



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL APPEAL NO. E243 OF 2024**

**EUROLINK AFRICA LTD.....1<sup>ST</sup> APPELLANT**

**SIMON MAINA NDIRANGU.....2<sup>ND</sup> APPELLANT**

**EPHANTUS NJUGUNA MWANGI.....3<sup>RD</sup> APPELLANT**

**- VERSUS -**

**FLORENCE NYAMBURA KARIUKI,  
NDERUE KARIUKI MUIGAI &  
DAVID WACHIRA KARIUKI (Suing as the Legal  
Administrators of the estate of KARIUKI NDERUE  
(DECEASED)).....RESPONDENTS**

*(Being an Appeal on Quantum only, arising from the Judgment/Decree of the Hon.  
Elizabeth N. Juma -CM, dated and delivered on 9<sup>th</sup> July 2024 in NAKURU CMCC  
NO. E768 of 2022)*

**JUDGMENT**

1. The Respondent sued the Appellant in NAKURU CIVIL CASE NO. E768 OF 2022 in the lower Court, in a claim arising from an alleged road traffic accident claim, that on the 29<sup>th</sup> November 2021, the deceased was lawfully a pedestrian along Nakuru- Nyahururu at Maili Sita Trading

Centre when the lawful, designated and/or authorised driver of motor vehicle registration number KDC 877F MERCEDES BENZ TIPPER in his/her lawful course of duty, employment and/or engagement so carelessly, negligently and/or recklessly drove, unparked, managed and/or controlled the said motor vehicle thereby permitting it to hit the deceased and occasioning him fatal injuries.

2. The Trial Court found in favor of the Respondent its Judgment on the 9<sup>th</sup> July 2024 as follows:

*a) Liability 100% against the Defendants (Appellants)*

*b) Pain and Suffering Kshs. 50,000*

*c) Loss of expectation of life Kshs. 100,000*

*d) Loss of dependency Kshs. 700,000*

*e) Special damages Kshs. 144,890*

3. The being aggrieved with the aforesaid judgment the Appellant filed this Appeal that is premised on the following grounds;

*i. That, the learned trial magistrate erred and misdirected herself on the principles applicable to awards on damages and in her findings on loss of dependency.*

*ii. That, the learned trial magistrate erred in law and in fact in falling to take in account the uncertainties and vicissitudes of life and give due allowance for that*

- iii. *That, the learned magistrate award on damages was so Inordinately high*
  - iv. *That, the award of damages for loss of dependency was based on no evidence at all.*
  - v. *That, award on Loss of Dependency was based on no or wrong legal principles.*
  - vi. *That, the learned magistrate failed to take into proper account that the deceased was 87 years old in assessing damages.*
4. The Appellant in his submissions asserts that the magistrate applied the wrong principle in deploying a global award under the head of loss of dependency citing the case of **John Thanga Rindiri & another v Peter Wahome Kagiri & another [2019] eKLR** where the Court held as follows:

*I looked at the testimony of PWW3 Antony Kinyua Mureithi. He said:*

*"I do electrical wirings and building constructions. Richard Kariuki was our employee in 2007 in Nyeri in Aurora Services Ltd, my company. I am one of the directors in that company. I have certificate of incorporation, copy and original. I produce it. Certificate of Incorporation Exh.P10. He was a foreman. He was employed around August 2007;we gave him a letter of appointment. I wrote a letter for him. He was to be paid Kshs.35,000/- per month. The Kshs. 5,000/- was house allowance. He worked for 2 months and some days". (emphasis added)*

*He was not certain on the date of employment; he was not certain on whether the deceased had received any pay. There was no evidence that the deceased had actually worked in his company. If he was to be believed, the deceased was not a casual but a foreman. A payroll or an acknowledgement by the deceased of receiving salary should*

*have been provided. How is it possible that the witness, a director of a limited liability company would testify that that staff were paid cash, that they did not pay taxes, that the company kept no records? If the company could give a letter of employment, then it was only logical that it would maintain records of employees. Otherwise it may have just*

*employed him verbally. I find that this evidence was not persuasive of the employment of the deceased by his company and the alleged earnings.*

5. That the employment letter produced as PEXH 13 emanated from Metrocosmo Limited, a perspicuous that a limited liability company would pay its employees in cash and not pay taxes or maintain payment records for their employees.
6. The Appellants submit that, an employment letter is not concrete proof of earnings. The Plaintiff should have produced payroll records acknowledgement letter or any other evidence to prove that the Deceased earned as much as alleged. It is thus evident that the

Respondents failed to adduce evidence to the effect that the deceased earned as much as alleged.

7. Further reliance is placed on the case of **Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR**, held as follows-

*"It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, Courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, Courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case."*

8. That furthermore in the case of **Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR** the Court was dealing with a similar issue stated:

*"In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to*

***a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency."***

9. That, the Trial Court agreed with the Appellants submissions that the Respondents had failed to tender evidence of the deceased earnings and Court adopted the global sum approach and awarded a global sum of Kshs 700,000 for loss of dependency that was manifestly excessive and/or inordinately high and should be reviewed and/or varied by this Honorable Court as the Trial Court relied on two case laws to award Kshs 700,000 for loss of dependency. **Kisii HCCA No.39 of 2014: MARWANGA Jeffern Vs Jeckton Ochieng and Anor** – In this case the Court gave an award of Kshs 1,600,000 for loss of dependency for a deceased who died at the age of 30 years and was survived by a widower and a 10year old son and in the case of **Florence Mumbua Ndoo and Francis Kioko (suing as the Administrators of the Estate of the late Alfred Safari) Vs Ezra Korir Kipngeno and Another (2017)** eKLR where the Court an award of Kshs 700,000 for loss of dependency to the estate of a 20 year old deceased person.
  
10. That it is indispensable to note that the deceased herein was aged 87 years as evidenced by the Death Certificate produced and that the Court erred in relying on case laws where the deceased persons were much younger, that is 20 and 30 years.

11. That is trite law that awards must be within consistent limits and Court awards for damages must be made taking into account comparable injuries or similar injuries and awards. **See Denshire Muteti Wambua - Vs- Kenya Power & Lighting Co. Ltd [2013] eKLR.** The Court should have relied on cases where the deceased persons were of a similar age or close to the age of the deceased herein. Therefore, the case laws relied on by the Trial Court were not comparable or compatible and should thus be reviewed by this Honorable Court.
12. The Appellant urges this Honorable Court to re-assess the award for loss of dependency based on the case In **Antony Njoroge Ng'ang'a (Legal representative of the Estate of the late Fred Nganga Njoroge aka Fred Ng'ang'a Njoroge) v James Kinyanjui Mwangi & 2 others [2022] eKLR** the Appellate Court awarded the deceased's representative Kshs. 400,000 for loss of dependency where the deceased was 64 years old.
13. That It is noteworthy that the deceased herein was 87 years old. The award of Ksh 700,000 by the trial Court was manifestly excessive for a person in that age group granted the vicissitudes of life.
14. That the Learned Trial Magistrate misdirected himself in fact and in law in the findings and awards on loss of dependency and the award granted was thus excessive. Therefore, urge this Court to allow the appeal and substitute the Trial Court's award of loss of dependency at Kshs 700,000 with an award of Kshs 200,000 which is sufficient compensation for loss of dependency given the age of the deceased.

15. The Appellant further calls upon this Court to deduct the award from the Fatal Accidents Act and the Law Reform Act.

16. The Appellant urges the Court to exercise great caution and ensure that awards under the Law Reform Act (Cap. 26, Laws of Kenya) and the Fatal Accidents Act (Cap. 32, Laws of Kenya) are not duplicated.

17. Reference is made to the case of **JOSEPH WACHIRA MAINA & another v MOHAMMED HASSAN [2006] eKLR**, Judge L. Kimaru stated:

***“On this point I am inclined to agree with the submissions made by the appellants. It is trite law that the Courts of law have to take into account an award made under the Law Reform Act when making an award under the Fatal Accidents Act.”***

18. Further reference is made to the case of **Humphrey Muigana & Anor - vs- Robert Kibibiri Gichuki & Anor Nakuru HCCC No. 85 of 1996 (unreported)** Ondeyo J. held that:

***“...This does not mean that damages can be recovered twice over, but if damages recovered under the Law Reform Act, devolve on the dependants, the same must be taken into account in reduction of the damages recoverable under the Fatal Accidents Act’.”***

19. The Appellants urges that the appeal has merit and should thus be allowed as prayed in memorandum of appeal.

20. Respondents opposed the appeal contending that the Appeal is a quantum only. As was held in the case of **John Wambua Vs Mathew Makau Mwololo & another [2020] Eklr** and in the learned treatise Judicial Hints on Civil Procedure by R. Kuloba at page 256 onwards, the Applicable principles on an appeal on this aspect are well settled and can be summarized as follows: -

- a) Assessment of damages justified in substituting as is at the discretion of the trial Court and an appellate Court is not a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. This is borne out of the fact that the difficult task of awarding money compensation in a case is essentially a matter of opinion, judgment and experience and hence it is inevitable in any system of law that there will be disparity in awards made by different Courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured;
- b) The question as to quantum of damage is one of fact for the trial Judge and the principles of case are only guides. When those rules or principles are applied, however, it is essential to remember that in the end what has to be decided is a question of fact. Circumstances are so infinitely various that, however carefully general rules are framed they must be construed with some liberality and too rigidly applied. The Court must be careful to see that the principles laid down are never so

narrowly interpreted as to prevent a judge of fact from doing justice between the parties;

- c) Therefore, a Court of Appeal does not readily interfere with the estimate of damages made by the trial judge as assessment of damages is necessarily an estimate, and an estimate is necessarily a matter of degree, and unless an Appeal Court comes to the conclusion that the judge below took an erroneous view of the evidence as to the damage suffered by the Plaintiff, or made some mistake in giving weight to evidence that ought not to have affected net his mind, or in leaving out of consideration something that ought to have affected his mind;
- d) As such and in order to justify reversing a trial Court's finding on quantum, it will generally be necessary that the Appellate Court should be convinced either that the judge at the trial acted upon some upon some wrong principle of law, or that the amount was so extremely high or so very small as to make it an entirely erroneous estimate of the damage to which the Plaintiff is entitled and therefore the fact that the Appeal Court itself might feel disinclined to agree with an amount since it would have given a different award if it was the one trying the agree with an amount since it would have given a different award if it was the one trying the case will not justify the Court of Appeal in making any amendment of the trial's judge award;
- e) Therefore, a Court of Appeal does not readily interfere with the estimate of damages made by the trial judge as. assessment of damages is necessarily an estimate, and an estimate is necessarily a matter of degree, and unless an Appeal Court

concludes that the judge below took an erroneous view of the evidence as to the damage suffered by the Plaintiff, or made some mistake in giving weight to evidence that ought not to have affected his mind, or in leaving out of consideration something that ought to have affected his mind;

- f) Therefore, it is not enough that there is a balance of opinion or preference of one award over the other. The scale must go down heavily against the figure attacked if the Appellate Court is to interfere, whether on the ground of excess or insufficiency. As such and where there are different awards for similar injuries in decided cases limits set by the range/both cases and the Trial Court's award is within the decided cases the Appellate Court will not interfere with the Trial Courts award: Courts award, here damages have been assessed and there is no question of misdirection on the Trial Court, an appellate Court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion,
- g) The scale must go down heavily against the figure attacked if the Appellate Court is to interfere, whether on the ground of excess or insufficiency. As such and where there are different awards for similar injuries in decided cases and the trial Court's award is within the decided cases the Appellate Court will not interfere with the trial limits set by the decided cases, the Appellate Court will not interfere with the Trial Courts award;

h) It not infrequently happens that a decision either way may seem equally open and when this so, then the decision of the trial Judge who has enjoyed the advantages not available to is the appellate Court, becomes of paramount importance and ought not be disturbed.

21. On damages for loss of dependency the Respondent submit that the fact that the learned trial magistrate used authorities where Deceased persons were younger than the Deceased herein to arrive at the award herein does not automatically mean that the award is erroneous and hence ought to be set–aside as a matter of right since it is an established principle of law that an Appellate Court must be satisfied not only that the Trial Court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence when arriving at an award, but also as a result of the said error the award arrived at was so inordinately high or low as to represent an entirely erroneous estimate. Reference is made to the case of **IntraHealth International Inc Vs Charles Musembi Munyao [20191 eKLR** where the Court held as follows: -

***“It is true as was held by the Court of Appeal in Tahir Sheikh Said Transporters (K) Limited & Another vs. Charles Mugabo Civil Appeal No. 273 of 1998 that General damages must be assessed on the combined effect of all the injuries on the person injured and a not calculated as the sum of all the independent assessment for each injury...In this case it is clear that the Learned Trial Magistrate based her award of damages on each head of the injuries sustained by the***

*Respondent. That was clearly an error of principle. However, to justify this Court in interfering with quantum of damages awarded by the trial Court only, this Court must be satisfied not only that the trial Court applied the wrong principles he wrong principles, (as by taking in count some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence, but as a result of the same the award arrived at was so inordinately high or low as to represent an entirely erroneous estimate.....though I find that the learned trial magistrate made an error of principles in making separate awards for each for each injury, I am not satisfied that in the end she as a result, arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate. In the premises, this appeal fails and is dismissed”.*

22. The Respondents further submits that, a global award of Kshs.700,000/= made under this head in the year 2024 is not excessive/inordinately that despite the Deceased's advanced age of 87 years, he was still working and being depended upon by his wife and some of his unemployed children. On the other hand, the Respondent urges the Court to consider the case of **Abson Motors & 2 others v Sinema Kitsao & another (administrators of the estate of the late Kitsao Kajefwa Kitunga [Deceased] [2016] eKLR** where the Deceased was a herbalist and died at the age of 85 years and the Court upheld an award of Kshs.600,000/= made under this head in the year 2016 meaning that an award of Kshs.700,000/= for the Deceased herein cannot be said to be excessive taking into account passage of

time and inflation since the said lower Court case was decided about 9 years before the instant case.

21. Similarly, the Respondent submits that, the proposed award Kshs. 200,000/= Appellants herein is untenable (and no wonder no decided case has been relied upon/cited in support thereof) and most importantly, the proposed award is even below that awardable to a few months old "child as demonstrated rate by the. case of **FOO & another (Suing as the legal representatives in the estate of LAO a minor aged 5 months) v Mathias (Civil Appeal E015 of 2022) [2022] REHC KEHC 14642 (KLR) (31 October 2022)** (Judgment ) where global award of Kshs.400,000/= was made under this head and hence cannot be said to be applicable herein given the fact that the Deceased herein was working and being depended upon by his family members.
22. It is in view of the foregoing that the Respondent urges the Court to uphold the Trial Court's award under this this head.
23. On the alleged duplication of awards the Respondent contends that, there is no provision under the law for deduction of the award made under The Law Reform Act from the award made under The Fatal Accidents since what the law provides is Reform Act from the award made under The Fatal Accidents since what the law provides is that a Court should just 'take into account such an award when giving award under the other statute but 'not deduct' the same. This issue was extensively dealt with by The Court of Appeal in the case of **Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2) [1985] eKLR** where the Court distinguished

the word 'deduct' from 'taking into account' in the judgement of the majority and held as follows: -

***“An award under the Law Reform Act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act and so it appears the Legislature intended that it should be considered. Section 2(5) of the Law Reform Act says this: “(5) The rights conferred by this part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act (emphasis is mine). It has been argued in some English cases that this provision affects the right and not the benefits. Indeed the legislation can be looked at narrowly or in a wide sense Narrowly it means rights and no more legislation can be looked at narrowly or in a wide sense. Narrowly it means rights and no more; widely it means the rights and benefits accruing from those rights are in addition and not in derogation to the rights and benefits resulting from them under the Fatal Accidents Act. In my view what section 2(5)of the Law Reform Act means is that a party entitled to sue under the Fatal Accidents Act still has the right to sue under the Law Reform Act in respect of the same death. To be taken into account and to be deducted are two different things. The words used in 4(2) of the Fatal Accidents Act are “taken into account” section***

*says what should not be taken into account and not necessarily deducted, For me it is enough if the judgment of the lower Court shows that in reaching the figure awarded under the Fatal Accidents Act the trial judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss. There here is no requirement in law or otherwise for him to engage in a mathematical deduction as suggested by Mr Barasa”.*

24. That in the case of **Antony Nyaga Njagi v Mohamed Ibrahim Abdirahmed [2018]** eKLR where the genesis of this confusion was explained by The Court of Appeal as follows:

*“This Court has explained the concept of double compensation in several decisions and it is that some courts continue to get it wrong. The principle is logical enough, duplication occurs when the beneficiaries of the deceased’s estate under the Law Reform Act and dependants under the Fatal Accidents Act are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the fatal Accidents Act should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the Law Reform Act, hence the issue of duplication does not arise. The confusion appears to have arisen because of different reporting of the Kenfro case (supra) which was heavily relied on by Mr. Kiplagat. The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the ratio*

*decidendi. The same case, however, is more fully reported in [1987] KLR 30 as Kenfro Africa Ltd via Meru express Services 1976 & another -vs- Lubia & another (No.2) and the ration decidendi is extracted from the unanimous decision of all three Judges. It was held, inter alia that: - An award under the Law Reform act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act, it appears the legislation intended that it should be considered. The Law Reform Act (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estate of deceased persons shall be in addition to and not derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents act. This therefore means that a party entitled to sue under the Fatal Accidents act still has the right to sue under the Law reform Act in respect of the same death. The words 'to be taken into account' and 'to be deducted' are two different things. The words in Section 4(2) of the Fatal Accidents Act are 'taken into account'. The Section says what should be taken into account and not necessarily deducted. It is sufficient if the judgement of the lower court shows that in reaching the figure awarded under the Fatal Accidents Act, the trial Judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction." The deduction of the entire amounts made under the LRA in this case was erroneous once again, we have to interfere with the final award of damages.*

*We observe that the High Court reduced even further the figure of Sh.100,000 awarded for Loss of the expectations to sh.70,000 despite confirmation in the judgment that there was no dispute on the ward. Mr. Kiplagat attempted to justify the reduction by the argument that it would be beneficial to Hellen because less amount would be deducted from the Fatal Accidents Act award. With respect, that argument is misguided since there is no compulsion in law to make the deduction.”*

25. Finally, reference is made to the case of **Hardev Kaur Dhanoa v Multiple Hauliers (E.A) Limited [2017] eKLR** where the High Court sitting at Nakuru held that:

*“I am alive to the fact that the award shall go to the same Dependants. I have considered the principles enunciated in the Kemfro Africa Case and the Provisions of Section 2(5) of The Law Reform Act. I have also considered that the expression 'Taking into account' and does not mean deduction of the award from the award under The Fatal Accidents Act. Reliance is placed upon the Court of Appeal decision in **Hellen Wanguru Waweru (Suing as the Legal representative of Peter Waweru Mwenja (Deceased) -vs- Kiarie Shoe Stores Ltd (2015) eKLR Nyeri Civil Appeal No.22 of 2014** among others. For those reasons the award under The Law Reform Act shall not be of 2014 among others. For those reasons the award under The Law Reform Act shall not be deducted from the award under The Fatal Accidents Act.”*

### **Analysis and determination**

26. I have considered the Appeal and all representation for and against and the following two issues emerge in my mind. The issues for determination in the appeal are therefore:

- a) Whether the Trial magistrate exercised her discretion in an injudicious manner?**
- b) Whether the damages awarded were manifestly excessive.**

27. Being a first appeal, the Court is bound by the principles as set out in the case of **Selle and Another vs Associated Motor Boat Company Ltd & Others [1968] 1EA 123** which provides that;

*“.....the Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”*

28. Loss of dependency is a question of fact as was held in the case of **Moses Maina Waweru v Esther Wanjiru Githae (Suing as the personal representative of the Estate of the late David Githae**

**Kiririo Taiti 2022KEHC1430(KLR)**. The Court further demarcated the principles applicable in the exercise of discretion as follows;

***“The criteria to be used in determining an award for loss of dependency for a deceased who left behind dependants is the number of dependants, the age of the dependants and the level of dependency. In my view the award ought to be higher where the dependants are young. The age at which the deceased died is also a relevant factor”***

29. In the case of **China Civil Engineering & Construction Company (K) Limited vs Mwanyoh a Kazungu Mweni & another (2019) eKLR**, Justice Nyakundi declined to disturb a kshs 700,000/- award to a seventy (70) year old deceased, while quoting the case of **Vassam v Kampala Aerated Water Co Ltd {1965} 1 WLR 668** rightly stated:

***“That the exercise of this discretion sometimes is a matter of speculation and may be conjecture.”***

***“In the instant appeal, the deceased was aged 79 years, survived by the claimant. Without certainty, if the Court would have applied the multiplier formulae may estimate multiplicand of 4 -5 years and or income of Kshs.18,000/= per month it would have been an appropriate estimate life expectancy to consider, in calculating dependency on this multiplier as the period of dependency the claimant would probably ended up with an award of over Kshs.600,000/=. With this in mind, the consideration of a global approach may not have been too generous for that matter. The***

***fundamental evidence of the deceased good health, evidence as to the income of the deceased and dependency remained uncontroverted”.***

30. The Appellant had the first hurdle to overcome by showcasing that the trial Court erred and misdirected itself on the principles applicable to awards on damages thereby arriving at an erroneous award that was excessive. In this instance and following my review this Court finds the contrary, the trial Court did consider the emerging challenge in computing the award under this head and soundly took into account all relevant factors in departing and granting a global award under this head.

31. The global award granted under the head of dependency was within the current award range of kshs 700,000 and 1,500,000/- currently being made by Courts in Kenya and the same cannot be termed to have been excessive so as to give an erroneous estimate.

32. In this instance the Court in its review has considered that notwithstanding his advanced age, the deceased was in good health, working and with ten dependents. I find no fault in the exercise of the discretion by the honorable magistrate.

33. I accordingly find no fault in the exercise of discretion by Hon. Elizabeth N. Juma -CM, in her Judgment/Decree of 9<sup>th</sup> July 2024 and accordingly dismiss the Appeal for want of merit.

34. The Costs are awarded to the Respondent.

It is so ordered.

**Dated, signed and delivered at Nakuru**

**this 17<sup>th</sup> day of March 2026.**

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**Mohochi S.M.**

**JUDGE**