

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL APPEAL NO. E126 OF 2024

PHILIP KAKAI.....APPELLANT

VERSUS

FAITH MAKUNGU KEVOGO.....1ST RESPONDENT

EL-LIHI CAPITAL LIMITED.....2ND RESPONDENT

TIMOTHY SITATI.....3RD RESPONDENT

(Being an appeal from the judgment of the Honourable D.M Macharia M/Adjudicator) delivered on 17th May, 2024 at the Small Claim Court at Nakuru in Nakuru SCCC No. E002 of 2024)

JUDGMENT

1. The background of this Appeal is that before the Small Claims Court and vide a Statement of Claim dated 5th January, 2024 in the *Small Claims Court Case No. SCCC No. E002 of 2024*, the Appellant herein sought compensation of Kshs. 1,000,000 from the Respondents being :-
 - a) *Repair costs of Kshs. 987,333/-*
 - b) *Re-inspection fees of Kshs. 2,459/-.*
 - c) *Assessment fees of Kshs. 10,208/-.*
 - d) *Costs of suit and interest.*
2. His case was that on or about 8th January, 2021 at approximately 11:00 AM, his authorised driver was lawfully driving Motor Vehicle Registration Number KBV 971Y along the Naivasha–Gilgil Road near the Weighbridge area when the Respondent’s authorised driver so negligently and recklessly managed, controlled, and/or drove Motor Vehicle Registration Number KCF 831T that it collided with Appellant’s vehicle KBV 971Y, resulting in extensive vehicular damage.

3. He blamed 1st Respondent for the accident as the registered owner of Motor Vehicle Registration Number KCF 831T, the 2nd Respondent was the insured of the said Motor Vehicle while the 3rd Respondent was the driver at the time of the accident.
4. He reported the accident to his insurance, Britam General Insurance Company(K) Ltd, and therefore that the claim was instituted on behalf of his insurance under the Subrogation rights.
5. When served, the Respondents filed their respective response to the claim and upon hearing both parties, the trial court shared liability equally between the two drivers at 50% liable for the accident. However, the court proceed to dismiss the claim on quantum on the basis, that the Appellant had not proved the claim to the required standard.
6. Dissatisfied with that Judgement, the Appellant, lodged this Appeal dated 30th May, 2024 based on the grounds that;-

- 1) The learned Resident Magistrate/Adjudicator erred in law and in fact by failing to consider the Appellant's Evidence on record both the list and bundle of documents dated 5th January, 2024.**
- 2) The learned trial magistrate/ Adjudicator erred in law in failing to consider the Appellant's Submissions dated 25th March, 2024.**
- 3) That the learned Resident Magistrate/Adjudicator erred in law in dismissing the Appellant's claim on the basis that the Appellant did not prove the Special damages to the required standard.**
- 4) The learned trial magistrate/ Adjudicator erred in law by apportioning liability 50:50 on the basis that the parties gave contradicting evidence and the Court had no opportunity to**

hear cross-examination of the witnesses to ascertain the veracity and the credibility of the evidence.

5) The learned Magistrate/ Adjudicator erred in law in finding that there was no evidence to establish who was to blame for the accident yet concluded that both parties shall share liability.

7. The appellant therefore prayed for the Appeal to be allowed, the trial court's Judgement be set aside and he be awarded costs of this Appeal.

Appellant's Submissions

8. He challenges the trial court's decision to have liability equally shared between the parties based on contradicting evidence without hearing cross-examination.

9. He argues that the court should have exercised its powers under Section 19 of the Small Claims Act 2016 to summon witnesses or Section 146 (4) of the Evidence Act and Order 18 Rule 10 of the Civil Procedure Rules to recall witnesses for clarification.

10. To support the duty of the court to ensure natural justice and a fair hearing, the Appellant cites the case of *Odinga & 5 Others v Independent Electoral and Boundaries Commission & 3 Others (Petition 5, 3 & 4 of 2013 (consolidated) [2013] KESC 6 (KLR) (16 April 2013)* where it was held that the court must determine the best course of action to serve the process of justice. Further he relies on the case of *Wachira Karani v Bildad Wachira [2016] eKLR* and emphasises that the fundamental duty of the court is to do justice and ensure parties have a reasonable opportunity to present their case.

11. The Appellant further contends that the court ignored the Police Abstract, which is admissible under Section 38 of the Evidence Act and clearly blamed the Respondents' vehicle. In support of the argument that a collision usually implies liability for at least one party, the Appellant

cites the case of *Platinum Car Hire Limited vs Samuel Arasa Nyamesi and Another, Majanja J, H.C Kisii C.A 29/2016* (citing *Berkly Steward Limited v Waiyaki (1982-1988) KAR* and *Baker v Market Harborough Industrial Co-operatives Society Ltd (1953) 1 KLR 1472*), observed that in a collision, one or the other party is typically held to blame.

12. To establish that the Appellant's version of events was more probable, he relies on the case of *Eastern Produce (K) Ltd – Chemomi Tea Estate v Bonfas Shoya [2018] eKLR* where while referencing *Kanyungu Njogu v Daniel Kimani Maingi [2000] eKLR*, the court defined the burden of proof in civil cases as requiring evidence to show one probability is more likely than another.
13. He argues that the trial court erroneously held that the special damages were not strictly proved despite the presence of invoices and ETR legal receipts.
14. While acknowledging the standard of proof for special damages, reliance is placed in *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited [2016] eKLR* for the holding that special damages should be specifically pleaded and strictly proved. The Appellant therefore asserts that ETR receipts he produced met this requirement.
15. It is further submitted that the actual repair receipts are not always a mandatory requirement for recovery if the damage extent is proven. To support this argument, the Appellant cites the case of *Nkuene Dairy Farmers Co-operative Society Limited vs Ngacha Ndeiya [2010] eKLR*, where it was held that a plaintiff only needs to show the extent of damage and the cost to restore the item, often through an assessor's report. Further reliance is placed on the case of *David Bagine vs Martin Bundi [1996] eKLR*, arguing that an assessor's report is sufficient proof and the failure to provide repair receipts is not fatal to a claim.

16. The Appellant therefore urges this Court to re-evaluate the evidence as a first appellate court, citing the case of ***Selle and Another vs Associated Motor Boat Company Ltd & Others [1968] 1 EA 123*** that an appellate court must reconsider and evaluate the evidence itself to draw its own conclusions, especially if the trial judge failed to take certain probabilities into account.
17. Consequently, the Appellant prays that the appeal be allowed, the trial court's judgment to be set aside, and the court to award the claim on its merits with costs.

1st and 3rd Respondent's Submissions

18. They argue that the trial court was justified in splitting liability as the evidence provided by both sides was contradictory and lacked supporting documentation for example, a sketch plan, police O.B. report, or covering report.
19. They submit that in arriving at its decision, the trial was guided by the decision in ***Helle Sejer Hansen & 2 others v Julius Kakungi Mukavi [2020] eKLR*** and ***Kennedy Nyangoya v Bash Hauliers [2016] eKLR*** which cases established that police abstract alone is not conclusive evidence of negligence .
20. Further , that the trial court relied on case of ***Hussein Omar Farah v Lento Agencies CA NAI Civil Appeal 34 of 2005 [2006] eKLR***, where the Court held that if there is no concrete evidence to determine blame between two drivers, both should be held equally liable.
21. The Respondents further contend that the Appellant failed to prove how the 3rd Respondent was negligent, citing ***Apollo Insurance Co. Limited v Peter Kimani Njuguna [2007] eKLR***, which places the burden of proving specific negligent acts on the party making the claim.
22. It is submitted that before the trial court, the 3rd Respondent maintained that he swerved only to avoid a head-on collision with the Appellant's

lorry, which was overtaking on a continuous yellow line near the Gilgil weighbridge.

23. The Respondents highlight that the Appellant's driver gave inconsistent reports, claiming no injuries occurred despite the 3rd Respondent being in a coma and other passengers being hospitalized. Furthermore, they argue that no formal police investigation or witness interviews ever took place, and the officer who prepared the abstract never provided a statement or testimony.
24. They emphasise that under Section 38 of the Small Claims Court Act, an appeal must be based only on matters of law. They argue the Appellant is wrongly attempting to have the High Court interfere with factual findings. They also assert that the Court is a neutral arbiter and was **not obligated to summon witnesses or fill gaps in the Appellant's poorly prosecuted case.**
25. Citing the Court of Appeal decision in *Hahn v Singh, Civil Appeal No. 42 of 1983 [1985] KLR 716*, which dictates that special damages must be specifically pleaded and strictly proven, they argue that the trial court correctly dismissed the claim for special damages as they were not strictly proved.
26. The Respondents point out several fatal flaws in the Appellant's claim for damages: The claim was a subrogation suit by Britam Insurance, but they failed to provide proof of actual payment (such as RTGS, cheques, or bank statements); the assessment report was deemed unreliable as it was prepared years later for the suit and contained inconsistencies regarding the damage described and lastly, that the invoices provided contained significant errors, including the wrong vehicle registration number, KBV 917Y instead of KBV 971Y), handwritten alterations, and ETR receipts that were not properly linked to the repairs.

27. In conclusion, the Respondents submit that the Appellant has failed to demonstrate any error in law by the trial court. They therefore urge Court to dismiss the appeal with costs.

2nd Respondent's Submissions

28. He submits that the Appellant has failed to provide any grounds challenging the specific finding made in paragraph 15 of the original judgment. He argues that in that judgment, the Adjudicator explicitly found that the 2nd Respondent was not in physical possession or control of the vehicle at the time of the accident and, consequently, held no insurable interest and bore no blame.

29. It is his argument that because the Appellant did not contest these specific findings in the Memorandum of Appeal, the 2nd Respondent has been improperly enjoined in this appeal process, likely due to an error on the part of the Appellant.

30. The Respondent clarifies the background of the claim, which stems from a motor vehicle accident on 8th January, 2021, involving vehicles KBV 971Y and KCF 831T. He submits that while the Appellant sued the 2nd Respondent as the registered owner of KCF 831T, the 2nd Respondent produced a Sale Agreement dated 21st December, 2020, proving the vehicle was sold to the 1st Respondent before the accident occurred.

31. He contends that the Appellant's grounds of appeal are focused entirely on the apportionment of liability between the Appellant and the 1st and 3rd Respondents, as well as the assessment of special damages. He therefore submits that since these issues do not involve the 2nd Respondent, their inclusion in the appeal is deemed improper.

32. While breaking down the Appellant's grounds to show irrelevance to their position, the 2nd Respondent argues that Grounds 1 and 2 challenge the trial court's consideration of evidence, yet the trial court already

established that the Appellant failed to disprove that the 2nd Respondent was no longer the owner.

33. It is submitted that Grounds 3, 4 and 5 deal with liability apportionment among other parties and have no connection to the 2nd Respondent, who was already cleared of possession or control of the vehicle.

34. Further the 2nd Respondent reiterates that the trial court's finding, that ownership was transferred prior to the accident, remains unchallenged and therefore, since the appeal raises no valid grounds against him, he prays that the appeal be dismissed against him with costs.

Highlighting of the submissions

35. Only the Appellant and 2nd Respondents chose to highlight on their submissions. This was basically for emphasis.

Analysis and Determination

36. To start with and whereas it is a fact that the first appellate court should give a fresh look at the evidence adduced before the trial court bearing in mind that it had no benefit of having seen or hearing the witnesses as they testified as was held in ***Selle & Another vs Associated Motor Boat Co. Ltd (1968) EA 123***, the parties must also bear in mind the provisions of Section 38 (1) of the Small Claims Court that:- ***1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law. (2). An appeal from any decision or order referred to in subsection (1) shall be final.***

37. Upon perusal of the Memorandum of Appeal, the Court notes a mixture of both on points of law and facts. The question that arises then is what is a point of law and a point of fact? The Blacks' Law Dictionary, Tenth Edition at page 1345 defines the term point of law as ***"A discreet legal proposition at issue in a case."*** Further, a point of fact is defined as ***"A discreet factual proposition at issue in a case."***

38. While dealing with provisions of Section 56 (2) of the Tax Procedures Act (TPA) which provided that an appeal to the High Court or to the Court of Appeal would be on a question of law only, Majanja J (*as he then was*) had this to say in the case of *Commissioner of Domestic Taxes v W. E. C. Lines (K) Limited (Tax Appeal E084 of 2020) [2022] KEHC 57 (KLR) (Commercial and Tax) (31 January 2022) (Judgment)*;

“An appeal limited to matters of law does not permit the appellate court to substitute the Tribunal’s decision with its own conclusions based on its own analysis and appreciation of the facts.

What amounts to matters of law are the interpretation or construction of the Constitution, statute or regulations made or their application to the sets of facts established by the trial court. The court’s engagement with the facts is limited to background and context and to satisfy itself, when the issue was raised, whether the conclusions of the trial court were based on the evidence on record or whether they were so perverse that no reasonable tribunal would have arrived at them. The court cannot be drawn into considerations of the credibility of witnesses or which witnesses were more believable than others; by law that was the province of the trial court.

When a court that is limited to dealing with matters of law had a concern regarding the issues that dealt on facts, then the court would also be limited to re-evaluation of the lower court’s conclusions and if the conclusions were erroneous and were not supported by evidence and the law, then the matter becomes a point of law.”

39. Further, the Court of Appeal in *Mercy Kirito Mutegi v Beatrice Nkatha Nyaga & 2 others [2013] eKLR* had this to say;

“31. We wish to state on the onset that in determining the three or so legal issues that arise in this appeal, some of the issues may cut across the spectrum of the factual evidence especially on the conclusions arrived at after the analysis of the primary evidence by the Election Court. We are nonetheless conscious that our jurisdiction is only limited to determination of points of law and thus, our concern regarding the issues that dealt on facts will be limited to our duty of re- evaluation of the Judge’s conclusions; and if the conclusions are erroneous; that is, not supported by evidence and the law; the matter becomes a point of law. As it was held in the case of Mwangi v Wambugu, [1984] KLR 453:

A Court of Appeal will not normally interfere with a finding fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding; and an appellate court is not bound to accept the trial Judge's finding of fact if it appears either that he has clearly failed on some material point to take account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

40. Bearing the above in mind, the broad issues for determination in this Appeal are;-

- 1. Whether the trial court erred in law by failing to consider the Appellant’s evidence, bundle of documents, and written submissions, thereby breaching the Appellant's right to a fair hearing.**
- 2. Whether the trial court misdirected itself on the legal standard of proof required for special damages and the**

evaluation of documentary evidence, leading to an erroneous dismissal of the Appellant's claim.

3. Who bears costs of this Appeal.

41. On the **first issue**, the statement by the Appellant's driver (**Johana Kokonya**) was that while driving Motor Vehicle Registration No. KBV 971Y from Naivasha toward Kitale and approaching the weighbridge, he saw the oncoming vehicle (KCF 831T) being driven towards his lane. He claimed to have slowed down and flashed his warning lights, but the Respondent's vehicle was too close and hit the driver's side of his vehicle, causing it to lose control and overturn, hence the police who investigated the scene blamed the 3rd Respondent for the accident.
42. The statement by the Appellant (**Philip Kakai**) was that he was informed that the Respondent's vehicle did not stop after the driver (Kokonya) slowed down and flashed lights, leading to the collision on his driver's side.
43. Lastly, the statement by **Wangari Maurine**, Britam Insurance Claims Officer, was that her employer insured the Claimant's vehicle and received a report of the accident involving the two vehicles near the weighbridge on the stated date and that the insurance fully paid the garage, repairs costs and thus they brought the claimed for reimbursement under the doctrine of subrogation.
44. On the other hand, the statement by the 3rd Respondent (**Timothy Sitati**) was that on the material date, he was driving motor vehicle registration number KCF 831T from Kitale to Nairobi and upon reaching the Gilgil weighbridge, he saw the Appellant's driver leave his lane in an attempt to overtake, thereby encroaching into the 3rd Respondent's lane. Noticing the immediate proximity of the Appellant's vehicle, the driver began hooting and flashing his lights at the 3rd Respondent. This hooting

- and flashing caused the 3rd Respondent to become disoriented, resulting in an instantaneous head-on collision.
45. As a result of the impact, the vehicle rolled over and came to a rest facing southwards. The 3rd Respondent was rendered unconscious and later regained consciousness in the hospital. He stated that his wife, son, nephew, and pregnant sister-in-law were also on board and due to the trauma of the accident, his sister-in-law was forced into premature labour.
46. They reported the matter to the police upon their discharge from the hospital but no action was taken. He alleged that the Appellant's driver reported the incident immediately after the collision in a pre-emptive bid to shift liability on the Respondents.
47. The statement by **Faith Makungu Kevogo** (1st Respondent) was that she was a passenger in Motor Vehicle Registration Number KCF 831T driven by her husband. That upon reaching the Gilgil area, she saw the Appellant's driver leave his rightful lane to overtake another vehicle, thus entering their lane and knocking them off the road. This collision caused their vehicle to roll and overturn, resulting in serious injuries to her family members and leaving her husband unconscious.
48. She explained that they did not report the matter to the police immediately as she was severely traumatised considering that her own mother had recently passed away following a road accident involving a lorry. She blamed the Appellant's driver for the accident.
49. This Court notes that trial court had this to say before framing two issues for determination, that is liability and quantum:- “ ***Upon perusal of the and consideration of the pleadings, the evidence on record and the written submissions the following commend to me for determination...***”

50. From the record , there is nothing to show that the trial court did not consider the material presented by the parties. Indeed, as regards evidence, the record shows that on 19/3/2024, Ms Nganyo Advocate for the Appellant proposed to proceed hearing of the claim under Section 30 of the Small Claims Court Act and this was agreed to by Mr. Matoke who was holding brief for Mr. Ibrahim for the 1st and 2nd Respondent and also by Mr. Kimathi holding brief for Mr. Chege for the 2nd Respondent.
51. For emphasis, Section 30 of the Small Claims Court Act allows proceedings by documents only and specifically that :- ***“Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court.”***
52. It was upon the consent by parties to proceed under the above provision of the law that they sought and were allowed to proceed to file and exchange submissions and upon compliance, Judgment was delivered on 17/5/2024.
53. In the circumstances, there was no breach or violation of fair trial. The Appellant’s challenge of the trial court’s decision on liability arguing that the court should have exercised its powers under Section 19 of the Small Claims Act 2016 to summon witnesses or Section 146 (4) of the Evidence Act and Order 18 Rule 10 of the Civil Procedure Rules to recall witnesses for clarification is untenable.
54. The record shows that there was no independent eyewitness as to how the accident occurred. Furthermore, while the Police Abstract alleges that the owner of Motor Vehicle Registration Number KCF 831T was to blame, there were no details, including sketch plan to support either party’s version of how and who was to blame for the accident.

55. Indeed, the Courts have severally stated that a police abstract is not conclusive evidence of who is to blame on an accident. Chemitei J in *Ngure v Maina (Civil Appeal E166 of 2024) [2025] KEHC 11696 (KLR)*, held that ;- “... *the police abstract is an abridged version of the OB. In this case the name of the deceased does not feature in the OB which is essentially the official document from the traffic police department showing the incidence, the vehicles and parties involved and the step-by-step action taken by the police.*”
56. Further, in the case of *Kennedy Nyangoya v Bash Hauliers [2016] KEHC 2616 (KLR)*, Mwangi J. held that:-“ *Even if the police abstract indicated that DW1 was to blame for the accident, the said abstract was not conclusive proof of liability in the absence of evidence being called to support it.*”
57. Given the conflicting and irreconcilable versions of events presented by the rival parties as noted in the circumstances herein, the court is entitled to find that both drivers equally contributed to the occurrence of this accident. Consequently, the trial court’s apportionment of liability at a ratio of 50:50 between the driver of Motor Vehicle Registration Number KBV 971Y and of Motor Vehicle Registration Number KCF 831T was judicious, fair, and based on a proper evaluation of the evidence tendered by the parties. There is no reason to disturb that finding.
58. **On Liability in regard to 2nd Respondent**, it was the Appellant’s contention that the 2nd Respondent’s name on the National Transport and Safety Authority (NTSA) records is conclusive proof of ownership. However, the 2nd Respondent tendered evidence in form a sale of Motor Vehicle Registration Number KCF 831T to the 1st Respondent on 21st December 2020 vide sale agreement dated 21/12/2020 and a copy of a

Credit Advice of even date for the sum of Kshs. 480,000/- being the sale price. That evidence was not controverted.

59. The 2nd Respondent, having surrendered the vehicle to the purchaser prior to the material date of the accident, was neither the owner in fact nor the employer of the driver. Indeed, in the case of *Securicor Kenya Ltd vs Kyumba Holdings Civil Appeal No. 73 of 2002* the Court of Appeal (Tunoi, O’Kubasu’ Deverell JJ.A) held that; **“Our holding finds support in the decision in OSAPIL VS. KADDY [2000] 1 EALA 187 in which it was held by the Court of Appeal of Uganda that a registration card or logbook was only prima facie evidence of title to a motor vehicle and the person whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise. The appellant had, indeed, proved otherwise.”**
60. In the circumstances, the trial court’s finding that the Appellant bore no responsibility for the accident was proper. The dismissal of the case against the 2nd Respondent with costs is upheld.
61. On the second issue that is whether the Appellant tendered evidence in support of the special damages sought in the material damage claim, it is borne in mind that this was a claim under the doctrine of subrogation and therefore, the Appellant who was insured by Britam Insurance Company Limited, tendered evidence in the form of a Motor Accident Report Form with insurer dated 15th January, 2021.
62. Further, he tendered an Assessment Report dated 28th January, 2021 done by Prime Accident Assessors Limited regarding Motor Vehicle Registration Number KBV 971Y showing estimated repair costs at Kshs. 990,477/-. After a sum of Kshs. 60,784/- contribution deduction, it comes to a total of Kshs 929,693/59.
63. A Supplementary Assessment Report was subsequently conducted on 24th February, 2021, for the sum of Kshs. 62,640/-. Additionally, a claim

requisition voucher was lodged with Britam on 19th April, 2021, covering assessment fees of Kshs. 13,108/-.

64. An invoice of all these repairs from Latent Automobiles & Spares (K) Limited, dated 9th March, 2021, was issued to Britam General Insurance Company Limited for Kshs. 987,333/59; a receipt for the same amount from Latent Automobile & Spares (K) Limited was superimposed on this invoice. Further evidence includes a discharge letter from Latent Automobile & Spares (K) Limited addressed to Britam General Insurance Company Limited, dated 13th February, 2021. This letter informed the insurer that the insured, Philip Kakai (the Appellant), was satisfied with the repairs and held no further claims for damages against the insurance provider.
65. Based on this evidence, this Court is satisfied that the Appellant has demonstrated proof of payment for the repairs, as evidenced by the receipt superimposed on the invoice of the sum of Kshs. 987,333/59, issued to Britam Insurance Limited dated 9th March, 2021.
66. Regarding other costs, this Court notes that while a re-inspection fee note of Kshs. 2,900/- was raised by Prime Accident Assessors Limited on 26th February, 2021, the annexed receipt for that amount was dated 24/2/ 2021. The receipt predates the fee note, and therefore, it cannot be considered valid proof of payment for the re-inspection. Again, the claim for legal fees for inspection totalling Kshs. 10,208/- was not supported by evidence. In the circumstances, that specific claim fails.
67. Consequently, the total amount of Kshs. 987,333/59 for repairs was sufficiently proved. However, after accounting for the 50% contributory negligence, the final award for repairs is Kshs. 493,666/79.
68. On costs, Section 27 of the Civil Procedure Act provides that costs should follow the event.
69. In conclusion, the following orders are issued;-

- 1) Judgment on liability at 50:50 between the drivers of the two vehicles is upheld.
- 2) The trial court's finding dismissing the claim against the 2nd Respondent with costs is upheld with costs of appeal to the 2nd Respondent.
- 3) The trial court's order dismissing the Appellant's claim for special damages is set aside and substituted with a judgment in favour of the Appellant against the 1st and 3rd Respondents in the sum of Kshs. 493,666/79 (being 50% of the proved repair costs of Kshs. 987,333/59).
- 4) The claims for re-inspection fees and legal inspection fees are dismissed.
- 5) The Appellant, 1st and 3rd Respondents to bear their own costs of this appeal.

Dated, signed and delivered Nakuru this 13th Day of April, 2026.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Nganyi for Mr. Omollo for the Appellant

Mr. Chege for the 2nd Respondent

N/A for the 1st and 3rd Respondents

Erickson , Court Assistant