

REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL NO. E034 OF 2024

CHARLES ABICH NDEGE.....

APPELLANT

VERSUS

SUKARI INDUSTRIES LIMITED.....

RESPONDENT

JUDGMENT

1. This Appeal arises from the Judgement of Hon. C.N.C Oruo PM delivered on 2.5.2024 in Rongo PMCC No. 134 of 2018. The appellant was the plaintiff in the lower court. The court heard her case and dismissed it, with costs to the Respondent.
2. The Appellant was aggrieved and filed a Memorandum of Appeal dated 28.5.2024 and set forth the following grounds of appeal:
 - a)The learned magistrate erred in law and fact in voiding the contract between the appellant and the Respondent dated 2.05.2012, on which the contract was performed, when the alleged farm was specifically pleaded, identified, and was existent, a fact not denied by the Respondent.

- b) The learned magistrate erred in law and fact in failing to evaluate, and interpret the contract, and by attempting to re-write or impose terms and conditions into a contract, which contract, clear in terms and conditions, was duly executed by the parties.
- c) The learned magistrate erred in law in concluding that the price of cane was not proved, yet the same was pleaded, evidence given, and admitted by the Respondent at the trial and during cross-examination to be a sum of Ksh. 3,500/=.
- d) The learned magistrate failed to properly evaluate the evidence on record and came to a wrong conclusion and an erroneous decision.

3. The Plaintiff dated 10.10.2017 claimed damages for breach of contract, costs, and interest. The Appellant averred that, by a written agreement entered into on 2.05.2012, the Respondent contracted the Appellant to grow and sell to it sugarcane on the Appellant's land measuring 0.2 ha. It was further the case of the Appellant that the sugarcane would be harvested at 18-28 months and ratoon after 16-24 months.
4. The Respondent breached the contract by failing to harvest the sugarcane when it was ready. The expected yield for the plant sugarcane and the two ratoons of sugarcane was 135 tonnes per hectare for the plant sugarcane and ratoons. In mathematical terms, that is a yield of 27 tonnes per harvest. This worked out to be Ksh. 94,500/= each, totaling

Ksh.283,500/=. The cause of action is said to have arisen in Kobita sublocation.

5. The Respondent filed a defence dated 20.08.2018 denying the allegations in the Plaint. The denials were those that could be described as mere denials. Consequently, the court cannot ascertain from the pleadings what the respondent's defence was.

Proceedings

6. PW1 was the Appellant. He relied on her list of documents. She testified that she was a farmer contracted to the Respondent. They entered into a contract for cane harvesting. The cane dried on the farm. He produced the documents in his list filed in the lower court. On cross-examination, she testified that the plot was 0.2 ha. It could produce 135 tons per hectare at a time. Price per tonne was Ksh. 3,500/=.
7. PW2 was Gordon Abogo from KALRO based at Kibos in Kisumu under KESREF. He produced the report as Exhibit 3.
8. On cross-examination, he stated that he had worked at KARLO since 2014. He stated that yields varied according to natural factors, location, and are captured in the report. he stated a farmer can plant and maintain a ratoon to avoid replanting again. The yields of ratoon and plant crops differ. He indicated that his charges were Ksh35,000/=.
9. The Respondent called DW1, John Okinda. He was an agricultural officer of the Respondent. He testified that there

was a valid contract. According to him, he was under contract with Sony Sugar. According to him, the Appellant did not demonstrate any clause breached. On cross-examination, it was his case that they did not harvest the sugarcane. Had they harvested, they could have paid Ksh. 3,500/= per tonne and three cycles of sugarcane. He also stated that he did not denounce the contract. He stated that sugarcane was not available when they conducted the census.

Submissions

10. The Appellant filed submissions dated 22.7.2025. It was submitted that the Appellant proved her case on a balance of probabilities. They stated that the court erred in finding that the contract was void *suo motu*. It was their submissions that from the defence evidence and that of the appellant, there was a contract between the parties. They posited that this countered the allegations of fraud on the defence. Reliance was placed on **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR)** and **Langat v Co-operative Bank of Kenya Ltd [2017] KECA 152 (KLR)**. In the latter case, the Court of Appeal[PN Waki, MS Asike-Makhandia & W Ouko, JJA] held as follows:

We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties. They are bound by the terms of their contracts, unless coercion, fraud or undue

influence are pleaded and proved. See National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd [2002]2 EA 503. The primary task of the court is to construe the contract and any terms implied in it. See Megarry, J. in the case of Coco vs A. N. Clark (Engineers) Ltd. - [1969] RPC 41.

11. They submitted that submissions are not evidence as the same is akin to adducing evidence from the bar. Reliance was placed on the case of **Ng'ang'a & another v Owiti & another** (2008) 1 KLR (EP) 749 [1994] KEHC 133 (KLR). They submitted that holding that the contract was void was not supported by evidence. The same was outside the evidence, and the court exceeded its remit. Reliance was placed on the case of **Josephine Mwikali Kikenye v Omar Abdalla Kombo & another [2018] KECA 512 (KLR)**, where the court of appeal [Visram, Karanja & Koome, JJ.A] held as follows:

1. The general rule is that a party of full age and understanding is normally bound by his signature to a document, whether he reads it or not. See *Levison vs. Patent Steam Carpet Cleaning Co Ltd* [1977] 3 All ER 498. Putting it another way, he is estopped by his/her signature thereon from denying his consent to be bound by the

provisions/terms contained in that document.

12. They also submitted that the appellant pleaded the price of cane, which was not disputed. They also produced a document indicating the price of sugar cane. The court is said to have relied on secondary evidence rather than direct evidence, thereby offending the best evidence rule. They further submitted that the appellant was an expert in the area, hence it was within their special knowledge on the price, weights, milling, and pricing. Reliance was placed on the case of **South Nyanza Sugar Company Ltd v Masiga Mikwanga [2018] KEHC 1678 (KLR)**, where DAS Majanja J, held as follows:

10. It is not clear from the evidence whether the 70 tonnes was for the respondent's piece of land. However, this calls for the court to evaluate the evidence on this point. The appellant pleaded and stated in his testimony that yield per hectare was 130 tonnes. The issue is a question of fact and I would also point out that yield per hectare is within the knowledge of the appellant as it has expertise in that area. Hence, as Mr Oduk pointed out, the admissions by DW 1 were critical in assessing the evidence.

13. They submitted that the expected yield per hectare was 135 tonnes. There was no evidence to counter this.
14. They aver that the court can assess damages. Reliance was placed on the case **John Richard Okuku Oloo v South Nyanza Sugar Co Ltd [2013] KECA 73 (KLR)**, where the court of appeal [Onyango Otieno, Azangalala & Kantai, JJ. A) held as follows:

It was held by the Court of Appeal in England in the case of *Chaplin v Hicks* [1911] KB 786 that the existence of a contingency which is dependent on the volition of a third person does not necessarily render the damages for a breach of contract incapable of assessment.

The following passage appears in the judgement of Vaughan Williams, LJ in the *Chaplin* case:

“Then it is said that the questions which might arise in the minds of the judges are so numerous that it is impossible to say that the case is one in which it was possible to apply the doctrine of averages at all. I do not agree with the contention that, if certainty is impossible of attainment, the damages for a breach of contract are unassessable. I agree, however, that damages might be so unassessable that the doctrine of averages would be inapplicable because the necessary figures for working upon would not be

forthcoming; there are several decisions, which I need not deal with, to that effect. I only wish to deny with emphasis that, because precision cannot be arrived at, the jury has no function in the assessment of damages.”

Vaughan Williams, LJ goes on to state, and we fully agree, that the fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages for his breach of contract.

In the case before the trial magistrate the appellant, as plaintiff, pleaded in the plaint acreage of the parcel of land which was 0.2 hectare (paragraph 3 of Plaintiff), average cane proceeds per acre was given as 135 tonnes and the price per tonne was pleaded as Kshs. 1553/=. The trial magistrate was not unpersuaded by this pleading but dismissed the suit after holding that there was no breach of contract.

15. Further reliance was made on the case of **Rosbela Awino Othoo v South Nyanza Sugar Co. Ltd [2018] KEHC 8392 (KLR)**, where W. A. Okwany J, held as follows;

15. In the instant case, I have already found that the special damages were specifically pleaded. The trial

magistrate stated as follows on the issue of breach of contract:

“I am convinced that it is the defendant who breached the agreement.”

16. The trial court was however of the view that the law does not allow for an award of general damages for breach of contract. I find this view to be erroneous, and I am guided by the legal principle of equity, which states that equity would not allow a wrong to be suffered without a remedy. The correct position is that general damages are not awardable for breach of contract where the damages are quantifiable (See Dharamishi vs Karsan (1974) EA 41).

17. In the instant case, the appellant pleaded that she expected to harvest 135 tonnes of cane per hectare for which the respondent was to pay Kshs. 1730 per tonne and I therefore find that the damages to be awarded were capable of being quantified and indeed the trial court calculated the amount due at Kshs. 46,710/= save that she found that the appellant's case was not proved.

18. It is my humble view that the trial magistrate's finding was confusing and contradictory because while on one hand she found that the respondent was guilty of breach of contract, on the other hand she

stated that the appellant's claim had not been proved. Upon finding that there was a breach of contract, the trial court ought to have proceeded to pronounce itself on the amount payable to the claimant for the said breach instead of going back on her own decision and finding that the case had not been proved.

16. The Appellant submitted that a sum of Ksh 283,000/= should be awarded.

17. The respondent filed submissions dated 8.01.2026. They submitted that it is the norm that liability follows a fault. As such, the appellant must prove that a breach of contract occurred as a result of the respondent's failures. To do so, the appellant must establish a causal link between the respondent's negligence and his loss. reliance was placed on the case of Nairobi HCCA No.152 of 2003, Statpack Industries Limited Vs James Mbithi quoted in Timsales Ltd V Willy Nganga Wanjohi [2006] eKLR that:

It is trite law that the burden of proof of any fact or allegation is on the plaintiff. He must prove a causal link between someone's negligence and his injury. The plaintiff must adduce in evidence from which, on a balance of probability, a connection between the two may be drawn. Not every injury is necessary as a result of someone's negligence. An injury per se is not sufficient to hold someone liable."

18. They submitted that the appellant sought compensation for loss of expected yield for the Plant Crop, 1 and 2nd Ratoon; he failed to produce any report or documentation to prove or support the expected yield tonnage. It is not disputed that the plaintiff filed a Cane Price list with his list of documents; however, during the hearing, the plaintiff marked the same document for production, but the same was not produced, and as such, the appellant cannot seek to rely on the same in support of their 3rd Ground of the Memorandum of Appeal. It was their position that the law parties are bound by their pleadings. They relied on the case of **Migore v South Nyanza Sugar Co Ltd [2018] KEHC 5465 (KLR)**.

19. They further submitted that the appellant sought to have the trial court rely on documents not produced before it to arrive at a judgment in its favour. The trial court, having solely relied on the plaintiff's evidence and having found there is no evidence in support of their claim for expected yield, dismissed the suit. As a result of the above, the appellant filed this appeal in which it further seeks this honourable court to rely on evidence not before it to issue a decision in his favour. In addition to the above, the appellant simply claimed that the cost of sugarcane per tonne at the time was Kshs 3,500; however, he failed to prove the said price. The appellant has submitted that the price of sugarcane is set by a sugarcane pricing committee as established in the Sugar Act 2001. The Sugarcane Pricing Committee is a public entity, and its

documentation and decisions are available to the public. The appellant, having alleged to be a sugarcane farmer, had access to published sugarcane prices and, as such, ought to have filed the same documents to guide the honorable trial court and support his claim for Ksh 3,500 per ton of sugarcane.

20. It was further submitted that the Appellant adduced a contract before the trial court in support of his claim. The appellant claimed breach of contract, as the contract required the respondent to harvest his sugarcane; the respondent, however, failed to do so. They stated that, in compliance with section 107 of the Evidence Act, the appellant produced the contract booklet to prove that there was an existing contract between himself and the respondent, and, as such, the respondent is in breach thereof. they relied on the English case of **Curtis v Chemical Cleaning & Dyeing Co. Ltd [1951] ALL ER 631**, where they indicated that Lord Denning, MR, as he then was, held that:

Where a party signs a contract, that signature is evidence of his assent to the whole contract, including exception clauses, unless the signature is shown to be obtained by fraud or misrepresentation.

21. They submitted that by signing the cane supply contract, the appellant was bound to the terms and obligations of the said contract. The position of the law regarding the binding nature of a contract executed willingly by the parties is now

well settled. They relied on the case of **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another** [2001] KECA 362 (KLR) and **Langat v Co-operative Bank of Kenya Ltd** [2017] KECA 152 (KLR).

22. They posited that the respondent was not under obligation to harvest the sugar cane. they relied on Clause 1 at page 1 of the Cane Farming and Supply Contract, the Grower (appellant) is obligated to harvest the cane on maturity, and the Clause reads:

“1. The term of this agreement shall commence on the 2nd day of May, 2012, and shall, unless sooner determined under the provisions of clauses 2, 3, and 4 hereof, continue until the Grower has harvested on maturity one Plant Crop/Ratoon 1/Ratoon2....”

23. They submitted that notices were not given, or the appellant did not harvest cane and make it available to the respondent. they maintained that there was no valid contract between the appellant and the respondent. In the alternative, if there was such a contract, the appellant breached it. Finally, general damages are not recoverable for breach of contract, as pleaded by the appellant. no special damages were pleaded. reliance was placed on the case of Dakianga Distributors (K) Ltd -v- Kenya Seed Company Limited [2015] eKLR, where the court of appeal posed as follows:

This Court in *Independent Electoral and Boundaries Commission & Anor v Stephen Mutinda Mule & 3 others* (supra) cited with approval the decision of the Supreme Court of Nigeria in *Adetoun Oladeji (NIG) Limited v Nigeria Breweries PLC SC 91/2002* where Pius Adereji, JSC expressed himself thus on the importance and place of pleadings:

“... it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.”

... “In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.

24. The reliance on the case of **South Nyanza Sugar Co Ltd - v- Dominic Erick Angila 2011KEHC3058(KLR)**, where, Asike-Makhandia, as he then was, posited as follows:

It is trite law that there can be no award of general damages for breach of contract. In the case of Joseph Ungadi Kedera V Ebby Kangisha Karai, C. A. No. 239 of 1997(UR) the Court of Appeal was emphatic "...As to the award of Kshs. 250,00/- as general damages, Mr. Adere submitted that there can be no award of general damages for breach of contract. In addition, there is no evidence on which this can be supported. We respectfully agree. There can be no general damages for breach of contract. Mr. Ombija submitted that general damages lay and relied on FOAMINOL LABORATORIES LTD V BRITISH ARTION PLASTICS LTD(1941) 2 ALL.ER 493. We are satisfied that even on the basis of that case, there is no evidence to support an award of Kshs. 250,000/-..." The upshot of the foregoing is that general damages are not recoverable or awardable on a breach of contract. To the extent that the learned magistrate may have made an award, on that basis, he was in error. I have no doubt in my mind that the learned magistrate was alive to that fact. However, in a rather convoluted manner, he went on to treat the award as though it was hinged on special damages.

Analysis

25. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a subordinate court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.
26. This Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong. In the case of **Mbogo and Another vs. Shah** [1968] EA 93 the court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

27. The duty of the first appellate court was set out in the case of **Selle and another Vs Associated Motor Board Company and Others** [1968] EA 123, where the court in their usual gusto, held as follows; -

“.. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court

of Appeal is not bound to follow the subordinate Court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally."

28. The Court is to bear in mind that it had neither seen nor heard the witnesses. It is the subordinate court that has observed the demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them.

29. This court's jurisdiction to review the evidence should be exercised with caution. In the cases of **Peters vs Sunday Post Limited [1958] EA 424**, the court therein rendered itself as follows: -

"It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion..."

30. Bearing in mind that the court does not have the advantage of seeing and hearing the witnesses as did the lower court, yet this court must reconsider the evidence, evaluate it itself and draw its own conclusions.
31. The Appellant urged the court to find that the lower court erred in dismissing her suit. This court is entitled to reevaluate by way of a retrial the pleadings and evidence at the lower court. On the prove of the allegations of breach of contract in **Raghibir Singh Chatte v National Bank of Kenya Limited [1996] KECA 99 (KLR)** the Court of Appeal stated thus:

“When a party in any pleading denied an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum, or any part thereof, or else set out how much he received. And so, when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along those circumstances, but fair and substantial answer must be given.”...

...First of all a mere denial is not a sufficient defence in this type of case there must be some reason why the defendant does not owe the money. Either there was

no contract or it was not carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient therefore simply to deny liability without some reason given.”

32. The burden was with the Appellant to prove his case against the Respondent. On this subject, Section 107 (1) of the Evidence Act, Cap 80 Laws of Kenya provides that:

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.

33. A party who invokes the aid of the law and asserts affirmative of an issue has the burden to prove the matters in issue. In **Anne Wambui Ndiritu -vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, the Court of Appeal held that:

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

34. It follows that the initial burden of proof lies on the Plaintiff, but the same may shift to the Defendant, depending on the circumstances of the case. The burden of prove also casts upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. however, the matters of price were with the Respondent's special knowledge. they were under duty to prove the same. section 112 of the evidence act provides as follows:

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

35. The legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue In **Nyakwana v Ongaro [2015] KEHC 8440 (KLR)** it was held that:

“As a general preposition 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.”

36. The question then is what amounts to proof on a balance of probabilities. Kimaru, J, as he then was, in **William Kabogo Gitau V George Thuo & 2 Others** [2010] KEHC 4124 (KLR) stated that:

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

37. Courts have established that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Lord Nicholls of Birkenhead in **Re H and Others (Minors)** [1996] AC 563, 586 held that;

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriated in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.....”

38. The preponderance of probabilities is well settled. It must carry a reasonable degree of probability, but not the high probability required in a criminal case. Furthermore, in **Palace Investments Limited v Geoffrey Kariuki Mwenda & another [2015] KECA 616 (KLR)** the Judges of Appeal held that:

“Denning J, in Miller -vs- Minister of Pensions [1947] 2 All ER 372 discussing the burden of proof had this to say;-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not;

the burden is discharged, but, if the probabilities are equal it is not.

This burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un)convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

39. The appellant claims a sum of Ksh 283,000/= as particularized in the plaint and in submissions. This was in respect of the claimed 3-cycle harvest that was lost as a result of the failure to harvest the sugar cane by the Respondent. The respondent’s witness admitted that they did not harvest and that they were to harvest three times. Further that the price was Ksh 3,500/=. The court cannot go behind admitted facts. the respondent attempted, quiet, unsuccessfully to lay a case that there was a contract with Sony sugar. this was not in the pleadings. a party must first plead and then prove. evidence given in absence of pleadings is of no use.

40. Parties are bound to plead their cases fully. In the case of **Migore v South Nyanza Sugar Co Ltd** [2018] KEHC 5465 (KLR), A C Mrima, J, stated as follows:

11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of **Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR** which cited with approval the decision of the Supreme Court of Nigeria in **Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002** where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....

...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this

enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.

In the case of **Malawi Railways Ltd vs Nyasulu [1998] MWSC 3, Malawi Supreme Court of Appeal** stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled The Present Importance of Pleadings published in [1960] Current Legal Problems at p 174 whereof the learned author posited that: -

As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadingsfor the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own

character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called Any Other Business in the sense that points other than those specific may be raised without notice.

41. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on *inter alia* scrutiny in the case of **Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR** found and held as follows in an election petition:

58. In the case of Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & anr, Civil Appeal Nos 5710-5711 of 2012; [2014] 2 SCR the Supreme Court of India held that [paragraph 8]:

....

52. Further, the court went on and observed that:

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts.

42. The next issue is whether the pleadings controverted the case before the court. The only issue noted was at paragraph 11 of the where fraud was alleged; at no time was the contract said to be void. The particulars of fraud, even if proved, do not

amount to fraud. Ownership of land has nothing to do with ownership of the sugar cane. Consequently, it is hard to fathom what defence the appellant was raising. This brings me to the holding by the Court of Appeal in the case of **Raghibir Singh Chatte v National Bank of Kenya Limited [1996] KECA 99 (KLR)** the Court of Appeal Akiwumi, J. A, stated thus:

The words of Jessel M.R. on this issue are the following:

When a party in any pleading denied an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum, or any part thereof, or else set out how much he received. And so, when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along those circumstances, but fair and substantial answer must be given."

43. The court in the above case continued as follows:

In the subsequent appeal to this court, it was held that a mere denial is not a sufficient defence in the type of action that had been brought against the

defendant. In the judgment of this court delivered by Platt, J. A. as he then was, it is clearly stated as follows:

“First of all, a mere denial is not a sufficient defence in this type of case; there must be some reason why the defendant does not owe the money. Either there was no contract or it was not carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient, therefore, simply to deny liability without some reason given.”

Thus, in *Maguga General Stores*, this court authoritatively enunciated the principle that in an action for a debt or liquidated demand, a mere denial or general traverse will not do for all purposes. Applying the same principle, a defence in an action of that type that is a mere general traverse cannot be and is not a sufficient defence, and also discloses no reasonable defence for the purposes of 06 r 13(1)(a).

44. A proper defence, for this kind of claim, must set out the following:
- a. Whether or not the agreement was entered into.
 - b. Whether there was a harvest.

- c. Whether the yield pleaded was expected from such a parcel
- d. The price of sugarcane in the period referred to
- e. Whether two ratoons could be harvested. Efforts taken and the result of the harvest.

45. The last issue was succinctly addressed in the case of

Migore v South Nyanza Sugar Co Ltd

[supra] KEHC 5465 (KLR), where A C Mrima, J, stated as follows:

3. Going back to the pleadings and the evidence in this matter, the evidence tendered by the Appellant does not support the pleadings. The Appellant pleaded that the Respondent had failed to harvest the plant crop and the first ratoon crop. The position changed in the statement to that the Respondent had harvested the plant crop but failed to harvest the first and second ratoon crops. That position again changed during the hearing of the suit to that the Respondent harvested only part of the plant crop and abandoned the other part as well as the ratoon crop.

14. The evidence to the effect that the Respondent only harvested part of the plant crop and that on the claim for payment for the second ratoon are for outright rejection. The effect of the remainder of the evidence is that Respondent harvested the plant

crop, but not the first ratoon crop. The Respondent testified that the plant crop yielded 21.79 tons and that the income thereof did not even cover the cost of the inputs and services rendered by the Respondent to the Appellant and left an outstanding balance of Kshs. 14,937/70 which remains unsettled.

46. The respondent admitted that if they had harvested, they could have paid Ksh 3,500/= per tonne. The payment formula was set out in the contract. The contract is admitted. It is not the duty of this court to amend or redraft a contract. In the case of **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another** [2001] KECA 362 (KLR) [Tunoi, Shah & Keiwua JJ A] as follows:

A Court of law cannot re-write 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. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.

As was stated by Shah JA in the case of *Fina Bank Limited vs Spares & Industries Limited* (Civil Appeal No 51 of 2000) (unreported):

“It is clear beyond peradventure that save for those special cases where equity might be

prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain.

47. The respondent did not denounce the contract. So, the court could not require more than what was provided. The price was set out in paragraph 8.4 as follows:

Price of sugar per metric tonne =

net price of sugar per metric tonne x farmers'
share

TC/TS

Where

farmers share = 50%

TC/TS = 10

Net price of sugar per metric tonne = ex-factory price of sugar per metric ton excluding VAT and SDL.

Provided the grower turns up in the specified period of 30 days, with or without being notified, for the processing of his cane.

48. The latter terms are to be provided by the respondent, not the farmer. Luckily, this was provided in cross-examination. In its judgement dated 2.5.2024, the court dismissed the suit. Surprisingly, the court proceeded on a wrong footing. It held that the reason for dismissal was that there was no document showing the price, and that the report produced was not the one requested. The court also found the contract to be void.

This is not true as they were produced as exhibits three and four.

49. This resulted in this Appeal. No party pleaded that the contract was void. A contract is void in the strict sense of the law if it is for illegal purposes or parties lack the capacity to enter into the same, or it lacks the offer, consideration, acceptance, and legal purpose. None of the parties pleaded that this was the case. Secondly, there have to be pleadings that pray to that effect. The court has no business whatsoever rewriting the contract between parties or suggesting what must be in the contract.

50. First, the contract was drafted by the respondent on its letterhead. Consequently, if there are gaps, they must be construed against the draft under the *contra preferentem* rules. This is a cardinal principle in contract law: when construing a contract, any ambiguity is construed against the party that drafted it. A party that drafted the offer must suffer the consequences of any ambiguity. **Bhogatia v Madison Group [2024] KEELRC 1587 (KLR)**, SC Rutto, J stated as follows:

50. Applying the rule of *contra proferentem* herein, it goes without saying that any ambiguity in the contracts of employment should be construed against the Respondent.

51. In this regard, I will follow the determination of the Court (Radido J) in the case of *Mwangi Ngumo v*

Kenya Institute of Management
[2012] KEELRC 56 (KLR), where the learned Judge
reckoned as follows:

2.The contract itself, it appears, was drawn by the Respondent. And if it was not drawn by the Respondent it has not been shown or argued that the Respondent entered into it under duress or coercion. I do agree with the Claimant that any ambiguities in the contract should be construed against the party who drew the contract and that party is the Respondent. This is what has been referred to as the *contra proferentem rule* and which was applied in the case of *Horne Coupar v Velletta & Co.* 2010 BCSC 483, relied on by the Claimant.

51. Any missing details must be taken to be known to the party drafting. The court took issue with the contract being anywhere in the Kobita sublocation. There is nothing wrong with being anywhere in that location. The contract described the land as owned, the acreage as 0.2, the variety planted as 617, and the actual date of the plaintiff as 3.4.2011.

52. The agreement was signed by the parties in the presence of the Assistant chief of Kobita sublocation. There was nothing void with the agreement. A void agreement must be void *ab initio*, not legally enforceable, and cannot be validated. That is to say, the agreement is as good as if it were never there. This

was not the pleadings filed by the respondent. They denied preaching or committing fraud. A void agreement can arise from illegal subject matter, lack of capacity, impossibility of performance, unspecific terms, or a lack of the 4 elements of a valid contract. That is consideration, offer, acceptance, consideration, and an intention to be bound. The parties have to be at consensus ad idem. The respondent's evidence was that a valid contract existed. The court cannot thus ignore evidence and wander off to its own frolics.

53. I therefore find and hold that the court was plainly wrong in finding that the contract was void. This was not before him at all. It was also not left to the court by the parties to decide in terms of the decision in *In Odd Jobs Vs. Mubia* [1970] E.A. 476, it was held:

"A court may base its decision on an unpleaded issue if it appears from the course followed at the trial that the issue has been left to the court for decision;

54. The questions of incompleteness of contract, irregular contract, the obligation of the plaintiff to harvest cane, notice of breach, the obligation to deliver, and lack of locus standi, delivery to Sony Sugar, breach of sale of goods, were not placed before the court.

55. A Party cannot find a claim in submissions. They are neither evidence nor pleadings. Mwera J, posited as follows when postulating on what is the role of submissions are. He stated

that they are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim in the case of **Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi Nairobi HCCC No. 36 of 1993:**

“Indeed, and strictly speaking, submissions are not part of the evidence in a case. Submissions, to this court's view, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So submissions are not necessarily the case.”

56. Submissions are not, strictly speaking, part of the case, the absence of which may do prejudice to a party. Their presence or absence does not in any way prejudice a case as held in **Ngang'a & Another vs. Owiti & Another [2008] 1KLR (EP) 749**, the Court held that:

“As the practice has it and especially where counsel appears, a Court may hear final

submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."

57. The Court of Appeal was more succinct in that Submissions cannot take the place of evidence when they addressed the question in the case of **Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR:**

"Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each

side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented.”

58. Therefore, submissions raised by the respondent in the court below were otiose and should have been disregarded. Courts are not prognosticators, soothsayers, and diviners to know the thinking of a party. A party must plead its case or forever keep its peace. In the case of **South Nyanza Sugar Company Ltd v Masiga Mikwanga** [2018] KEHC 1678 (KLR), where DAS Majanja J, held as follows

8. As regards the ground that the claim was not pleaded with particularity, I am satisfied that the nature of the respondent's claim was clearly set out in paragraph 3, 4, 5 and 6 which set out the nature of the agreement, paragraph 7 which pleaded the breach and the particulars of loss were set out in paragraphs 8 and 9 and the prayer for relief which I have set out above. The purpose of a pleading is to enable the opposing party understand the nature of the claim and answer it. In this case, the appellant was able to answer the claim in its defence. It accepted the agreement and put forth an alternative

basis for calculating the damages. The nature of this claim has not escaped attention from the Court of Appeal. In *John Richard Okuku Oloo v South Nyanza Sugar Company Limited* KSM CA No. 278 of 2010 [2013]eKLR, the Court expressed the view that;

We have in the judgment set out in full this averment by the appellant at paragraph 12 of the plaint where it was pleaded that the average cane yield per acre was 135 tonnes which the appellant claimed at the rate of Kshs. 1,553 per tonne being the average yield unharvested by the respondent.

.....

We have shown that the pleadings on special damages suffered by the appellant were clear and sufficient enough and the learned judge was clearly in error to dismiss the appeal on the ground that the appellant had not specifically pleaded for the same to the required standards nor offered sufficient proof.

59. The appellant made a similar pleading in paragraphs 3,5,6 and 7 of the plaint. The particulars of damage were set out in paragraph 8. In that contest, the claim was fully pleaded.

60. Reading from the evidence, I find that it was admitted that the Respondent was entitled to have his cane harvested. They proved breach of contract on the part of the respondent.

61. Sadly, I note that the court did not attempt to assess damages or calculate damages they would have awarded had the claim been proved. **Lei Masaku v Kalpama Builders Ltd** [2014] KEHC 1196 (KLR), A. MABEYA J, held as follows: -

It has been held time and again by the Court of Appeal that the court of first instance assess damages even if it finds that liability has not been established. To have casually dismissed the suit and failed to address that issue of damages in this case is a serious indictment on the part of the trial court. Both the trial court and this court must assess damages as they are not courts of last resort. Their decisions are appealable and the appellate court needs to know the view by the Court of first instance on the issue of quantum. To the extent that the trial court failed to assess damages, its judgment was a serious flaw and cannot stand. It therefore behooves this court to assess quantum.”

62. Cane was grown in the Kobita sublocation in South Nyanza, where productivity in the sublocation in 1997/1997 was 119.7 for crop plant, 29.3 for the first ratoon, and 82.5 for the

second ratoon. The variety of cane assessed in the contract was N14, with an average yield for year 2000 of 94.3 tons per hectare. This thus works out to 75.44 tonnes for the plot in issue, that is:

$$94.3 \times 0.2 = 66,010 \text{ tonnes per hectare.}$$

63. The second ratoon last averaged 65.4 tons per hectare. For a 0.2-hectare plot, the yield will be 0.2×65.4 , which equals 13.08 tonnes. The second agreed ratoon will be based on a yield of 53.3. The yield, therefore, will be based on 53.3×0.2 hectares, resulting in 10.66 tonnes. The expected yields for the three cycles ought to work out as follows;

- i. Crop plant works out as follows: $94.3 \times 0.2 \times 3,500 = 66,010/=$.
- ii. First ratoon works out as follows: $65.4 \times 0.2 \times 3,500 = 45,780/=$
- iii. Second ratoon works out as follows: $54.32 \times 0.2 \times 3,500 = 38,024/=$.

Total Ksh.
149,814/=.

64. However, the court is drawn to the common position of the parties that the contract period was 5 years. Could all 3 cycles be covered within 5 years, given that the sugarcane plant would be harvested at 18-28 months and ratooned after 16-24 months? I think not. The reasonable number of cycles can only be one plant and the first ratoon to cover the five-year period.

The court therefore finds that the correct computation that is right and just is as follows:

- i. Crop plant works out as follows: $94.3 \times 0.2 \times 3,500 = 66,010/=$.
- ii. First ratoon works out as follows: $65.4 \times 0.2 \times 3,500 = 45,780/=$

Total Ksh. 111,790/=.

65. This was not a claim for special damages but for failure to harvest the cane that was contracted. The respondent has a duty to disclose the annual prices as a basis for determining contractual terms. Since the Respondent admitted that the price was a sum of Ksh. 3,500/=, the court should not belabour the point. Farming is not an exact science. It is based on the best available evidence and admissions. The court cannot fail to award simply because there was no agricultural report. In large-scale farming, such as coffee, tea, and sugar, averages will always work out.

66. The court got it wrong by setting the issue in the judgment as to the existence of a valid contract. The only issue in the case was the amount of loss suffered. The court cannot go into issues that were not raised in evidence or pleadings.

67. Parties are bound to plead their cases fully. In the case of **Migore v South Nyanza Sugar Co Ltd** [2018] KEHC 5465 (KLR), A C Mrima, J, stated as follows:

11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....

...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues

as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.

In the case of *Malawi Railways Ltd vs Nyasulu* [1998] MWSC 3, Malawi Supreme Court of Appeal stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled *The Present Importance of Pleadings* published in [1960] *Current Legal Problems* at p 174 whereof the learned author posited that: -

As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadingsfor the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim

or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called Any Other Business in the sense that points other than those specific may be raised without notice.

68. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on *inter alia* scrutiny in the case of **Raila Amolo Odinga & Another vs. IEBC & 2 others** (2017) eKLR found and held as follows in an election petition:

58. In the case of Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & anr, Civil Appeal Nos 5710-5711 of 2012; [2014] 2 SCR the Supreme Court of India held that [paragraph 8]:

....

52. Further, the court went on and observed that:

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts.

69. The net effect is that the appeal is allowed as aforesaid. This leaves the issue of costs, which is governed by Section 27 of the Civil Procedure Act, which provides as follows:

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law

for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

70. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** [2018] KECA 158 (KLR) had this to say:

"It is our finding that the position in law if that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning

secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

71. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Rai & 3 others v Rai & 4 others** [2014] KESC 31 (KLR), as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law,

constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

72. Costs follow the event. The event is the allowance of the appeal. The appellant shall have costs of Ksh 45,000/=.

Determination

73. In the upshot, I make the following Orders:

- a. The Appeal is allowed. The judgment of the court below is set aside. In lieu thereof, judgment is entered for the appellant for the sum of Ksh. Ksh. 111,790/=.
- b. The Appellant shall have costs of the appeal of Ksh. 45,000/=.
- c. The appellant will have costs in the court below.
- d. 14 days right of appeal.
- e. 30-day stay of execution.
- f. The file is closed.

DELIVERED, DATED and SIGNED at **Nyeri**, virtually on this **16th** day of **March, 2026**. Judgement delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Ms. Theuri for the Appellant

Ms. Ogola for Olendo for the Respondent

Court Assistant - Michael /Martin

ORIGINAL