



REPUBLIC OF KENYA



West Kenya Sugar Company Limited v Milimo (Employment and Labour Relations Appeal E004 of 2022) [2023] KEELRC 938 (KLR) (20 April 2023) (Judgment)

Neutral citation: [2023] KEELRC 938 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS APPEAL E004 OF 2022**

JW KELI, J

APRIL 20, 2023

BETWEEN

WEST KENYA SUGAR COMPANY LIMITED APPELLANT

AND

SOSTINE SALAMBA MILIMO RESPONDENT

(Appeal against the entire judgment of Hon. E.W. MULEKA (SRM) delivered on the 16 th August 2018 Butali Law Courts in Butali SRMCC NO. 107 of 2015)

JUDGMENT

1. The Appellant being dissatisfied by Judgement of Hon. E.W Muleka (SRM) in Butali E. Muleka (SRM) in Butali SRMCC No 107 of 2015 delivered on August 16, 2018 filed Memorandum of Appeal dated January 28, 2022 against the entire decision seeking the following reliefs:-
 - a. The Appeal be allowed and the judgment and decree of the court appealed from be set aside and in place judgment be entered for the appellant dismissing the Respondent's case in the subordinate court.
 - b. Costs of the appeal and the primary suit be awarded to the appellant.
2. The appeal was premised on the following grounds:-
 - a. The Learned Trial Magistrate erred in law and in fact and grossly misdirected himself in treating the evidence and submissions on record more so the Appellant's superficially thereby arriving at a wrong conclusion On liability.
 - b. The Learned Trial Magistrate erred in law and in fact and grossly misdirected himself in treating the evidence and submissions on record more so the Appellant's superficially thereby arriving at a wrong conclusion on the award of damages.



- c. The Learned Trial Magistrate erred in fact and law in arriving at a finding that the appellant was liable for the accident and/or Respondent's injuries when there was no evidence of breach of duty of care and/or contract at all on the part of the Appellants.
- d. The Learned Trial Magistrate erred in awarding a sum in respect of damages which was so inordinately high in the circumstances that it represented an entirely erroneous estimate vis-a-vis the Respondent's claim.
- e. The Learned Trial Magistrate failed to apply judiciously and to adequately evaluate the evidence and exhibits tendered and thereby arrived at a decision unsustainable in law.

Background to the Appeal

3. The Respondent/Claimant sought before the trial magistrate court damages for injuries sustained at work for which the trial magistrate awarded him against the appellant as follows:-
 - a. Liability apportioned plaintiff liable at 20% as against 80% of the defendant.
 - b. General damages of Kshs130,000 for soft tissue injuries and healed.
 - c. Special damages of Kshs3,000/-
Total award of KES. 107,000/-.
 - d. Cost and interest. (page 109 of the record of appeal)

Hearing

4. The court directed that the appeal be canvassed by way of written submissions. The Appellant's written submission's drawn by L.G . Menezes & Company Advocates were dated February 7, 2023 and received in court on the February 9, 2023. The Respondent's written submissions drawn by Z.K Yego Law Offices were dated February 27, 2023 and received in court on the March 1, 2023.

Determination

5. The principles which guide this court in an appeal from a trial court are now well settled. In *Selle and another v Associated Motor Boat Company Ltd & Others*, [1968] EA 123, Sir Clement De Lestang, Vice President of the Court of Appeal for East Africa stated those principles as follows:-

“An appeal to this Court from a trial by the High Court is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”



6. Further in *David Kaburuka Gitau & another v Nancy Ann Watbitibi Gatu & another* Nyeri HCCA No 43 of 2013 the court opined:-

"Is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions."

Issues for determination

7. The Appellant in its submissions address prove of negligence and liability and whether the quantum of damages awarded to the plaintiff was in excess and or exorbitant with regard to the injuries sustained.
8. The Respondent addressed the merit of appeal with respect to liability and quantum of damages. The court finds that the issues placed by the parties for determination in the appeal are with regard to the liability and quantum of damages and formulate the issues as follows:-
- a. Whether the trial learned Magistrate arrived at the wrong conclusion on liability.
 - b. Whether the quantum of damages awarded to the Respondent/Plaintiff were exorbitant with regard to injuries sustained.

Issue 1. Whether the trial learned magistrate arrived at the wrong conclusion on liability.

The Plaintiff's case at trial court.

9. The Claimant in the trial court alleged breach of duty of care/negligence on part of the Appellant/ Respondent and gave particulars of the same to be failure to avail him with helmet, gloves, apparel, factory boots, gumboots, masks, and other protective gear and failure to ensure safe environment in a wet and slippery surface leading to the accident and injuries. The Claimant slid and fell while loading wet sugar cane while it was drizzling from the truck of the Respondent KAV 212X sustaining injuries. He was alleged to have been taken to the hospital by the company motor vehicle called by the truck driver to the scene. The plaintiff produced as his evidence (page 106 of the record).
1. Gate pass Exhibit 1
 2. Outpatient treatment card Mukumu Hospital Exhibit 2.
 3. Outpatient Card Malava Hospital P exhibit3
 4. Dr Samuel Aliela Medical report P exhibit4 (a) and receipt of Kshs 3,000/- (4 b).
 5. Demand letters P exhibit5.

The plaintiff testified On oath and called a medical officer from Mukumu hospital (PW2) Pw2 produced Exhibit 2 having treated the plaintiff which was corroborated by Exhibit3a (page 94)

Defence Case

10. The defence called two witnesses of fact. DWI1 was Rose Otieno who testified- on that that she worked for the defendant company in the Human Resource Department as insurance officer. She was aware the Claimant had worked for them. She could not ascertain if he was on duty as his name did not appear in the loader weighment details of 3.6.2015. (D exhibit 1 was the loader details). That the alleged motor vehicle was not in the transporter details (D exhibit2) and the casual listings did not have his name being on duty (D exhibit 3) (page 98). That the alleged accident did not occur and the truck KAW 212X did not leave the company on the material date. On Cross-examination DWI said the documents she



produced were not prepared in her office. That the Claimant was treated at Mukumu and she did not have a write up from the hospital denying the treatment. That she did not have the accident register. That D Exhibits 1,2,&3 were preparation behalf of the defendant. DW2 was Heslop Were Akhonya (page 100) where it is stated/recorded he was working with the defendant at the transport department. He said the accident did not happen. It is recorded he had the 2013 register. (Accident register defence exhibit for June 3, 2013). That no accident happened and it was not recorded. DW2 told the court he was the custodian of the register but did not make entries into it. On cross- examination DW2 stated he had no evidence he was at work on date of alleged accident. DW2 stated when the accident happened he was working in the transport department of defendant. DW2 confirmed their clients go to Mukumu and the doctor can confirm.

11. Having considered the evidence the learned Magistrate concluded (page 107) “ the gate pass was proof of employment. DW1 confirmed the claimant was their employee but could not confirm if he was on duty that day. That other than the gate pass and the history there was no other evidence the Claimant was on duty that date.” The learned Magistrate concluded that the Claimant ought to have called at least one of his colleagues he was on duty with to corroborate his evidence. The learned magistrate further found as follows on defence:- That the defence failed to produce authenticated documents to support their defence. The Defence exhibits were not signed nor certified and so the court cannot rely on it. DW2 on his part affirmed that its true that their staff are usually referred to Mukumu Hospital. PW2 Peter Wanyama confirmed this position. ‘ It was on this basis I find in favour of the plaintiff on a balance of probability’. The learned Magistrate found the defence did not rebut the claimant’s case with evidence.
12. On the apportioning of liability the learned Magistrate held that statute obliges the employer to provide safe work environment but that did not mean the employee did not have to be cautious while carrying out their duties. That in the instant case the plaintiff could have avoided the accident if he were keen. For that reason liability was apportioned at the ratio of 80.20 in favour of the plaintiff.

Written Submissions

13. The Appellant submits that under section 109 of the *Evidence Act*

‘the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person’.

That the Appellant denied negligence for the accident. That a party suing for a cause of action arising out of tort of negligence must prove that such negligence was occasioned by the alleged tortfeasor as reiterated in the case of *Jamal Ramadban Yusuf v Ruth Achieng Onditi & another* (2010) eKLR where the court stated:-

“It is always absolutely necessary and vital that a party who sues for damages based on the tort of negligence must prove such negligence with cogent and credible evidence as who asserts must prove such negligence with cogent and credible evidence as the who asserts must prove...”



14. The appellant submits further that there must be a correction between the injury and the defendants action relied on the decision in *Stat Pack Industries limited v James Mbiti Munyao* [2005] eKLR where the court deliberated on the issue of causation in negligence claims and opined as follows:-

“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 evidence from which, on a balance of probability, a connection between the two may be drawn. Not every injury is necessarily a result of someone’s negligence. An injury per se is not sufficient to hold someone liable for the same.”

15. The Appellant submits negligence was the key issue that the trial court ought to have determined substantially and sufficiently before the proceeding to apportion it on the said ratio. The Appellant submits that PWI on cross examination opined he was bare footed while loading cane on the tractor registration No KAV 212X yet he was aware the canes were slippery due to the rain. That he should have known from common sense it was unsafe but dangerous too as he was on top of the loaded tractor stepping on full of wet and slippery cane. That he did not demonstrate to court how the gumboots and helmet if supplied by the defendant would have prevented or minimized the occurrence of the alleged accident. That the Claimant was solely to blame for the accident . The Appellant submits that the court ought not confine itself to scientific interrogations and indulgence only but in a court of law this question must be decided as a properly instructed and reasonable jury would have decided it as held in *Stapley v Gypsum Mines Ltd (2)* (1953) AC 663 at page 681 cited with approval by Aburili J in *Peter Kanithi Kimunya v Aden Guyo Haro* (2014) e KLR to wit:-

“To determine what caused an accident from the point of new legal liability is a most difficult task. If there is any valid logical or scientific theory of It is quite irrelevant in this connection in a court of law this question must be decided as a properly instructed and reasonable jury would decide it ...”

“The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history, several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of items. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one to regard that one as the sole cause, but in other cases, it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally.”

16. The Appellant further submits that the plaintiff blamed the driver for forcing him to continue loading canes yet it was drizzling the driver was not called to testify by Claimant hence the allegation was hearsay. That the Applicant did not owe the Claimant absolute duty of care and the Claimant should have exercised due caution and skill. The Appellant to buttress these submissions relied on decision in *Boniface Muthama Kavita v Canton Manufactures* [2015] eKLR where Onyanja, J stated:-

“The relationship between the appellant and the respondent as employer and employee creates a duty of care. The employer is required to take all reasonable precautions for the safety of the employer to provide appropriate and safe system of work which does not expose the employee to unreasonable risk.”.



The appellant further relied on decision in *James Finlay (K) Ltd v Benard Kipsang Koechi* (2021) eKLR to effect that the duty of care by employer to employee is not absolute and an employee will solely or largely take blame if he exposes himself to injuries due to his negligence. In that case the court held:-

the foregoing supports my view that the employer's duty of care is not absolute and it does not extend to cases where the employee is just acting negligently, carelessly and reluctantly. If the employee is doing manual work without a machine, he is expected to be in control of his work and has an implied duty to exercise due care to avoid exposing himself to foreseeable risks". (emphasis given by the appellant)

The Appellant cited other 2 decisions on negligence where the employee is undertaking manual work to extend the slasher or panga were under his control being *Wilson Nyanyu Musigisi v Sasini Tea & Coffee Ltd* (2006) eKLR cited in the *James Finlay* case (*supra*) and *South Nyanza Sugar Co. Ltd v Omwando* (2017) eKLR also cited in *James Finlay* case (*supra*) with regard to the employees having been in control of the panga that cut him hence acted carelessly absolving the employer from the negligence claim.

Respondent's Submission

17. The Respondent submits that the Appellant failed to produce the accident register and that was a notice to produce the muster roll and attendance register for June 3, 2015 (page 19) and as such a presumption the said documents were unfavorable to the Respondent relying on decision in *Nguku v Republic*. The evidence on causation being the medical report was unrebutted. The appellant's system of work was unsafe as the factory worker was working in unsafe place of work provided by Appellant and relied on decisions in Nakuru HCCA No 38 of 1995 *Sokoro Saw Mills -vs Benard Muthimbi* where the court held that the duty to provide safe environment was absolute and in Nakuru HCCA No 111 of 2014 *Timsales Limited v Daniel Karanja* where the court held that the Appellant is liable for non-provision of protective gear. The Respondents submits that they relied on decision in *Kebirigo Tea Factory v Jared Raini* (2008) eKLR where it was held that where the employer denies that its employee was never injured whilst on duty it was incumbent upon that employer to produce the Accidents register for the relevant period to disprove the employee's assertion that he was injured while on duty working. That the evidence of the plaintiff was corroborated by documentary evidence being medical report by Dr. S.1 Aluda and Treatment card from St Elizabeth Hospital Mukumu with treatment notes of the plaintiff on June 3, 2015 at that facility produced by Peter Wanyama (PW2). The respondent submitted that the Appellant was vicariously liable for breach of duty of care leading to the suffering of damage. That the Appellant was the occupier under Section 2 of the *Occupational Safety and Health Act, 2007* hence bound by Section 6 of the Act to provide safe and health environment to its employee.

Decision

18. The appellant challenged the finding on negligence on its part for lack of proof. That the Claimant had not demonstrated the gumboots and helmet if supplied would have prevented or minimized the accident stating the respondent chose to be barefooted on top of slippery sugarcane hence he was to blame for the negligence. "occupier" means the person or persons in actual occupation of a workplace, whether as the owner or not and includes an employer under the *Occupational Safety and Health Act*. In the instant appeal the court finds the appellant was an occupier under the Act. Section 6 of the *Act* provides duties of the occupiers as follows:-



- (1) Every occupier shall ensure the safety, health and welfare at work of all persons working in his workplace.
 - (2) Without prejudice to the generality of an occupier's duty under subsection (1), the duty of the occupier includes—
 - (a) the provision and maintenance of plant and systems and procedures of work that are safe and without risks to health;
 - (b) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provision of such information, instruction, training and supervision as is necessary to ensure the safety and health at work of every person employed;
 - (d) the maintenance of any workplace under the occupier's control, in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks to health;
 - (e) the provision and maintenance of a working environment for every person employed that is, safe, without risks to health, and adequate as regards facilities and arrangements for the employees welfare at work;
 - (f) informing all persons employed of—
 - (i) any risks from new technologies; and
 - (ii) imminent danger; and
 - (g) ensuring that every person employed participates in the application and review of safety and health measures.
 - (3) Every occupier shall carry out appropriate risk assessments in relation to the safety and health of persons employed and, on the basis of these results, adopt preventive and protective measures to ensure that under all conditions of their intended use, all chemicals, machinery, equipment, tools and processes under the control of the occupier are safe and without risk to health and comply with the requirements of safety and health provisions in this Act.
 - (4) Every occupier shall send a copy of a report of risk assessment carried out under this section to the area occupational safety and health officer.
 - (5) Every occupier shall take immediate steps to stop any operation or activity where there is an imminent and serious danger to safety and health and to evacuate all persons employed as appropriate.
 - (6) It is the duty of every occupier to register his workplace unless such workplace is excepted from registration under this Act.
 - (7) An occupier who fails to comply with a duty imposed on him under this section commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.”
19. That the employer is required to take all reasonable precaution the safety of the employee to provide an appropriate and safe system of work which does not expose the employee to unreasonable risk under section of the *Occupational safety and health act* and specifically as stated under section 6 outlined



above. The upholds the decision by Onyanja J to apply in the instant appeal in *Boniface Muthama Kavita v Canton Manufactures* (2015) e KLR to wit:-

“The relationship between the appellant and the respondent as employer and employee creates a duty of care. The employer is required to take all reasonable precautions for the safety of the employer to provide appropriate and safe system of work which does not expose the employee to unreasonable risk.”.

20. The court finds there was prove of employment of the plaintiff, prove of treatment at Mukumu hospital which hospital DWI admitted was place of treating their injured employees and DW2 admitted he knew the driver Benjamin said to have drove the truck to be loaded with cane and there was evidence before trial court of the treatment of the respondent on 3rd June, 2015 corroborated by PW2 and the medical report by Dr. Aluda.
21. The court finds the statutory obligation to provide safe environment of work and protective case is mandatory and the appellant breached by having the respondent load cane on top of truck which had wet and slippery cane barefooted and without helmet . The court upholds to apply in the instant appeal the decisions cited by the Respondent in Nakuru HCCA No 38 of 1995 Sokoro Saw mills- vs Benard Muthimbi where the court held that the duty to provide safe environment was absolute and in Nakuru HCCA No 111 of 2015 Timsales Limited -vs Daniel Karanja where court held that the Appellant was liable for non provision of protective gear. The court further upholds decision in Kebirigo Tea factory case (supra) on statutory obligation of the employer to keep accident register and produce the register in court when disputing the happening of accident. This was not complied with despite notice to produce having been served to the appellant by the respondent.
22. In the circumstances the court finds the learned magistrate arrived at the right conclusion on the liability. The court finds no basis to disturb the award on liability. The court finds that the role of employer to provide safety to employee is not absolute hence will not disturb the ratio of blame on the Respondent. The award on liability at ratio of 20:80 in favour of Respondent is upheld.

Whether the quantum of damages awarded to the Respondent/plaintiff was exorbitant with regard to injuries sustained.

23. According to the medical report Pexhibit4 (a) (page 16) the injuries sustained were:-
 - a. Blunt trauma to the back which was tender.
 - b. Two deep cut wounds on the right shoulder about 7 cm and 5 cm long.

The diagnosis was that:-

‘the injuries sustained were soft tissue injuries and have healed but for the occasional pains which subside with the use of analgesic. That the scar will remain a permanent feature on his body’.

24. The Appellant challenged the quantum award on ground that the same was in ordinately high in the circumstances and represented erroneous estimate vis a vis the respondent’s claim of injuries. That the learned magistrate failed to apply judicially and to adequately evaluate the evidence and exhibits tendered arriving at a decision unsustainable in law.



25. The learned Magistrate court award on quantum was as follows:-

“Quantum of damages, the plaintiff suffered moderate soft injuries which at the time of testifying had healed and the DR’s opinion was that these were soft tissue injuries and healed in my view general damages of Kshs130,000 would be adequate and the same is hereby awarded’. The court agrees with the Appellant on the principles to apply on appeal against award set out in Butt -Khan (1982-88) KAR wherein the court held that :- An appellate court will not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low”.

The said principle were upheld in *Joseph Henry Rubui v Attorney General* (Nairobi HCC A No 701 of 2001) cited by the Respondents.

26. The Appellant submits that the learned magistrate erred for failing to state the principles relied on to arrive at a high award of Kshs 130,000/- yet acknowledged in her judgment that the plaintiff sustained soft tissue injuries which had healed hence the award is inordinately high and ought to be revised downwards. The Appellant submits that in assessing damages, comparable injuries should be as far as possible be compensated by comparable award as held in *Simon Taveta -vs Mercy Mutitu Njeru* (20140 ECLR where the court of Appeal opined : “the context in which the compensation for the Respondent must be evaluated is determined by nature and extend of injuries and comparable awards made in the past”. The court agrees with that position and in upholding the authority finds that the learned trial magistrate erred by failing to make comparison between past awards in arriving at her award.
27. The court then proceed to evaluate the past awards as per submission by the parties before the trial court.
28. The Appellants proposed a figure of Kshs 50,000 and relied on decision in *Eastern Produce (K) Limited v Joseph Mamboleo Khamadi* (2015) e KLR where the Claimant had suffered cut wound of right middle finger characterized as soft tissue and was awarded Kshs 50,000/- and in *Ndungu Dennis v Ann Wangari Ndirangu & another* (2018)e KLR where an award of Kshs 300,000 for soft tissue injuries to the lower right leg and soft tissue injuries, to the lower right leg and soft tissue injures and to the back was reduced to Kshs 100,000 on appeal. The Appellant submitted those injuries were more severe than in the instant case and the said decision was barely 6 months old from date of decision of the trial court. (page 86-87).
29. The respondent/plaintiff submitted that under the injuries he was entitled sum to award of Kshs 350,000 and relied on the decision in *Catherine Wanjiru King’ori & 3 others v Gibson Theuri Gichubi* in Njeri HCCC No 320 of 1998 where Justice JM Khamoni awarded sum of Kshs 300,000 for soft injuries on May 1, 2005.
30. The court opines that award of general damages is an exercise of judicial discretion which is based on the injuries sustained and comparable award for comparable injuries. In the instant case the court finds the High Court decision of Justice Khamoni relied on of 2005 by the plaintiff was too old to be comparable to a decision of 2018. The court finds that was not a suitable authority for comparison of awardable damages. In the decision in *Ndungu Dennis v Ann Wangari Ndirangu & Another* (2018) eKLR of the High Court justice Joel Ngugi found the injuries to be soft injuries to the lower right leg and to the back and found award of Kshs 300,000 excessive and reduced the same to Kshs 100,000 . In the instance case the injuries were found by court to be moderate soft tissue injuries. The court erred by not stating the injuries as per medical report which was soft tissue injuries to the back and right shoulder. The court



finds and holds the said injuries were less severe than those in Ndungu Denis Case where the court found the injuries as per the medical report were head concussion (brief loss of consciousness), blunt injuries to the chest and both hands. The report stated the Respondent still experienced back pains and chest pains on exertion. In the instant case the medical report indicates there was slight tenderness in the back and right shoulder and occasional pain in the back which subside with use of analgesics. The decision of the High court in Ndungu Dennis case was dated 1st day February 2018 . The learned Magistrate judgment was dated 16th August 2018. The court finds that the learned magistrate erred in failing to take into consideration the past award in Ndungu Dennis case as the injuries though more severe was comparable and also within short time period.

31. The court upholds the principle that award of damages should be as per comparable injuries and as far as possible by comparable awards. That this court at appeal is obliged to revise the quantum awarded to the Respondent for the foregoing reasons. It is the considered opinion of the court the suggested amount of Kshs 50,000 as per authority relied on for a cut finger by the appellant was low compared to the injuries suffered by the Respondent. The court finds the proposed figure of Kshs 350,000 by the respondent was excessive compared to injuries suffered and that the authority relied on was irrelevant time wise compared to the Ndugu Dennis case. The court finds an award of Kshs 80,000/- was adequate to compensate for the injuries suffered in this case and sets aside the quantum award of Ksh 130,000/ which is substituted with Kshs 80,000.
32. In conclusion the appeal is allowed and the court substitutes the assessment of general damages by the lower court from Kshs 130,000 with award of general damages at Kshs 80,000/ The amount award in special damages was not challenged and is upheld. The 20:80 liability ratio in favour of the respondent was upheld hence damages payable are substituted are $80/100 \times 80,000$ plus 3,000 total net substituted award on appeal to the Respondent is Kshs 67,000. (Sixty Seven Thousand only) plus cost and interest from judgment date at the lower court.
33. For equitable reasons I will not award costs in this appeal. Each party to bear own costs.
34. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 20TH DAY OF APRIL 2023.

**JEMIMAH KELL,
JUDGE.**

In The Presence Of

Court Assistant: Lucy Macheso

Appellant : Otieno Njoga

Respondent: Absent

