George & another v Babu (Civil Appeal E130 of 2023)
[2024] KEHC 5986 (KLR) (24 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5986 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL APPEAL E130 OF 2023

DKN MAGARE, J

MAY 24, 2024

BETWEEN

MAINA GITHAIGA GEORGE ..... 1ST APPELLANT

STEPHEN KIRIMI ..... 2ND APPELLANT

AND

GEOFFREY MANYANYA BABU ..... RESPONDENT

JUDGMENT

****ARGUMENTS

1. This Appeal arises from the Judgement and Decree of Trial Court delivered on 30th June 2022 by Hon. A.N Makau, Senior Principal Magistrate in Milimani CMCC No. 885 of 2020.
2. The Court awarded liability and Damages as follows:

   1. Liability 100%

   2. General Damages Kshs. 1,300,000/-

   3. Future Medical expenses Kshs. 250,000/=

   4. Special Damages Kshs. 24,270/-.

   TOTAL Kshs. 1,605,324/-.

   with costs of the suit and interest.
3. Aggrieved, the Appellant filed this Appeal lodged the Memorandum of Appeal.
4. The Appeal is on both quantum and liability.

Pleadings

5. The Plaint dated 14th December 2010 claimed damages for an accident that occurred on 21/5/2019 involving Motor Vehicle Registration Number KAS 271N owned by the Plaintiff and Motor Vehicle Registration Number KCR 147T 634Y which was owned by the Defendants. The Respondent was a driving said Motor vehicle when die to negligence driving by the Defendant's agent or servant, the two motor vehicles collided as a result of which the Plaintiff suffered personal injuries.

6. The Respondent set forth particulars of negligence for the vehicle. He pleaded injuries as follows:

   Fracture of the left tibia

   Fracture of the left fibula

   Fracture of the right femur

   Bruises to the left leg

   Recurrent pains

   Inability too lift heavy load

   Surgical scar

   Permanent disability of 40% to the right leg

   Permanent disability of 20% to the left leg

7. The Appellants filed Defence and denied liability while also blaming the accident on the rider of the Respondent.

Evidence

8. On 21st March 2022, the parties entered consent on liability at 85:15 in favour of the Plaintiff. The witness statements and bundle of documents filed in court by both parties were also adopted in evidence. The parties then agreed to file submissions on quantum of damages.

9. The court considered the matter and rendered its Judgement from which this appeal arises.

The Appellants' Submissions

10. The Appellant filed submissions on 23rd October 2023.

11. It was submitted that the award of general damages was inordinately high and negated the established principles.

12. The Appellant submitted that the award of Ksh. 1,300,000/= in general damages did not correspond with the injuries suffered and was excessive.

13. They submitted that an award of Kshs. 700,000/- would be sufficient and supported their submissions inter alia on the cases of Joseph Mwangi v Thuita v Joyce Mwole (2018) eKLR and Pauline Gesare Onami v Samuael Changamure & Another (2017) eKLR.

14. It was also submitted that the court erroneously entered liability at 100% in favour of the Plaintiff when there was a consent of the parties conferring liability at 85:15 in favour of the Plaintiff and which was recorded and adopted by the court.

15. I was urged to allow the appeal.

16. The Respondent submitted that the learned magistrate correctly applied the principles on general damages and also arrived at the correct finding on damages for future medical expenses.

17. Reliance was placed inter alia on the cases of Kirinjit Singn Magon v Bonanza Rice Millers (2008) eKLR and Lucy Waruguru Gatundu v Miriam Nyambura Mwangi (20217) eKLR.

18. I was urged to disallow the appeal.

Analysis

19. 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 trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

20. In the case of Mbogo and Another vs. Shah [1968] EA 93 where 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 is 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."

21. The duty of the first appellate Court was settled long ago by Clement De Lestang, VP, Duffus and Law JJA, in the locus Classicus case of Selle and another Vs Associated Motor Board Company and Others [1968] EA 123, where the law lords held by 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 trial 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."

22. The Court is to bear in in mind that it had neither seen nor heard the witnesses. It is the trial 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.

23. In the case of Peters vs Sunday Post Limited [1958] EA 424, 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..."

24. Circumstances in which an Appellate court will interfere with the quantum of damages awarded by a Trial Court were clearly laid out in the case of Kenya Bus Services Limited vs. Jane Karambu Gituma Civil Appeal Case No. 241 of 2000 where the Court of Appeal stated as follows:

> " ...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial

court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages."

25. This Appeal being on quantum only, the principles guiding this Court as the first Appellate Court have crystalized. This is in recognition that the award of Damages in discretionary.

26. The Court of Appeal pronounced itself succinctly on the principles of disturbing awards of damages in Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2) [1985] eKLR as follows:

> The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

27. The foregoing statement had been ably elucidated by Sir Kenneth O'Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Council, that is, Nance v British Columbia Electric Co Ltd, in the decision of Henry Hilanga v Manyoka 1961, 705, 713 at paragraph c, where the Learned Judge ably pronounced himself as follows regarding disturbing quantum of damages:-

'The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance.'

28. The words of Lord Denning in the West (H) & Son Ltd (1964) A.C. 326 at page 341 on excessive awards on damages are important to replicate herein thus:

> " I may add, too, that if these sums get too large, we are in danger of injuring the body politic, just as medical malpractice cases have done in the United States of America. As large sums are awarded, premiums for insurance rise higher and higher, and they are passed to the public in the shape of higher and higher fees for medical attention. By contrast we have a National Health Service. But the health authorities cannot stand huge sums without impending their service to the community. The funds available come out of the pockets of the taxpayers. They have to be carefully husbanded and spent on essential services. They should not be dissipated in paying more than fair compensation."

29. The words of Lord Denning were reiterated by Nyarangi, JA. in Kigaragari v Aya [1985] eKLR thus:

> " I would express firmly the opinion that awards made in this type of cases or in any other similar ones must be seen not only to be within the limits set by decided cases but also to be within what Kenya can afford. That must bear heavily upon the court. The largest application should be given to that approach. As large amounts are awarded, they are passed on to members of the public, the vast majority of whom cannot just afford the burden, in the form of increased costs for insurance cover (in the case of accident cases) or increased fees."

30. Further, in the case of Kilda Osbourne v George Barned and Metropolitan Management Transport Holdings Ltd & another Claim No. 2005 HCV 294 being guided by the principles enunciated by

both Lord Morris and Lord Devlin in H. West & Sons Ltd v Shephard {1963} 2 ALL ER 625 Sykes J stated as follows:

> " The principles are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will have to live with this injury for quite sometime is part of the subjective portion of the assessment. The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant."

31. It is thus common reasoning that astronomical awards may lead to increased insurance premiums thus hurting the insurance industry as well as the economy. See the case of H. West and Son Ltd v. Shepherd [1964] AC.326 (supra) where it was stated that:

...but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation.

In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional....."

32. With the above guide, if the Award is inordinately high, then I will have to set it aside. If, however, it is just high but not inordinately high, I will not do so. For the Appellate Court to interfere with the Award, it is not enough to show that the Award is high or had I handled the case in the Subordinate Court I would have awarded a different figure.

1. I now proceed to establish whether the Respondent was entitled to the reliefs awarded. In David Bagine v Martin Bundi [1997] eKLR, the Court of Appeal cited the judgment by Lord Goddard CJ. in Bonham Carter v Hyde Park Hotel Limited (1948) 64 TLR 177), where he that:

> [The] Plaintiffs must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying 'this is what I have lost', I ask you to give me these damages; they have to prove it.
>
> in Attorney General of Jamaica v Clerke (Tanya) (nee Tyrell), Cooke, J.A. delivering the judgment of the court stated that special damages must be strictly proved; the court should be very wary to relax this principle; that what amounts to strict proof is to be determined by the court in the particular circumstance of the case and the court may consider the concept of reasonableness.

34. Further, 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."

35. Further, in Evans Nyakwana –vs- Cleophas Bwana Ongaro [2015] eKLR 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 Respondent suffered the following injuries:

Fracture of the left tibia

Fracture of the left fibula

Fracture of the right femur

Bruises to the left leg

Recurrent pains

Inability too lift heavy load

Surgical scar

Permanent disability of 40% to the right leg

Permanent disability of 20% to the left leg

37. I have reevaluated the evidence produced by the Respondent. I note that the injuries are what was stated in the Respondent's Doctor's Medical Report by Dr. Cyprianus Okoth Were dated 23rd August 2019, which was produced in evidence. The Appellants' doctor Dr. Wambugu's Medical Report dated 18th May 2021 did not dispute the injuries however, it observed that the fractures have united and the metal implants may be removed after one year. In my view, the second medical report did not state that the Plaintiff's fractures had healed nor was it his case that the implants should removed immediately.

38. I have perused the memorandum of appeal and the submissions and I cannot find the Appellant's reason for challenging the award on future medical expenses. I note the Appellants' medical doctor prosed the future medical expenses of removing the implant to be Ksh. 110,000/- while the Respondent's medical doctor proposed Ksh. 250,000/- and which the court awarded. In my view, I do not find the award by the learned magistrate to be excessive.

39. This Court appreciates that Courts have impressively expressed the extend of application of an expert opinion in judicial proceedings and the general trend is that such evidence is not necessarily conclusive and binding. As was held in Shah and Another vs. Shah and Others [2003] 1 EA 290:

> " The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is not bound to accept the evidence of an expert if it finds good reasons for not doing so."

40. Further, the Court of Appeal, on its part in Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko Civil Appeal No. 203 of 2001 [2007] 1 EA 139 held that:

> " ... such opinions are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified although a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so."

41. Furthermore, in Parvin Singh Dhalay vs. Republic [1997] eKLR; [1995-1998] 1 EA 29, it was held that:

> " It is now trite law that while the courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts and the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so. We will repeat what this Court said in the case of Elizabeth Kamene Ndolo vs. George Matata Ndolo, Civil Appeal No. 128 of 1995. There the Court said with regard to the evidence of experts:-
>
> "The evidence of PW1 and the report of Munga were, we agree, entitled to proper and careful consideration, the evidence being that of experts but as has been repeatedly held the evidence of experts must be considered along with all other available evidence and it is still the duty of the trial court to decide whether or not it believes the expert and give reasons for its decision. A court cannot simply say:- "Because this is the evidence of an expert, I believe it."..."

42. I find and hold that the fact that there would be need for the removal of the implant was not disputed and the cost thereof would certainly vary depending on the facility where the implant is to be removed. I find that the award of Kshs. 250,000/- by the learned magistrate was based on the projection by the Respondent's medical doctor and which I consequently have no basis to interfere with for the reasons already stated above.

43. On general damages, in assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages. The Court of Appeal in Odinga Jacktone Ouma V Moureen Achieng Odera [2016] eKLR stated that "comparable injuries should attract comparable awards"

44. The principle on the award of damages is settled. In Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -

    1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.

    2) The award should be commensurable with the injuries sustained.

    3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

    4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

5) The awards should not be inordinately low or high.

45. My duty is thus to analyze similar injury cases to arrive at the decision whether the learned magistrate did not factor in the principles applicable to the award of general damages.

46. I understand no single case is typically identical to the other. In Penina Waithira Kaburu v LP [2019] eKLR, the Court stated thus on the issue of award of general damages –

> "While no injuries occurring in different circumstances can be similar in every respect and hence the possibility of varied awards in general damages, the trial court must always make a comparative analysis of the injuries sustained and the extent of the awards made for similar injuries in previous decisions. As I have stated elsewhere, if not for anything else, the comparison is necessary for purposes of certainty and uniformity; the award, must, as far as possible, be comparable to any other award made in a previous case where the injuries for which the award are relatively similar."

47. In the case of David Mutembei v Maurice Ochieng Odoyo (2019) eKLR, the Respondent suffered injuries of a fracture of the right femur and a proximal fracture of the left tibia. An award of Ksh 1, 600, 000/= was reduced on appeal to Ksh 800, 000/=.

48. In Reuben Mongare Keba v LPN (2016) eKLR the respondent suffered fracture of the tibia-fibula bones of right leg, dislocation of the right hip joint, bruises on the chin, fracture of the right femur and degloving injury of the right leg. An award of Ksh 800,000/= was made in general damages.

49. In Mary Pamela Oyioma v Yess Holdings Limited (2011) eKLR the court awarded Kshs 900,000/= in general damages for comminuted fracture of the right femur, compound fracture of the left tibia, soft tissue injuries of the right shoulder and multiple cut wounds all over the body.

50. In my view, the injuries in Mary Pamela Oyioma (supra) were the most comparable to the injuries suffered by the Respondent herein. Therein, the Plaintiff suffered comminuted fracture of the right femur, compound fracture of the left tibia, soft tissue injuries of the right shoulder and multiple cut wounds all over the body while in this case the Respondent suffered injuries as listed below:

Fracture of the left tibia

Fracture of the left fibula

Fracture of the right femur

Bruises to the left leg

Recurrent pains

Inability too lift heavy load

Surgical scar

51. On this basis, and regarding lapse of time and inflation since the year 2011, I find that the award of Kshs. 1,300,000/- in General Damages was not inordinately high as to amount to an erroneous estimate of damages and injustice to the Appellants. would in my view be adequate compensation to the Respondent. I consequently decline to interfere with the Judgment of the Trail Court to this on this award.

52. The Appellant also appealed against the award of Special Damages. With special damages, the rule is strict and somewhat mathematical. The court has to discern pleaded damages and proceed to find

their proof. It is not based on estimates. The Court of Appeal in Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177 where it was stated that:

> " The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded."
>
> 53. Special damages are thus very specific and constitute liquidated claim which must be pleaded and proved. This court's task thus entails whether the trial court failed to award special damages that were pleaded and proved.

54. In Joseph Kipkorir Rono vs. Kenya Breweries Limited & Another Kericho HCCA No. 45 of 2003, Kimaru, J held that:

> " In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred...Special damages and general damages are used in corresponding senses. Thus in personal injury claims, 'special damages' refers to past expenses and lost earnings, whilst 'general damages' will include anticipated loss as well as damages for pain and suffering and loss of amenities... Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses. Therefore in the instant case the loss of income as a direct consequence of this fraud would be both a general damage as well as a special damage. General damages particularly extent thereof would be unknown at the time of the trial and must await the conclusion of the case so that they may be assessed. Special damages on the other hand consist of those losses that could be calculated at the time of the trial. Special damages must be pleaded, but so must future pecuniary loss if it may lead to surprise. Non-pecuniary damage must not be quantified in a pleading...There ought to be a distinction between past pecuniary losses or expenses already incurred and could easily be calculated by say reference to receipts obtained and anticipated future pecuniary loss or expenses which is continuing and which though one may know the multiplicand you will not normally know how long the loss will take. Such an anticipated loss is general damage, which must of necessity await the completion of the suit to be assessed by the Court. Special damages on the other hand is calculable at the date of the trial out of which a round figure will be obtained. General damages are such as the law will presume to be the direct natural or probable consequences of the action complained of. Special damages on the other hand, are such as the law will infer, from the nature of the act. They do not follow in the ordinary course but are exceptional in their character and, therefore, they must be claimed specifically and proved strictly...Specific loss of profits consequential upon the loss of use of an article for a specific period to the date of the plaint is special damage, which must be pleaded. However, in certain circumstances loss of profits could be included within a claim for general damages... General damages consist of the nature of prospective loss of income while special damages consist of out of pocket expenses and loss of earnings or income incurred down to the date of

trial and is generally capable of substantially exact calculation. Where damages has become crystallised and concrete since the wrong the defendant could be surprised at the trial by the detail of its amount."

55. The court awarded special damages that were pleaded and I have perused the receipts and noted that the award on special damages of Kshs. 24,270 was proved. I dismiss the appeal on special damages.

56. On future medical expenses, the court awarded Kshs. 250,000/=. I note there is no appeal this award and will leave it to rest.

57. On the ground that the Court did not subject the damages to the agreed liability of 85:15. I note on the face of judgement that indeed it is liability of 85:15 that was agreed and adopted by the parties by way of consent on o 21st March 2022. The Court of Appeal decision in Flora N. Wasike vs. Destimo Wamboko [1988] KLR 429; [1982-88] 1 KAR 625. In that case the Court expressed itself as hereunder:

> " It is well-settled law that a consent judgement or order has contractual effect and can only be set aside on grounds which would justify setting aside, or if certain conditions remain unfulfilled, which are not carried out. If a consent is to be set aside, it can only really be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of material matters by legally competent persons...Prima facie a consent order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court, or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement...A court cannot interfere with a consent judgement except in such circumstances as would afford good ground for varying or rescinding a contract between the parties...In the instant case, while the Judge did not in terms record the parties' 'or their advocates' consent to the consent judgement he entered, nevertheless the original record shows that both parties were represented by advocates and that the consent judgement was recorded in their presence. The universal practice is to record that a judgement or order is by consent, if that be the case, and it is difficult to believe unless demonstrably shown otherwise that the court would so head the judgement if it were not the case, at least so far as the Judge was aware. Furthermore, a solicitor or counsel would ordinarily have ostensible authority to compromise suit so far as the opponent is concerned...But it would be no mean task for a party to a decree by consent to prove that the decree is invalid on the grounds referred. It is abundantly clear that the appellant was a ready and willing party to the material judgement by consent and that the terms and consequences of the judgement were explained to her."

58. Consequently, the consent of 85:15 in respect of liability became an order of court and a contract between the parties after it was adopted on 21st March 2022. It was therefore in error for the learned magistrate to impose liability of 100% for the Respondent when parties had consented and adopted as a court order liability of 85:15 in favour of the Respondent. It was a reversible error of fact which I overrule and reinstate the liability of 85:15 as agreed and recorded by the parties and adopted by the court.

59. However, in my view, it was not necessary for the Appellants to appeal against the apparent error of the court on liability. The error could be corrected by way of review or under the slip rule.

60. In the upshot, I make the following orders: -

i. The Appeal is on the award of General Damages is dismissed.

ii. The Judgement of the trial court on liability is set aside and substituted with liability ratio of 85:15 in favour of the Respondent.

iii. As the Appellants had the opportunity to correct the error on liability at the lower court which they failed, the Respondent will have the costs of the Appeal which I assess at Kshs. 100,000/-.

DELIVERED, DATED AND SIGNED AT MOMBASA, VIRTUALLY ON THIS 24TH DAY OF MAY, 2024. JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

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KIZITO MAGARE

JUDGE

In the presence of: -

Janjo for the Appellant

No appearance for the Respondent

Court clerk: Brian

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KIZITO MAGARE, J.