



REPUBLIC OF KENYA



**Osman & 3 others v Diamond Trust Bank Limited (Civil Suit 7 of 2015)  
[2026] KEHC 2459 (KLR) (Commercial & Admiralty) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2459 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
CIVIL SUIT 7 OF 2015  
PM MULWA, J  
FEBRUARY 26, 2026**

**BETWEEN**

**ZAHRA MOHAMED OSMAN ..... 1<sup>ST</sup> PLAINTIFF  
IRON FURNITURE COMPANY LIMITED ..... 2<sup>ND</sup> PLAINTIFF  
MAZEN ROYAL FURNISHERS LIMITED ..... 3<sup>RD</sup> PLAINTIFF  
IFCL HOLDINGS LIMITED ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**DIAMOND TRUST BANK LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted this suit by way of an Amended Plaint dated 8<sup>th</sup> February 2019, seeking judgment against the Defendant for:
  - a. A declaration that the Defendant breached its duty of care by conducting transactions in the Plaintiffs' accounts without express authority;
  - b. Payment of Kshs. 138,286,517.68 as lost profits allegedly occasioned by the Defendant's unlawful actions;
  - c. An order directing the Defendant to unconditionally release the title to property L.R. No. 209/12116/63;
  - d. General damages for breach of duty of care, fraud and deceit;



- e. A declaration that the 1st Plaintiff's reference to the Credit Reference Bureau was without basis and an order directing removal of her name from the list of loan defaulters;
  - f. Costs of the suit and such further or other relief as the Court may deem fit
2. The 1<sup>st</sup> Plaintiff is a director and shareholder of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs and was at all material times an authorized signatory to their accounts held with the Defendant, a licensed banking institution
3. The Plaintiffs plead that at all material times there existed a banker–customer relationship between them and the Defendant, pursuant to which they operated several savings, current, overdraft and fixed deposit accounts at the Defendant's Capital Centre Branch
4. The gravamen of the Plaintiffs' case is that the Defendant breached its contractual and fiduciary duties by effecting 13 impugned transactions, including inter-account transfers and the liquidation of a fixed deposit of Kshs. 9,000,000 allegedly without written authority.
5. The Plaintiffs further aver that despite repeated demands, the Defendant failed to furnish them with true and accurate statements of account and other transactional documentation. They maintain that although they repaid all facilities advanced to them, the Defendant refused to acknowledge receipt of such payments, declined to release securities held, including the 1<sup>st</sup> Plaintiff's title to property L.R. No. 209/12116/63, and continued to assert indebtedness without justification, and unlawfully listed her with the CRB.
6. The loss is quantified at Kshs. 138,286,517.68 said to represent lost profits arising from unauthorized transfers and the liquidation of fixed deposits which would otherwise have continued to accrue interest.
7. In its Amended Statement of Defence dated 19<sup>th</sup> March 2020, the Defendant denies liability. It maintains that the that the 1<sup>st</sup> Plaintiff was at all material times the sole signatory to the accounts of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs. It avers that by virtue of that position, the 1<sup>st</sup> Plaintiff possessed ostensible and full authority to operate and manage all the Plaintiffs' accounts and to issue instructions for inter-account transfers, which instructions the Defendant duly honoured in the ordinary course of business.
8. The Defendant further pleads that there existed a consistent course of dealing between the parties between 2004 and 2009, whereby the 1<sup>st</sup> Plaintiff would at times issue oral instructions for transfers for purposes of expediency and thereafter ratify the same in writing. It contends that the 1<sup>st</sup> Plaintiff regularly received and reviewed bank statements and confirmed the veracity of the transactions, and that the Plaintiffs are consequently estopped from disputing those transfers. The Defendant therefore maintains that all impugned transactions were lawful, valid and did not occasion any loss to the Plaintiffs.
9. With respect to the financial facilities, the Defendant avers that at the Plaintiffs' request it advanced various facilities, including share purchase loans, a term loan of Kshs. 5,000,000 to the 3<sup>rd</sup> Plaintiff, and overdraft facilities on specified current accounts
10. It pleads that in or about 2010, the Plaintiffs defaulted on the said facilities, prompting recovery action through its advocates. Despite demand letters and the supply of statements of account, the Plaintiffs allegedly failed to settle the outstanding indebtedness. The Defendant further avers that it regularly furnished the Plaintiffs with statements of account, both through its electronic banking platform and through correspondence from its advocates. It denies any withholding of documents and maintains that the Plaintiffs were fully apprised of their account positions.



11. The Defendant contends that any CRB listing was lawful under the Banking (Credit Reference Bureau) Regulations, 2008. The Defendant concludes by asserting that the suit is without merit and prays that it be dismissed with costs.
12. At trial, Pw1 testified for the Plaintiffs before my brother Justice Mativo. Dw1 testified for the Defendant. Parties thereafter filed written submissions.
13. Pw1, Zahara Mohamed Osman, testified that she is the 3<sup>rd</sup> Plaintiff and a director of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs. She adopted her witness statement dated 28<sup>th</sup> July 2021 and produced the plaintiffs' bundle of documents dated 16<sup>th</sup> December 2014.
14. She stated that she began banking with the Defendant in 2006 and maintained multiple accounts, including a fixed deposit account in her personal name. Between 2007 and 2009, she deposited approximately Kshs. 10 million in a fixed deposit account. The Defendant later created a credit facility using her own funds as security. She testified that she serviced the facility promptly and subsequently expanded her business significantly.
15. Pw1 alleged that the Defendant transferred funds from her accounts without her knowledge or authority. She specifically disputed a document dated 9<sup>th</sup> July 2009 authorizing a transfer of Kshs. 1,550,000 to an overdraft account, stating that she did not sign it. She further referred to internal bank communication directing the liquidation of a fixed deposit of Kshs. 9,000,000 and crediting Kshs. 4,000,000 into an overdraft account, which she said was never communicated to her. She maintained that her fixed deposit was personal and was to be held strictly as security, and she did not authorize its transfer into other accounts.
16. She also complained of other disputed transfers, including Kshs. 2,500,000 and Kshs. 1,550,000 between various accounts, and contended that certain documents relied upon by the Defendant either lacked her signature or bore irregularities. She asserted that when her account became overdrawn, interest was charged, yet she had not authorized the underlying transfers. She further testified that the Defendant reported her to the Credit Reference Bureau (CRB), causing her prejudice.
17. In cross-examination, Pw1 confirmed that the dispute concerns 13 transactions, some relating to the corporate plaintiffs. She acknowledged that certain instructions bore her signature but maintained that key disputed transactions were unauthorized. She reiterated that funds were moved from her personal fixed deposit account to other accounts, including accounts associated with Maze Royal Furniture, without her consent. She stated that although the 3<sup>rd</sup> Defendant is her company; her complaint concerns the unauthorized movement of funds from one account to another.
18. In re-examination, she maintained that she did not authorize the transfer of Kshs. 1,550,000 from her account to the 3<sup>rd</sup> Plaintiff's account and emphasized that several documents lacked proper signatures. She concluded that the transactions were irregular and that her accounts were mismanaged by the Defendant.
19. Peter Kimani Kamohi testified as Dw1. He identifies himself as an employee of DTB Bank, currently serving as Branch Operations Manager at the Limuru Branch. He states that he is familiar with the Plaintiffs' accounts and the bank's records and adopts the Defendant's bundle of documents as part of his evidence.
20. He confirms that Zahra Mohamed Osman held several accounts with the bank and was the sole signatory to the relevant individual account. He explains that for funds to be transferred out of an account, there must be proper customer instructions and approval by the signatory. He refers to



documents in the Defendant's bundle (including pages 35 and 38) which, according to him, bear the customer's signature authorizing the transactions.

21. The witness addresses the impugned transactions and states that some entries were duly authorized and processed in accordance with banking procedures. He acknowledges that certain documents (e.g., pages 40, 44, 45) may have anomalies but asserts that such issues can be explained and do not invalidate the transactions. He adds that staff may have processed some transactions due to familiarity with the customer.
22. On the issue of indebtedness, he states that the customer owed the bank money. He refers to the loan statement in the Defendant's bundle (page 171) showing an outstanding amount of Kshs. 4,661,197 as at 29<sup>th</sup> August 2020. He further refers to correspondence dated 10<sup>th</sup> October 2013 regarding ongoing repayments and to cheque deposits made by the Plaintiffs.

The witness explains that the loan statement reflects debit and credit entries, and that repayments are captured in the credit column. He maintains that all repayments made by the customer were properly credited to the loan account. He disputes the Plaintiffs' position that the loan was fully repaid and questions why, if fully repaid, the Plaintiffs would still be listed with the Credit Reference Bureau (CRB).

23. At the close of trial parties filed written submissions. The Plaintiffs' submissions are dated 15<sup>th</sup> May 2025, while the Defendant's submissions are dated 28<sup>th</sup> April 2025.

#### **Plaintiffs' submissions**

24. In their written submissions, the Plaintiffs contend that the Defendant, as banker, owed them a contractual and fiduciary duty of care arising from the banker–customer relationship and was obligated to act strictly in accordance with their written mandates. They submit that the Defendant effected multiple inter-account transfers without written instructions or authorized signatures, thereby breaching its duty of utmost good faith and fidelity. Relying on authorities including *Family Bank Limited v Panda Co-operative Savings and Credit Society* [2022] eKLR and *Equity Bank Limited & another v Nairobi Robert Chesang* [2016] eKLR, the Plaintiffs argue that a bank must exercise reasonable care and skill in executing customer instructions and is liable in damages for deviations from that duty. They further submit that despite full repayment of the outstanding loan on 10<sup>th</sup> October 2013, the Defendant failed to update its records, wrongfully listed the 1<sup>st</sup> Plaintiff with the Credit Reference Bureau, and continued to withhold her title to L.R No. 209/12112/63, actions they term malicious, defamatory and negligent.
25. They urge the Court to find that the Defendant's admitted anomalies and failure to credit repayments render it liable for general damages, damages for loss of business, emotional distress, and wrongful CRB listing, and to allow the Plaintiffs' prayer.

#### **Defendant submissions**

26. In its written submissions, the Defendant contends that the Plaintiffs' claim is misconceived, time-barred, contractually barred and unsupported by evidence. The Defendant submits that the 1<sup>st</sup> Plaintiff was the sole signatory to the accounts and that the impugned transactions were inter-account transfers between related parties, not third parties, and were executed pursuant to customer instructions in accordance with internal banking protocol. It is argued that no funds were lost, that the Plaintiffs had full knowledge of the transactions, and that the liquidation of the fixed deposit was undertaken on the 1<sup>st</sup> Plaintiff's instructions. The Defendant further submits that the suit offends Order 4 Rule 1(3) of the Civil Procedure Rules for want of proper authority from the 2<sup>nd</sup> to 4<sup>th</sup> Plaintiffs, and that claims



relating to transactions between July 2007 and December 2008 are statute-barred under section 4(1) of the *Limitation of Actions Act*.

27. It also relies on the express terms and conditions of the account opening documents to argue that the Plaintiffs are contractually estopped from challenging the statements of account. On the allegation of fraud, the Defendant submits that the Plaintiffs have not pleaded or strictly proved fraud to the required standard, citing sections 107 and 108 of the *Evidence Act* and relevant case law.
28. The Defendant maintains that it exercised reasonable care and skill as expected of a banker and that none of the transactions was out of the ordinary so as to trigger a duty of inquiry. Finally, it argues that the claim for Kshs. 138,286,517.68 as loss of profits is a claim for special damages that has neither been specifically proved nor supported by expert evidence, and therefore urges the Court to dismiss the suit with costs.

### **Analysis and determination**

29. From the pleadings, evidence and submissions, the issues that arise for determination are:
  - i. Whether the Defendant breached its contractual and fiduciary duty.
  - ii. Whether the Plaintiffs proved fraud to the required standard.
  - iii. Whether the loan facilities were fully repaid and whether the CRB listing was unlawful.
  - iv. Whether the Plaintiffs are entitled to damages, including loss of profits.
  - v. Who should bear costs.

### **Whether the Defendant breached its contractual and fiduciary duty**

30. The first issue for determination is whether the Defendant owed the Plaintiffs a fiduciary duty and, if so, whether that duty was breached. It is not disputed that the Defendant is a licensed commercial bank and that the Plaintiffs opened and operated accounts with it. A banker–customer relationship was therefore created. That relationship is fundamentally contractual, arising from the account opening forms, the general terms and conditions, and the mandates executed by the customer.
31. By virtue of that relationship, the Defendant was bound by the contractual obligations governing the operation of the accounts. In addition, the law imposes upon a banker a duty to exercise reasonable care and skill in executing a customer’s mandate, to act in good faith, and to safeguard funds entrusted to it. In *Co-operative Bank of Kenya Ltd v Biwott (Civil Appeal 18 of 2019) [2022] KEHC 9946 (eKLR)*, the Court stated:

“The bank-customer relationship is contractual in nature and imposes a duty on the bank to exercise reasonable care and skill in its dealings with the customer ... A bank has a duty under its contract with its customer to exercise ‘reasonable care and skill’ in carrying out its part with regard to operations within its contract with its customer. The standard of that reasonable care and skill is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all the relevant facts, which can vary almost infinitely.”

32. The duty is therefore not abstract or absolute; it is measured objectively against ordinary banking practice, considering the circumstances of the transaction in question.



33. Similarly, in *Family Bank Limited v Panda Co-operative Savings and Credit Society* [2022] eKLR, the Court emphasized that a bank must execute customer instructions faithfully and strictly in accordance with the mandate. However, the obligation “to the letter” presupposes the existence of a valid mandate and does not elevate the bank into an insurer against every dissatisfaction that may subsequently arise between related account holders.
34. The Plaintiffs’ grievance relates to 13 transactions, including inter-account transfers and the liquidation of a fixed deposit of Kshs. 9,000,000. The evidential matrix is critical. First, it is common ground that the 1<sup>st</sup> Plaintiff was the sole signatory to the relevant accounts. Secondly, the transfers in question were between accounts of related entities under her control. Thirdly, documentary evidence was produced by the Defendant showing written instructions bearing the 1<sup>st</sup> Plaintiff’s signature in respect of several of the transactions. Fourthly, the evidence demonstrated a consistent pattern of frequent inter-account transfers between 2004 and 2009, forming a discernible course of dealing.
35. Dw1 testified that the bank followed its internal protocol and that the transactions were supported by customer instructions. The Plaintiffs challenged the authenticity of certain documents but did not adduce expert handwriting analysis or forensic evidence to impugn the signatures attributed to the 1<sup>st</sup> Plaintiff. In commercial disputes of this nature, where authenticity of execution is put in issue, the absence of expert evidence is telling. Bare assertions that signatures were not appended by the signatory, without more, do not suffice to discharge the evidential burden.
36. The applicable standard is not whether the bank could have acted more cautiously in hindsight, but whether it exercised reasonable care and skill at the material time. It is trite law that a bank’s duty is one of reasonable care and skill, not perfection. The duty of inquiry arises only where the transaction is so unusual or suspicious that an honest and reasonable banker would be put on notice.
37. On the facts before this Court, there was no evidence that the impugned transactions were extraordinary, aberrant, or inconsistent with the account history so as to trigger a heightened duty of inquiry. They were transfers between related accounts operated by a single signatory within an established pattern of dealings.
38. Taking the totality of the evidence into account, I am not persuaded that the Defendant fell below the threshold of reasonable care and skill expected of a banker. On a balance of probabilities, the Plaintiffs have not proved that the impugned transactions were unauthorized or that the Defendant breached any fiduciary or contractual duty owed to them.

#### **Whether the Plaintiffs proved fraud to the required standard.**

32. The Plaintiffs have alleged that the impugned transactions were fraudulent. It is settled law that fraud is a serious allegation which must not only be specifically pleaded but strictly proved. Sections 107 and 108 of the [Evidence Act](#) place the legal and evidential burden squarely upon the party who asserts the existence of fraud. The Court does not presume fraud; it must be demonstrated through credible and cogent evidence.
33. In *Central Bank of Kenya Ltd v Trust Bank Ltd & 4 Others* [1996] eKLR, the Court of Appeal pronounced itself in clear terms:

“Fraud must be specifically pleaded and strictly proved. Although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”



32. That pronouncement has been consistently applied by our courts. It establishes a standard that is higher than the ordinary civil standard, given the gravity of the accusation.
33. The same principle was reiterated in *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi JA (as he then was) held:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved.”
32. Further, in *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR, the Court of Appeal emphasized:
- “It is trite law that any allegations of fraud must be pleaded and strictly proved. Although the standard of proof is not as heavy as to require proof beyond reasonable doubt, it is something more than a mere balance of probabilities.”
32. In the present case, while the Plaintiffs used the language of fraud and characterized the transactions as fraudulent, the particulars pleaded were largely conclusory. Beyond asserting that certain transfers were unauthorized or irregular, there was no evidence demonstrating deliberate deceit, falsification of documents, or collusion on the part of the Defendant’s officers.
33. Allegations of fraud, particularly against a regulated financial institution, demand evidential rigor. Where a party alleges that signatures were forged or documents fabricated, the Court expects forensic examination, expert handwriting analysis, or other technical evidence capable of displacing the presumption of regularity in commercial documentation. None was presented.
34. Fraud is a question of fact that must be proved by credible evidence and cannot be inferred from mere suspicion. Suspicion, however strong, cannot substitute proof.
35. The Plaintiffs did not call any expert witness to challenge the authenticity of the signatures appearing on the impugned instructions. They did not demonstrate any internal manipulation of the bank’s systems, nor did they establish that any bank official acted dishonestly or in collusion. The evidence fell short of demonstrating intentional wrongdoing.
36. It is also noteworthy that several of the transactions occurred within a consistent course of dealing between related accounts operated by the same signatory. In such circumstances, the Court must be cautious not to convert a commercial dispute into a finding of fraud absent clear proof of dishonesty.
37. Having carefully examined the pleadings and the evidentiary record, I find that the Plaintiffs have not met the elevated standard required to establish fraud. The allegations remain unsubstantiated. Consequently, the claim founded on fraud must fail.

**Whether the loan facilities were fully repaid and whether the CRB listing was unlawful**

32. The Plaintiffs’ case on this limb is that the loan facilities were fully repaid on 10<sup>th</sup> October 2013 and that the Defendant negligently and/or deliberately failed to update its records, thereby wrongfully maintaining that a balance remained outstanding and listing the 1<sup>st</sup> Plaintiff with the Credit Reference Bureau.



33. It is common ground that the relationship between the parties in respect of the facilities was governed by contractual instruments, including letters of offer and the general banking terms and conditions. The starting point, therefore, is that the rights and obligations of the parties are anchored in contract. As the Court of Appeal held in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR:
- “A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”
32. The Plaintiffs bore the burden of demonstrating that they had discharged their contractual obligations in full. Under Sections 107 and 109 of the *Evidence Act*, he who asserts must prove. A party alleging full settlement of a loan must do more than assert payment; he must demonstrate, through cogent documentary evidence, that the entire indebtedness principal, interest, penalties and charges as contractually provided was extinguished.
33. In the present case, Dw1 produced a loan statement indicating an outstanding balance as of 29<sup>th</sup> August 2020. The Plaintiffs, on the other hand, relied primarily on copies of cheques allegedly issued on 10<sup>th</sup> October 2013. However, the mere issuance of cheques does not, in itself, conclusively establish discharge of indebtedness. What the Court requires is evidence that the cheques were received, cleared, appropriated to the loan account, and that upon proper reconciliation, no balance remained outstanding.
34. Notably absent from the Plaintiffs’ case was a reconciliation statement prepared by an accountant or auditor demonstrating how the payments made extinguished the entire debt. No expert analysis was tendered to challenge the Defendant’s computation of interest or to demonstrate overstatement. In commercial banking disputes, particularly where accounts span several years and involve overdraft facilities and term loans, the Court cannot engage in speculative arithmetic. The evidential burden lies squarely with the borrower.
35. The Defendant’s account statements were placed before the Court and were not successfully impeached. The Plaintiffs did not demonstrate specific computational errors, unlawful interest, or unauthorized debits. Statements of account produced in the ordinary course of banking business constitute prima facie evidence of indebtedness unless properly challenged through credible evidence.
36. Turning to the issue of CRB listing, the regulatory framework is provided under the Banking (Credit Reference Bureau) Regulations, 2008 (now subsumed under the Credit Reference Bureau Regulations, 2020). A licensed institution is permitted to submit negative information where a borrower is in default, subject to compliance with notice requirements. The Plaintiffs did not demonstrate that the statutory procedure was breached, nor did they establish that no debt was outstanding at the time of listing.
37. In the absence of proof of full settlement, and absent evidence of non-compliance with statutory procedure, the Court cannot conclude that the CRB listing was unlawful. The Plaintiffs’ assertion of full repayment, unsupported by a comprehensive reconciliation or expert audit, falls short of the standard required in a commercial dispute of this nature.
38. Accordingly, I find that the Plaintiffs have failed to discharge the burden of proving full discharge of the loan facilities. Consequently, the continued assertion of indebtedness and the CRB listing cannot, on the evidence before this Court, be said to have been unlawful.

Whether the Plaintiffs are entitled to damages, including loss of profits



32. The Plaintiffs seek Kshs. 138,286,517.68 as alleged lost profits arising from what they term unauthorized transfers and the liquidation of a fixed deposit. The sum is pleaded as a specific figure and is therefore in the nature of special damages.
33. The law is settled that special damages must not only be specifically pleaded but must also be strictly proved. The evidentiary threshold is exacting. In *Kenya Commercial Bank Ltd v Sheikh Osman Mohamed* [2013] KECA 61 (KLR), the Court of Appeal held that a claim for loss of profits must be specifically pleaded and proved through credible and concrete evidence. A bare assertion of anticipated profits does not suffice.
34. Similarly, in *Hydro Water Well (K) Ltd v Sechere & 2 Others* [2021] KEHC 22 (KLR), the High Court underscored that a claim for loss of profits requires a concrete evidential foundation, often supported by audited accounts, expert analysis, or demonstrable historical performance capable of grounding the projection. Courts do not award speculative or conjectural figures.
35. Loss of profits is not presumed. It must be demonstrated by showing, through reliable financial data, what profits would probably have been earned but for the alleged breach. That ordinarily requires audited financial statements, business records, projections supported by historical trends, or expert testimony explaining the methodology used to arrive at the claimed figure.
36. In the present case, the Plaintiffs did not produce audited financial statements showing historical profitability. No accountant or financial expert testified to explain how the sum of Kshs. 138,286,517.68 was computed. No business model, cash flow analysis, or documentary evidence was tendered to demonstrate the nexus between the impugned transactions and the alleged loss.
37. The claim for loss of profits, in the absence of strict proof, cannot be sustained. Accordingly, the claim for Kshs. 138,286,517.68 fails.

### **General Damages**

32. The Plaintiffs further seek general damages for breach of duty of care, fraud and deceit. However, it is trite that general damages are not ordinarily awardable for breach of contract. In *Kenya Tourist Development Corporation v Sundowner Lodge Ltd* [2018] KECA 312 (KLR) the Court stated:
 

“As a general rule, general damages are not recoverable in cases of breach of contract...it is well settled that the governing purpose of damages is to put the party whose rights have been violated in the same position so far as money can so as if his rights had been observed..”
32. In the present case, I have already found that the Plaintiffs have failed to establish breach of contract or fraud. In the absence of breach, the substratum upon which damages would rest collapses. Damages do not issue in vacuo; they are a remedy for a legally cognizable wrong. Having found that no such wrong has been proved, there is no juridical basis upon which an award of general damages can properly be made. The claim for general damages must therefore fail.
33. Accordingly, I find that the Plaintiffs have failed to prove their case on a balance of probabilities.
34. Consequently, the plaintiff's suit is hereby dismissed in its entirety, the prayers sought in the amended plaint dated 8<sup>th</sup> February 2019 are declined.
35. The plaintiff shall bear the costs of the suit.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026.**



**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Obuya for Plaintiffs

Mr. Shah for Defendant

Court Assistant: Carlos

