kibunja

EL

C JUDGE