



REPUBLIC OF KENYA



**Ahmed v Akuno (Appeal E064 of 2023) [2025] KEELRC 1386 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1386 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**APPEAL E064 OF 2023**

**JK GAKERI, J**

**MAY 12, 2025**

**BETWEEN**

**HON SHAKEEL AHMED ..... APPELLANT**

**AND**

**EMMANUEL OYUKO AKUNO ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal against the Judgment of Hon. D. O. Onyango, (CM) delivered at Kisumu on 8<sup>th</sup> November, 2023 in CMELRC No. E160 of 2021 Emmanuel Oyuko Akuno v Hon. Shakeel A. Shabbir Ahmed & Kisumu East Constituency office.
2. The respondent's case is simply that he was employed as a security officer of the 1<sup>st</sup> respondent at Kshs.40,000.00 per month for a period of 5 years effective 1<sup>st</sup> July, 2018, for a period of 49 months. The contract was signed by the 1<sup>st</sup> appellant, as employer and the respondent in the presence of one Nancy Wanyonyi Wambweni and Millicent Akinyi Olum as witnesses and rendered services diligently until his employment was terminated vide letter dated 7<sup>th</sup> June, 2021. The respondent's letters of employment and termination was signed by the 1<sup>st</sup> respondent.
3. The respondent's contention before the trial was that termination of his employment was unfair for non-compliance with the provisions of the *Employment Act* and prayed for general damages, Kshs.1,000,000 salary in lieu of notice, gratuity at 31%, certificate of service, costs of the suit and interest at court rates.
4. The appellant's case was that the respondent was an employee of the 2<sup>nd</sup> respondent assigned to the 1<sup>st</sup> respondent, was invited for a disciplinary hearing on 3<sup>rd</sup> June, 2021 attended, was rude and stormed out of the meeting and was thereafter terminated from employment but refused to return the appellant's property and gratuity was outstanding and was paid salary in lieu of notice.
5. The appellants prayed for dismissal of the respondent's case with costs.



6. After considering the respective cases, exhibits on record and submissions, the learned trial magistrate found that the respondent was an employee of the 1<sup>st</sup> respondent, was unfairly terminated from employment and awarded the respondent salary in lieu of notice Kshs.49,000, gratuity Kshs.546,840 and equivalent of 5 month's salary as compensation, certificate service costs and interest on the decretal sum from date of Judgment.
7. This is the decision appealed against.
8. The appellant faults the learned trial magistrate on the grounds of having erred in fact and law in: -
  1. Finding that termination of the respondents was unfair against the weight of evidence on record.
  2. Failing to consider and find whether there was a valid reason for the appellants to terminate the respondent's employment which occasioned an erroneous decision.
  3. Awarding five (5) months salary compensation which was excessive in the circumstances.
  4. Awarding one month's salary in lieu of notice without analysing the evidence on record and submissions by the parties.
  5. Awarding gratuity without analysing the evidence on record and submissions by the parties.
  6. Failing to consider the respondent's submissions on the quantum and ignoring the submissions and authorities.
  7. Arriving at a decision in a speculative and cursory manner, not guided by principles and failed to exercise discretion within applicable principles of assessment of damages on quantum occasioning miscarriage of justice.
9. In summary, the appellant is challenging the trial court's appreciation and application of the evidence before it, awards made, disregarding of appellant's submissions and authorities and exercise of discretion.

### **Appellant's submissions**

10. The appellant's counsel submitted on whether there was privity of contract between the 1<sup>st</sup> Appellant and the respondent; whether termination of the respondent's employment was wrongful and unfair and entitlement to reliefs.
11. On the 1<sup>st</sup> issue, reliance was placed on paragraph 748 of the Halsbury's Laws of England 4<sup>th</sup> Edition vol. 9(1) on Privity of Contract as were the sentiments of the court in Savings and Loans (K) Ltd v Kanyenje Karangatia Gakombe & another [2015] eKLR, Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co. Ltd [1915] AC 847 and Agricultural Finance Corporation v Lengetia [1982] – 88] IKAR 772, to urge that a contract confer rights and imposes obligations on persons who are party to it and submit that the respondent was not an employee of the 1<sup>st</sup> appellant but the second and duly paid his salaries and allowances.
12. Counsel submitted that the respondent was attempting to benefit through fraud as he was not an employee of the 1<sup>st</sup> appellant and the case against him ought to be dismissed.
13. As to whether termination of employment was unfair and unlawful, reliance was placed on the provisions of Section 47(5) and 41(1) of the Employment Act and the sentiments of the court in Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Ltd [2013] eKLR on the precepts of



procedural fairness, and Section 43 of the Act on prove of reason(s) for termination of employment. Counsel placed further reliance on the range or band of reasonable responses test as captured by Lord Denning in *British Leyland (UK) Ltd v Swift* [1981] I. R. L. R. 91, to urge that the court should inquire into the circumstances of the case and find that the 2<sup>nd</sup> appellant acted reasonably in terminating the respondent's employment.

14. According to counsel, the respondent's conduct had raised concerns and were discussed by staff on 25<sup>th</sup> March, 2021, was invited for a hearing on 3<sup>rd</sup> June, 2021, attended but refused to give an explanation as to his poor performance and his employment was terminated vide letter dated 7<sup>th</sup> June, 2021.
15. That the 2<sup>nd</sup> appellant exercised its contrual right under clause 5(1) of the Employment Contract and a reasonable employer would have made a similar decision in the circumstances, and the 2<sup>nd</sup> Appellant complied with the provisions of the *Employment Act* on termination of employment. Counsel contended that the respondent was unable to prove that termination of his employment was unfair under Section 47(5) of the *Employment Act*.
16. Reliance was also placed on the decisions in *Paul Waigiri Muriuki v Nairobi Water & Sewerage Co. Ltd* [2015] eKLR and *George Okello Munyolo v Unilever Kenya Ltd* [2019] KEELRC 2270 (KLR) on procedural fairness.
17. On reliefs, counsel submitted that the *Employment Act* did not evision an award of general damages in employment disputes, salary in lieu of notice was paid, gratuity was paid and the respondent could collect the certificate of service after clearance with the Kisumu East Constituency Office Fund.
18. The respondent did not file submissions.

### **Analysis and determination**

19. As explained by Mativo J. (as he then was) in *Mursal & another v Manese* (suing as the Legal Administrator of Daphine Kanini Manesa [2022] KEHC 282 (KLR),

A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it bearing in mind that it did not have the opportunity of seeing and hearing the witness first hand. The duty was stated in *Selle & another v Associated Motor Boat Co. Ltd* and *Peter v SundayPost Ltd*

“A first appellate court has jurisdiction to reverse or affirm the findings of the trial court. A first appeal is a valuable right of the parties and unless restricted by law the whole case is therein open for rehearing both on questions of fact and law. The Judgment of the appellate court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court...”

20. It is common ground that the appellants employed the respondent as a security officer of the 1<sup>st</sup> appellant effective 1<sup>st</sup> July, 2018 until his employment was terminated vide letter dated 7<sup>th</sup> June, 2021.
21. Although during the hearing the appellant's witness maintained that the respondent was an employee of the 2<sup>nd</sup> appellant but attached to the 1<sup>st</sup> appellant, the appellants did not contest the finding of the trial magistrate that the respondent was indeed an employee of the 1<sup>st</sup> appellant. However, the appellant's counsel raise the issue in his submissions, styled as privity of contract between the respondent and the 1<sup>st</sup> appellant.



22. On this issue, the learned trial magistrate expressed himself thus:

“The 1<sup>st</sup> respondent has clearly signed the letter as Member of Parliament for Kisumu East Constituency. The letter of termination in the letter head of the 1<sup>st</sup> respondent. From the contract of employment and letter of termination there is no doubt in my mind that the 1<sup>st</sup> respondent was an employer of the claimant. He clearly had authority not only to hire but equally fire. There is no indication whatsoever in the letter of termination that the 1<sup>st</sup> respondent was acting for Kisumu East Constituency Fund. I therefore find that the claimant has proved to the required standard that he was the employee of the respondents...”

23. To the trial court, there was privity of contract between the respondent and the 1<sup>st</sup> appellant.

24. The Memorandum of Appeal dated 29<sup>th</sup> November, 2023 make no reference to the foregoing finding of the trial court.

25. Order 42 Rule 4 of the Civil Procedure Rules 2010, provides:

The appellant shall not, except with leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule: Provided that the High Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

26. The above provisions prohibits an appellant from relying on any ground of objection not set forth in the grounds of appeal. It follows that the court shall not hear an appellant on any such ground. Any new ground may only be raised and heard with leave of court. The proviso to the Rules stipulated that even where leave is granted, the court is barred from basing its decision on a ground not raised in the memorandum of appeal unless the opposite party is given sufficient opportunity to contest the appellant’s case on that ground” per Mugure Thande J in *Car and General (Trading) Ltd v Mashiko & another* [2024] KEHC 148 (KLR).

27. Similarly, in *Republic v Tribunal of Inquiry to Investigate the Conduct of Tom Mbaluto* [2018] eKLR, the Court of Appeal, when interpreting Rule 104 of the Court of Appeal Rules which is equivalent to Order 42 Rule 4 of the Civil Procedure Rules, 2010 stated as follows:

“Rule 104 of the Court of Appeal Rules, among others, prohibits an appellant from arguing without leave of the court, ground of appeal other than those set out in the memorandum of appeal. The appellant did not seek leave of the court to raise the new ground of appeal but rather belatedly and literally from the blue, raised it in the written submissions. It needs no emphasis that submissions must be founded on the issues before the court and the evidence on record regarding the issue. A party is not at liberty to change the nature of his case surreptitiously at the submissions stage. It is in the discretion of the court to allow a party to raise a new point on appeal, depending on the circumstances of the case. (See also *George Owen Nandy v Ruth Watiri Kibe* [CA No. 39 of 2015](#) and *Openda v Ahn* [1983] KLR 165)”.

28. These sentiments apply on all fours to the facts of the instant case.

29. See also *Geobe Ltd & Another v Nyaturima Holding Ltd t/a Satima Services Ltd* [2021] eKLR John Kaniu v Jason Bundi Gitari [2015] eKLR.



30. As adverted to elsewhere in this Judgment, a careful reading of the memorandum of appeal herein reveals that it does not embody the issue of privity of contract or whether the respondent was an employer of the 1<sup>st</sup> or 2<sup>nd</sup> respondent as one of the grounds for consideration in this appeal and the appellant never sought the courts leave to urge this new issue raised for the first time in his submissions dated 4<sup>th</sup> April, 2025.
31. Based on the forgoing statutory and judicial authorities, it is the finding of this court that the most appropriate action is to decline jurisdiction to consider the question whether there was privity of contract between the 1<sup>st</sup> Appellant and the respondent.
32. Concerning termination of the respondent's employment, the trial court is faulted for finding that it was unfair and failing to consider whether there was a valid reason for the appellants to terminate the respondent's employment.
33. That the trial court came to the conclusion that the termination of employment was unfair after having found that the appellants did not adhere to the procedural requirements of Section 41 of the Employment Act as the appellants did not notify the respondent the charges he was facing, and neither a notice that termination of employment was being contemplated nor was the appellant invited for a hearing, accorded time to prepare for his defence and informed of his right to be accompanied by a fellow employee of his choice or shop floor representative as held in *Anthony Mkala Chilavi v Malindi Water & Sewerage Co. Ltd* (supra).
34. In arriving at its decision the court considered, respondents' exhibits and in particular minutes of staff meetings dated 25<sup>th</sup> March, 2021 and 3<sup>rd</sup> June, 2021 and none of these meetings was a disciplinary hearing.
35. Having considered the provisions of Section 41 of the Employment Act and case law, the learned trial magistrate in the court's view, applied the law correctly.
36. In *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR, the Court of Appeal summarised the elements of procedural fairness as follows:
- Four elements must thus be discernible for the procedure to pass muster: -
- i. an explanation of the grounds of termination in a language understood by the employee;
  - ii. the reason for which the employee is considering termination;
  - iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
  - iv. hearing and considering any representations made by the employee and the person chosen by the employee".
37. In this case, the appellants failed to demonstrate that they had acted in accordance with the provisions of Section 41 of the Employment Act. There was neither a notice to show cause nor an invitation to appear for a disciplinary hearing.
38. Hon. Shakeel Shabir's evidence that the meeting held on 25<sup>th</sup> March, 2021 was a disciplinary meeting, notwithstanding the fact that it was identified as a staff meeting could not avail him as he concomitantly admitted that there was no letter inviting the respondent to attend the alleged disciplinary hearing or evidence to prove that he was allowed to attend the meeting with a colleague of his choice.



39. Equally, the testimony that prior to the meeting the respondent had been warned severally lacked probative value for want of verifiable evidence.
40. Without prior notice of the charges the respondent was facing, coupled with an invitation to attend a disciplinary hearing on a particular day, time place and setting out the agenda of the meeting, and according the respondent time to prepare for his defence and right to attend with a fellow employee of his choice, it was not feasible for the appellants to contend that termination of the respondent's employment by the appellants was procedurally fair.
41. Hon. Shakeel Shabir's retort on re-examination that the respondent could have attended the staff meeting with whoever he wished was a futile attempt to wriggle out of a tricky situation.
42. In the court's view, it is patently clear that the appellants failed to demonstrate that termination of the respondent's employment vide letter dated 7<sup>th</sup> June, 2021 was procedurally fair as by law required.
43. The court is not persuaded that the learned trial magistrate erred in law or fact when he made the finding that the appellants had failed to prove adherence to procedural fairness.
44. Concerning substantive justification or fairness, the provisions of Section 43 and 45(2)(a) and (b) of the *Employment Act* are unambiguous.
45. First things first, contrary to the appellant's argument that the respondent did not discharge his burden of proof under Section 47(5) of the *Employment Act*, he did by testifying that he was employed by the respondents and his employment was terminated vide letter dated 7<sup>th</sup> June, 2021 yet he had not been issued with a notice to show cause or invitation for a disciplinary hearing.
46. The respondent's testimony was sufficient to establish a prima facie case of an unlawful termination of employment, which is the threshold under Section 47(5) of the *Employment Act* and having done so, it behooved the appellants to discharge their burden of proof under Section 43 and 45(2)(a) and (b) of the *Employment Act*, that the appellants had a reason(s) or substantive justification, relating to the respondent's capacity, conduct or compatibility or operational requirements of the appellants.
47. Neither M/s Nancy Wanyonyi Wabweni nor Shakeel Shabir Ahmed availed verifiable and credible evidence to demonstrate the reason(s) for which the respondent's employment was terminated.
48. On cross-examination by Mr. Obiero, M/s Nancy Wanyonyi Wambweni confirmed that the complaints against the respondent were oral, but could not testify as to what they were.
49. Significantly, the 1<sup>st</sup> appellant authored the letter of termination of employment dated 7<sup>th</sup> June, 2021 and did not identify or state the reason why the respondent's employment was terminated. The law insists on a reason for termination of employment, which the employer is required to prove was valid.
50. Both provisions of Section 43(1) and 45(2) and (b) of the *Employment Act* are emphatic that the employer is bound to prove that it had a valid and fair reason(s) to terminate the employee's employment failing which the termination of employment is deemed to have been unfair.
51. The trial court is faulted for having failed to consider and make a finding whether the appellants had a valid and fair reason(s) to terminate the respondent's employment and failure occasioned an erroneous decision.
52. At page 137 and 138 of the Record of Appeal, the learned trial magistrate addressed the issue of substantive fairness and mentioned Sections 43 and 45 of the *Employment Act* on the reason(s) for termination of the respondent's employment.



53. The trial court found that based on the material placed before it, the appellant had not demonstrated that the reason for termination of the respondent's employment was valid or fair.
54. The court found and held that termination of the respondent's employment was neither substantively justifiable nor procedurally fair.
55. As held by Ndolo J in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR and *Naima Khamis v Oxford University Press (EA) Ltd* [2017] eKLR, for a termination of employment to pass the fairness test it must be not only substantively justifiable or fair but also procedurally fair.
56. In this case, the court juxtaposed the evidence before the court against the applicable law and found both requirements absent.
57. In his submissions, counsel for the appellant invoked the range or band of reasonable response test in *Halbury's Laws of England* and as expressed by Lord Denning in *British Leyland (UK) Ltd v Swift* (supra), to urge that a reasonable employer in similar circumstances would have done the same, in that the 2<sup>nd</sup> appellants staff deliberated on the respondent's conduct and agreed that the respondent would act with utmost professionalism and integrity at all times, that his performance was raised by the 1<sup>st</sup> appellant but the respondent refused to give an explanation on his poor performance during the disciplinary hearing on 3<sup>rd</sup> June, 2021.
58. Contrary to the appellants contention, neither the meeting held on 25<sup>th</sup> March, 2021, at 9:30am, nor the meeting held on 3<sup>rd</sup> June, 2021 was a disciplinary meeting as none was styled as such or held for that purpose and notice given to respondent.
59. Concerning the meeting held on 3<sup>rd</sup> June, 2021 at 4:40pm although the agenda was 'staff conduct' it did not mention any staff and an additional agenda was any other business. This meeting ought to have originated the notice to show cause to the claimant and demand a response on specific allegations.
60. Strangely, neither of the appellants singled out the specific allegations made against the respondent at any point.
61. The general allegation of poor performance cannot avail the appellants as the term "performance" incorporates acts and omissions.
62. Termination of employment based on poor performance is different from other forms of misconduct in that it presupposes that the employer has an operational performance managed system or policy, including an appraisal or evaluation system and the same was complied with in addition to the requirements of Section 41 of the *Employment Act*.
63. Poor performance also presupposes the existence of agreed parameters or targets which the employee is required to meet.
64. In determining this issue, the court is guided by the sentiments of Mbaru J in *Jane Samba Mukala v Ol Tukai Lodge Ltd* [2013] eKLR where the learned Judge held inter alia:
65. This is important to note as where poor performance is shown to be a reasons for termination, the employer is placed at a high level of proof as outlined under section 8 of the *Employment Act* to show that in arriving at this decision of noting the poor performance of an employee, they had put in place an employment policy or practice on how to measure good performance as against poor performance. Section 5 (8) (c) further outline the policy and practice guidelines that include having a performance evaluation system that can be used by an employer in ensuring their employees get a fair chance when they are of poor performance.



66. Therefore, it is imperative on the part of the employer to show what measures were in place to enable them assess the performance of each employee and further what measures they have taken to address poor performance once the policy or evaluation system has been applied. It will not suffice to just say that one has been terminated for poor performance. The effort leading to this decision must be demonstrated otherwise, it would be an easy option for abuse.
67. Beyond having such an evaluation measure, and before termination on the ground of poor performance, an employee must be called and an explanation on their poor performance shared where they would in essence be allowed to defend themselves or be given an opportunity to address their weaknesses. In the event a decision is made to terminate an employee on the reasons of poor performance, the employee must be called again and in the presence of another employee of their choice, the reasons for termination shared and explained to such an employee”.
68. Evidently, the appellant’s have not shown that they had a performance management policy or evaluation policy or indeed that they subjected the respondent to it and his performance was found wanting and heard him in the presence of another employee of their choice before his employment was terminated.
69. Without clearly substantiated reason(s) for termination of the respondent’s employment, it is not plausible that a reasonable employer in similarly circumstances would have terminated the respondent’s employment.
70. The court is not satisfied that the learned trial magistrate erred in law or fact on this ground.
71. The foregoing disposes of grounds 1 and 2 of the Memorandum of Appeal.
72. The rest of the grounds of appeal relate to the awards made by the court.
73. As regards one (1) month’s salary in lieu of notice, the respondent admitted having received his salary for June 2021 but denied having been paid the one (1) month’s salary in lieu of notice and although, RWI M/s Nancy Wanyonyi Wambweni confirmed on cross-examination that the respondent was paid in lieu of notice, she had no evidence of proof of payment.
74. Since the respondent worked for only 7 days in June, 2021, his entitlement was Kshs.11,433.00 having been paid the entire months’ salary. The appellant’s liability to him in respect of salary in lieu of notice is Kshs.11,433.00 only, which the court awards.
75. On the award of five (5) month’s salary as compensation, the trial court is faulted on the ground that the award was excessive in the circumstances.
76. A perusal of the judgment of the trial court reveals that the learned trial magistrate did not set out the reasons or circumstances which he took into consideration in making the award.
77. This is essential because the discretion granted to the court to award compensation under Section 49 of the [Employment Act](#) must be exercised within the context of Section 49(4) of the Act which catalogues the relevant circumstances which the court must consider, such as, wishes of the employee, employee’s contribution, duration of service, mitigation of loss among others.
78. The failure by the trial court to consider any of the factors set out in Section 49(4) of the [Employment Act](#) justifies the courts interference with the exercise of the court’s discretion, as held in *Mbogo & another v Shah* [1968] EA Patel v *E.A Cargo Handling Services Ltd* [1974] EA 75 *Shanzu Investments Ltd v Commissioners of Lands* [1993] eKLR and *Shabir Din Ram Parkash Anand* [1955] 22 EACA 48 at 51.



79. Considering that the respondent did not express his wish to remain in the appellant's employment, did not appeal the decision to terminate his employment, partly contributed to the termination of his employment and had only served for about 3 years, the award of five (5) months was excessive and is adjusted to the equivalent of two (2) months Kshs.98,000.00.
80. As regards gratuity, it is trite that this is an amount paid by the employer gratuitously for services rendered and can only be enforced if it is an integral part of the contract of employment or a Collective Bargaining Agreement (CBA) which the employer is party to, and it is only for the term of the contract served unless the contract provides otherwise. It was so held in *Pravin Bowry v Ethics & Anti-Corruption Commission* [2013] eKLR.
- See also *Bamburi Cement Ltd v Farid Aboud Mohammed* [2016] eKLR.
81. Since the respondent's contract of employment with the 1<sup>st</sup> appellant provided for payment of gratuity under clause 5(1), the same was merited. However, since the respondent had served for 35 months as opposed to 36 months used by the court, the amount payable as gratuity is Kshs.531,650.00 .
82. Finally, grounds number 6 and 7 of the memorandum of appeal object to the disregard of the appellant's submissions and exercise of discretion by the trial court in the assessment of damages for unfair and unlawful termination of employment.
83. Although the provisions of the *Employment Act* do not provide for the award of damages for unfair termination of employment they provide for compensation up to a maximum of 12 months gross salary and the provisions of Section 49(1) of the Act are triggered, whenever a court comes to the conclusion that termination of employment or summary dismissal was unfair or unlawful.
- (See *Kenfreight (EA) Ltd v Benson K. Nguti* [2019] eKLR.
84. On the disregard of the appellant's submissions and authorities by the learned trial magistrate, in his submissions dated 26<sup>th</sup> May, 2023, the appellant's counsel isolated three issues for determination touching on privity of contract, whether termination of the respondent's employment was unfair wrongful and unlawful and the reliefs sought.
85. In his submissions dated 4<sup>th</sup> April, 2025, the 1<sup>st</sup> appellant makes no reference to specific aspects or portions of the submissions dated 26<sup>th</sup> May, 2023, which the learned trial magistrate did not consider.
86. However, the court is in agreement with the 1<sup>st</sup> appellant's counsel that the trial court made no reference to having considered the 1<sup>st</sup> appellant's submissions but respectfully disagrees with counsel's contention that that the court's failure to consider the submissions resulted in an unjustifiable decision on the quantum.
87. In the upshot, the appeal is only partially successful to the extent that the amount payable as salary in lieu of notice is adjusted to Kshs.11,433.00, gratuity payable is adjusted to Kshs.531,650.00 and compensation to two(2) month's salary Kshs.98,000, total Kshs.641,083.00.
88. Other awards by the trial court are upheld.
89. In the circumstances, it is only fair that each party bears its costs of this appeal.
- Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 12<sup>TH</sup> DAY OF MAY 2025**

**DR. JACOB GAKERI**



**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COvID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

**DRAFT**

