

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CIVIL CASE NO. E115 "B" OF 2007**

**NIYIBIZI NDAYAMBAJE**

**suing as Attorney for RUGOMEZA NDAYAMBAJE .....**

**PLAINTIFF**

**VERSUS**

**THE COMMISSIONER OF POLICE ..... 1<sup>ST</sup>**

**DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup>**

**DEFENDANT**

**Coram: Before Justice R. Nyakundi**

**M/s Gicheru & Company Advocates**

**The Attorney General's Chambers.**

**JUDGMENT**

1. This litigation was commenced by a way of plaint dated 19.6.2007 in which the Plaintiff sued the Defendants based on the following facts:
  - i. That the 2<sup>nd</sup> Defendant is the Attorney-General of the Republic of Kenya, Service of summons shall be effected through the Plaintiff Advocates office.
  - ii. That on or about the 1<sup>st</sup> day of September 2006, the plaintiff's Lorry truck registration number SK 4660BB/KN 0220 BQ whole transporting petroleum products to Goma in the Republic of Congo was involved in a road traffic accident along /Eldoret-Webuye road near Mwamba.
  - iii. That Plaintiff avers that immediately, after the occurrence of the said accident, police officers from Lugari Police station were dispatched to the scene of the accident for purposes interalia of preventing the theft of petrol, ensuring that the Lorry/Truck was not vandalized and to generally maintain law and order.

- iv. That Plaintiff further avers that the said officers, indiscriminately and unreasonably started selling petrol to the members of the public thereby causing an unexpected violent riot and or truck on fire in protest of the police action.
- v. That Plaintiff avers that the said action of the police officers amounted to a breach of statutory duty, negligence and/or recklessness.
  - a) Failing to maintain law and order as mandated by the Police Act cap 84 of Kenya
  - b) Selling petrol belonging to the Plaintiff to members of Public unlawfully
  - c) Allowing members of the public to come near the scene of an accident
  - d) Allowing members of the Public to come near the scene of an accident.
  - e) (d) Exposing the members of the Public to danger which they knew or ought to have known.
  - f) (e) Failing to take into consideration the nature of the Petroleum product being transported by the Lorry truck.
  - g) (f) Causing the members of the Public to riot.
  - h) (g) Causing the Plaintiff's Lorry/Truck to be set on fire.8.

THE Plaintiff further avers that, as a result of the said Police action and/or inaction, his Lorry truck was totally destroyed by fire for which he holds the Police wholly liable.9. SUBSEQUENT to the foretasted accident, the Plaintiff suffered serious losses.

**PARTICULARS OF LOSS**

- i. The costs of the Tractors (prime mover).....Kshs 3,700,000.000
- ii. The cos of the Trailer.....Kshs 1,376,000.00
- iii. Loss of user/profit at the rate of USD 24,675@MONTH

III The plaintiff shall further content that the said police action and/or inaction was unlawful and illegal.

### **PARTICULARS OF ILLEGALITY**

*(a) Selling petrol to members of the Public.*

*(b) Acting outside the scope of their authority as custodians of Public tranquillity.*

*(c) Dealing with property belonging to the Plaintiff without authority.*

The Plaintiff's claim against the Defendants is therefore for the losses occasioned as a result of the said accident.

12, THERE is no other suit pending and there have been no previous proceedings in any court between the Plaintiff and the Defendant over the same subject matter.

13. DESPITE demand and notice of intention being issued. the Defendants have refused to admissibility

14. This Honourable court is seized with the requisite jurisdiction to hear and determine this suit.

**REASONS WHEREFORE:** The plaintiff prays for judgement against the Defendants for:

*a) The cost of the tractor (prime mover) Kshs 3,700,000.00*

*b) The cost of the tractor Kshs 1,376,000.00*

*c) Loss of user/profit at the rate of USD 24,675 @ month*

*d) Costs of the suit*

*e) Interest on (a) (b) (c) above at the commercial Bank Leading Rates applicable from time to time.*

*f) Any other and further relief this Honourable court shall deem fit to grant*

2. In rebuttal the Defendants jointly denied all allegations pleaded by the Plaintiff in the following terms: *That the Defendants aver that if there was an accident as alleged upon receipt of information of occurrence of a road accident the police officers were dispatched to the scene for purpose of investigating and establishing the cause of the accident, rescue and recovery and upon reaching the scene of accident the officers were confronted with a violent crowd which wanted to loot the contents of the tanker*
3. In addition, the Defendants denied the allegations set out in paragraph 7 of the amended plaint and aver that they did not breach any statutory duty as alleged, were not negligent or reckless in any manner and aver that if there was a fire the said fire was caused by or substantially distributed to by the plaintiff or plaintiff; servants, agent or driver.
4. The Defendants further denied that they were liable for the destruction of the Plaintiff's lorry or the petroleum products to be held liable as stated by the Plaintiff in his claim.
5. This factual matrix forms the basis upon which the evidence that followed would be viewed within the threshold of Section 107, 108, & 109 of the Evidence Act.
6. That the operative plaint remained to be the further amended and amended Plaint dated 20<sup>th</sup> December, 2018 in which the following orders were pleaded.
  - a. *The Cost of the tractor (Prime mover) of Kshs. 3,700,000/=*
  - b. *The cost of the tractor Kshs. 1,376,000/=.*
  - c. *Loss of user/profit at the rate of USD 24,675 @ month.*
  - d. *Transport charges on the prime mover USD 3000*
  - e. *Shipping charges for the prime mover USD 7000.*
  - f. *Tax paid on the prime mover USD 10,000.*
  - g. *The sum of Kshs. 6,000,000 being the cost of the stolen/destroyed super petroleum fuel.*
  - h. *Costs of this suit.*

- i. Interest on (a), (b), (c), (d), (e), (f), (g) and (h) above at the Commercial Bank Lending Rates applicable from time to time.*
  - j. Any other and further relief this Honourable Court shall deem fit to grant.*
- 7.** The brief facts of the case are that on or about the 1<sup>st</sup> day of September, 2006, the Plaintiff's Lorry truck registration number SK 4660 BB/KN 0330 BQ while transporting Petroleum products to Goma in the Republic of Congo was involved in a road traffic accident along Eldoret-Webuye road near Mwamba. The Plaintiff averred that immediately after the occurrence of the said accident, Police Officers from Lugari Police Station were dispatched to the scene of the accident for purposes interalia of preventing the theft of petrol, ensuring that the Lorry/Truck was not vandalized and to generally maintain law and order.
- 8.** According to the Plaintiff, the said officers indiscriminately and unreasonably started selling petrol to the members of the Public thereby causing an unexpected violent riot and/or disaffection among the said members of the public who eventually set the Plaintiff's lorry truck on fire in protest of the police action burst into flames due to the said act of the police officers.
- 9.** The Plaintiff avers that the said action of the Police Officers amounted to a breach of statutory duty, negligence and/or recklessness. The particulars highlighted to that effect are:
  - a. Failing to maintain law and order as mandated by the Police Act of Kenya.
  - b. Selling Petrol belonging to the Plaintiff to members of the Public unlawfully.
  - c. Allowing members of the public to come near the scene of an accident.
  - d. Exposing the members of the Public to danger which they knew or ought to have known.

- e. Failing to take into consideration the nature of petroleum product being transported by the Lorry truck.
  - f. Causing members of the public to riot.
  - g. Causing the Plaintiff's Lorry/truck to be set on fire.
- 10.** The Plaintiff highlighted the particulars of loss as follows:
- a. The cost of the Tractor (Prime mover) ..... Kshs. 3,7,000,000/=.
  - b. The Cost of the Trailer ..... Kshs. 1,376,000/=.
  - c. Loss of user/profit at the rate of USD 24, 675.00 @ month.
  - d. Transport charges on the prime mover USD 7000
  - e. Tax paid on the prime mover USD 10,000.
- 11.** He equally pleaded the particulars of illegality as hereunder:
- a. Selling petrol to members of the public.
  - b. Acting outside the scope of their authority as custodians of public tranquillity.
  - c. Dealing with property belonging to the Plaintiff without authority.
- 12.** On record, the defendants had filed a defence prior dated 23<sup>rd</sup> June, 2009 in which they denied the Plaintiff's averments in their entirety. The defendants denied that the officers indiscriminately and unreasonable started selling petrol to members of the public and caused an unexpectedly caused a riot among members of the public who eventually set the Plaintiffs truck on fire.
- 13.** The defendants in the alternative averred that if there was an accident as alleged, upon receipt of such information, the police officers were dispatched to the scene for purposes of investigating and establishing the cause of the accident, rescue and recovery upon reaching the scene of accident, the officers were confronted with a violent crowd which wanted to loot the contents of the tanker.
- 14.** Further, they pleaded particulars of recklessness in the part of the Plaintiff as follows:
- a. Causing an accident along Eldoret-Webuye road.

- b. Failing to control, manage or in any way manage motor vehicle registration number SK 4660 BB/KW 0330 BQ, so as to prevent an accident.
- c. Failing to keep the said motor vehicle in proper mechanical repair.
- d. Driving motor vehicle on a highway without due regard to his safety or the safety of other road users.
- e. Driving recklessly and at inordinately high speeds.

### **Evidence**

- 15. PW1** was the Plaintiff who testified and adopted his witness statement dated 21<sup>st</sup> March, 2017. He gave evidence that on 1<sup>st</sup> September, 2006, his Lorry truck registration number SK 4660 BB/KN 0330 BQ was heading to DR. Congo after filling with super petrol in Eldoret with 60,000 litres of petrol. On reaching Mwamba trading centre along the Eldoret-Bungoma road, at around 7:30 PM, there was a tractor heading in the same direction as the truck. However, the tractor had not lights. He testified that the truck's driver while trying to avoid hitting the tractor veered off the road and the truck landed on the left side of the road. That the petrol began to immediately spill from all the three tanks.
- 16.** The Plaintiff told the court that immediately after the accident, Police officers from Lugari Police station were dispatched to the scene of the accident and instead of them providing security, they started selling the spilling petrol to members of the public and as a result the Plaintiff incurred loss out of their negligence.
- 17.** On cross examination, the Plaintiff testified that the day of the accident he was in Belgium and therefore he did not witness the scene of the accident.

**18. PW2** was Hosea Inunda who gave evidence that he was instructed to prepare the investigation report dated 16<sup>th</sup> October, 2006, which was admitted in evidence in support of the Plaintiff's case.

### **The Defence case Summary**

**19.** The defendants called two witnesses in support of their case namely DW1 Corporal Charles Omuse formally attached to High patrol unit Webuye. He gave evidence that when they got to the scene of the accident, there was a big crowd and the police were trying to control them. That before they could decide on the kind of assistance to give, the tanker exploded. He gave evidence that in the intervening period he was involved in the accident and got burns together with PC Mwendo. They were rushed to Moi Referral Hospital where they treated and discharged.

**20. DW2** was Michael Kimaiyo No. 65569 who gave evidence that on the said date of the accident he was called from his house in Lumakanda Police lines. When they arrived at the scene together with his colleagues, there were so many people drawing fuel that was spilling out from the overturned tanker (lorry). When they saw their vehicle, they disappeared briefly and late came back regrouping. The tanker exploded but he managed to run only to find out he had a dislocated elbow.

### **Analysis and determination**

**21.** For starters, on liability, I find it useful to cite *Halsbury's Laws of England* which states: -

*"The burden of proof in an action for damages for negligence rests primarily on the plaintiff, who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible. This involves the proof of some duty owed by the defendant to the plaintiff, some breach*

*of that duty, and an injury to the plaintiff between which the breach of duty a causal connection must be established."*

**22.** The burden of proof is on whoever alleges. This is succinctly set out in **Sections 107-109** of the *Evidence Act*, Cap 80 Laws of Kenya as hereunder:

*"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."*

**23.** The burden of proof was also addressed by the Court of Appeal in the locus classicus case of **Anne Wambui Ndiritu -v- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, where the said court 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."*

**24.** The burden of proof is neither on the Plaintiff nor the Defendant but on the party that alleges specific matters. It is on the party who alleges. In

**Evans Nyakwana -v- 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.”*

**25.** In the case of **Elijah Ole Kool v George Ikonya Thuo [2001] eKLR** the court in considering causation and nexus between injury and negligence observed as follows;

*“Although the Plaintiff may be able to trace even a consequential connexion between an injury and the negligence of the Defendant, the law does necessarily attach liability to the Defendant who has been negligent...*

*Negligence is an effective cause of an injury which either is intended, or, judged broadly on common principles, is a direct consequence. When negligence has been established, liability follows for all the consequences which are in fact the direct outcome of it, whether or not the damage is a consequence that might reasonably be foreseen....*

*the choice of the real or efficient cause from out of the whole complex of the facts must be made by applying common sense standards. Causation is to be understood as a man in the street, and not as either the scientist or the metaphysician, would understand it.”*

**26.** It is enough that the cause forms part of a chain of events which has in fact led to the injury. What cause will be effective? The Learned Authors of Halsburys Supra at p. 28 say as follows:-

*“In the absence of intervention by voluntary human action the original act is to be regarded as a cause of the injury, provided that its effect is still actively continuing and has not been superseded by some independent natural cause.....If in fact the defendant’s neglect of a proper precaution has caused the injury, the court will not enter into hypothetical inquiry to establish whether the Plaintiff’s injury must necessarily have happened with or without the defendant’s negligence.”*

**27.** A good starting point would be the definition of proximate cause otherwise referred to as direct cause. The word “Proximate” is defined in the Concise English Dictionary as 12<sup>th</sup> Edition at page 1156 as: “closest in space, time or relationship; nearly accurate, approximate” Proximate cause is defined in the Blacks Law Dictionary 7<sup>th</sup> Edition as;

*“A cause that is legally sufficient to result in liability. A cause that directly produces an event without which the event would not have occurred”*

**28.** Having set out the applicable legal principles, this court must now turn to examine whether the Plaintiff has discharged the burden of proving that the Defendants were negligent and that such negligence was the proximate cause of the loss suffered.

**29.** The first issue that demands this court's attention is the quality and credibility of the Plaintiff's evidence. The Plaintiff himself, who was the principal witness for his own case, admitted under cross examination that he was in Belgium at the time of the accident occurred and therefore did not witness any of the events that transpired at the scene. His entire testimony regarding what allegedly happened at the accident scene is based on what he was told by others. This is hearsay evidence of the most basic kind. While PW1 recounted details of the accident and

made serious allegations that police officers sold petrol to members of the public thereby causing a riot, he could not speak from personal knowledge of these events. This fundamentally undermines the Plaintiff's case as he cannot establish with any degree of certainty what actually occurred at the scene.

**30.** The only other witness called by the Plaintiff was PW2, Hosea Inunda, who testified that he was instructed to prepare an investigation report dated 16<sup>th</sup> October 2006, which was admitted in evidence. However, no explanation was given as to the methodology of his investigation, whether he interviewed eyewitnesses who were present at the scene, or the basis upon which he arrived at his conclusions. The report itself, while admitted in evidence, cannot stand alone as proof of the serious allegations made against the police officers without corroborating testimony from persons who actually witnessed the events in question.

**31.** In stark contrast, the Defence called two police officers who were actually present at the scene and who both sustained injuries during the incident. DW1, Corporal Charles Omuse, gave straightforward evidence that when they arrived at the scene there was already a large crowd present which the police were attempting to control. He testified that before they could determine what assistance to render, the tanker exploded. Significantly, both he and PC Mwendo suffered burns in the explosion and required medical treatment at Moi Referral Hospital. Similarly, DW2, Michael Kimaiyo, testified that when they arrived at the scene many people were already drawing fuel from the overturned tanker. He stated that the crowd briefly dispersed upon seeing the police vehicle but later regrouped, and that when the tanker exploded he sustained a dislocated elbow.

**32.** The evidence of the Defence witnesses presents an entirely different picture from that alleged by the Plaintiff. Rather than police officers engaged in selling petrol and inciting a riot, the evidence shows officers responding to an emergency situation in which an overturned tanker

was spilling large quantities of highly flammable fuel and attracting a crowd of people who were attempting to siphon the fuel for themselves. The fact that two police officers sustained injuries in the explosion, one suffering burns requiring hospitalization and another suffering a dislocated elbow lends considerable credibility to their account that they were attempting to discharge their duties in an extremely dangerous and volatile situation rather than engaging in the commercial sale of petroleum products.

**33.** The duty of proving liability is vested with the Plaintiff at all material times. In cases of this nature, proving liability against police officers in an accident involves establishing that the officer breached a duty of care owed to the public, acting carelessly rather than in a reasonable manner under similar circumstances. The mere occurrence of an accident is not proof of liability, the plaintiff must establish negligence on a balance of probabilities.

**34.** What usually are the key elements of duty of care in a situational analysis where an accident has occurred and soon thereafter police are informed to visit the scene to commence investigations:

- ***Negligence (Standard of Care):*** Police officers must exercise the care that a reasonable, prudent officer would in the same circumstances. While emergency situations allow for higher speeds, they do not waive the responsibility to take precautions against foreseeable risks.
- ***Breach of Duty:*** A breach occurs when an officer fails to act reasonably, such as violating department policies on high-speed chases, failing to use sirens/lights, or driving with reckless disregard for public safety.
- ***Causation:*** There must be a direct link between the officer's breach of duty and the injuries sustained.

- **Foreseeability:** *The injury to the claimant must be a reasonably foreseeable result of the officer's actions.*

**35.** *Generally Negligence is the most common tort claim brought in civil courts and it is used as a vehicle to obtain relief for plaintiffs that have suffered from injury or harm. The tort of negligence has been defined as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. To succeed in a civil action of negligence, a plaintiff must prove that (1) the defendant owed a duty to the plaintiff (2) the defendant breached that duty (3) the defendant was the cause of the harm, and (4) the plaintiff suffered actual damage to their person or property*

**36.** The claim before this court by the Plaintiff against the Police Officers is to be measured within the scope of the standard of care established in a negligence action and how reasonable they conducted themselves to warrant the liability to a level that this court should award the remedies as pleaded in the plaint. What was the Plaintiff required to do in the circumstances of this case? It is to prove that the defendants jointly and severally breached their duty to the Plaintiff by showing that their acts or mission violated some duty incumbent upon him which resulted in the injury complained of. In other words the term breach simply implies that the Defendants jointly and severally failed to adhere to the requisite standard of care. It was therefore necessary for the evidence to show that there existed a link between the Defendant's employees, servants, or agents misconduct and the plaintiff's harm demanding payment of compensation. So what is missing in this case?. Causation is that missing link. In my considered view the plaintiff has not shown or did not show by way of evidence that the harm or injury complained of would not have occurred but for defendants acts of omission on the material day. That therefore, could have invited cogent and credible

evidenced on proximate cause of the accident and involvement of the Defendants Agents or employees. There are two test which are missing in the logical analysis of the evidence presented by the Plaintiff during the trial on the merits. First, is the foreseeability test which involves the Plaintiff to show that the Accident in which he suffered loss and damage was within the scope of the danger created by the Defendant's servants, employees, or agents negligence or stated differently that the accident was a reasonably foreseeable consequences of their negligence. In the second limb, is what is termed as the substantial factor test, in which a number of factors are to be determined to establish whether the Defendant's Agents, employees or servants were the proximate cause of the Plaintiff's injury as suited in the claim. First, a court must examine all of the factors that may have contributed to the loss and damage suffered by the Plaintiff. Second, a court must decide whether the Defendant's Agents, employees or servants conduct set in motion a force or a series of forces that remain active up to the time in which the Plaintiff suffered the so alleged loss and damage culminating into the necessity of compensation in damages. Generally, a look back of the facts of this case the evidence falls short of the threshold required on the test of proximate cause in the tort of negligence. Typically, the doctrine of qualified immunity is considered when assessing tort claims involving law enforcement officers. This qualified immunity is a judicially created protection that absolves state actors from liability arising from their misconduct. However, we should not lose the point that qualified immunity is not a blank cheque to be waved by police officers whenever a claim of negligence is raised against them. This immunity does not always shield police officers from liability in the event of breach of duty of care. This is one case in which the immunity of a public entity from liability in the suit before this court cannot be waived so that compensatory damages can be awarded to the Plaintiff. There was

nothing from the evidence other than speculation to reach a conclusion that the Police Officers at the scene of the accident conduct was a cause of the collusion or siphoning of the petroleum products as alleged by the Plaintiff.

- 37.** The Plaintiff has failed to adduce any credible evidence whatsoever that police officers were selling petrol to members of the public. There is no eyewitness testimony to this effect from any person who was present at the scene. No member of the public who allegedly purchased petrol from the police was called to testify. There are no receipts, no statements, no corroboration of any kind of this central and serious allegation. The court cannot and will not make a finding of liability based on speculation, conjecture, or unproven allegations, no matter how serious they may be.
- 38.** Even if this court were to assume, without in any way conceding, that there was some degree of negligence on the part of the police officers in managing the crowd or securing the scene, the Plaintiff has still failed to establish the necessary causal link between any such negligence and the loss he claims to have suffered. The undisputed facts before this court are that the truck had already overturned in a road traffic accident, that 60,000 litres of highly flammable super petrol was spilling onto the ground, and that a crowd of people had gathered at the scene. This was an inherently and extraordinarily dangerous situation. The explosion and subsequent fire could have been triggered by any number of causes including a lit cigarette, a spark from any source, friction, or even spontaneous combustion given the highly volatile nature of petroleum products in such quantities and conditions.
- 39.** Applying the test of proximate cause as set out in the authorities cited above, this court must ask itself whether the alleged negligence of the police officers was the direct and effective cause of the loss suffered by the Plaintiff. On the totality of the evidence before me, I am not satisfied that it was. The initial and primary cause was the road traffic accident

caused by the Plaintiff's driver which resulted in 60,000 litres of super petrol spilling onto a public road. This created an extraordinarily dangerous situation that would have posed a severe risk of fire or explosion regardless of how the police responded. Even with the most exemplary police response imaginable, given the volume of highly flammable fuel involved and the presence of members of the public in the vicinity, the risk of fire or explosion remained extremely high. The Plaintiff has not proven on credible evidence that any specific act or omission by the police officers was the proximate cause of the fire and explosion.

**40.** The law is clear that a plaintiff must prove his case on a balance of probabilities. The evidential burden rests squarely on the party asserting the claim. In this case, the Plaintiff has failed to prove on credible evidence that the police officers breached any duty of care owed to him. He has further failed to establish that any such breach, if it existed, was the proximate cause of the loss he claims to have suffered. The case is built upon hearsay evidence from a witness who was not present, speculation, and unsubstantiated allegations of the most serious nature against public officers. Where such evidence is directly contradicted by credible testimony from defence witnesses who were actually present at the scene and were themselves injured in the incident, and where no proper causal link has been established between the alleged negligence and the loss, this court cannot and will not find in favour of the Plaintiff.

**41.** Having carefully considered the totality of the evidence adduced by both parties and having applied the well-established legal principles governing burden of proof, negligence, and causation, I find that the Plaintiff has not discharged the burden of proving liability on the part of the Defendants.

**42.** Accordingly, the Plaintiff's claim fails in its entirety and is hereby dismissed with costs to the Defendants.

**43.** It is so ordered.

**DATED AND SIGNED AT ELDORET THIS 9<sup>TH</sup> DAY OF FEBRUARY,  
2026**

A handwritten signature in black ink, appearing to read 'R. Nyakundi', is written over a horizontal dotted line.

**R. NYAKUNDI  
JUDGE**