Climax Coaches Bus Limited v Omukobo & another (Suing as the Legal Representatives in the Estate of the Late Nathan Omurunga Otuoma) (Civil Appeal E072 of 2023) [2024] KEHC 13057 (KLR) (25 October 2024) (Judgment)

Neutral citation: [2024] KEHC 13057 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL APPEAL E072 OF 2023

AC BETT, J

OCTOBER 25, 2024

BETWEEN

CLIMAX COACHES BUS LIMITED ..... APPELLANT

AND

JOHNSTONE OKONDEKHA OMUKOBO ..... 1ST RESPONDENT

BEATRICE ANYANGO MASIDE ..... 2ND RESPONDENT

SUING AS THE LEGAL REPRESENTATIVES IN THE ESTATE OF THE LATE NATHAN OMURUNGA OTUOMA

(Being an appeal from the Judgment and Decree of Hon. G. Ollimo (SRM) delivered on 6th April 2023 in Butere PMCC No. 7 of 2021)

JUDGMENT

Background

1. The Respondents filed suit against the Appellant on 15th February 2021 in their capacity as the legal representatives of Nathan Omurunga Otuoma (deceased). The basis of their suit was that on or about 6th August 2020, the deceased was lawfully riding motor cycle registration number KMEH 080H along Ekero-Ebuyangu Road, when the Appellant's agent or driver so negligently drove its motor vehicle registration number KCE 110X that it lost control, infringed on the other lane and knocked down the motor cycle as a result of which the deceased sustained fatal injuries.

2. In response, the Appellant filed a defence in which it denied the occurrence of the accident as alleged. It also denied the particulars of negligence attributed to the driver of motor vehicle registration number KCE 110X and averred that if the accident did occur, then it was the rider of motor cycle registration

number KMEH 080H who was negligent as listed in the particulars of negligence set out. The Appellant denied that the doctrine of res ipsa loquitor was applicable as pleaded by the Respondents.

3. After hearing the parties, the trial Magistrate delivered Judgment in favour of the Respondent as follows:-

   (a) Liability 100%

   (b) Lost years ..... Kshs. 4,000,000/=

   (c) Loss of expectation of life Kshs. 200,000/=

   (d) Pain and suffering Kshs. 100,000/=

   (e) Special damages Kshs. 36,375/=

   TOTAL AWARD KSHS. 4,336,375/=

   The trial Magistrate also awarded the Respondents costs of the suit plus interest on general damages and special damages.

4. The Appellant was aggrieved with the Judgment of the learned trial Magistrate and filed an appeal against both liability and quantum. The grounds of appeal were as follows:-

   (1) That the learned trial Magistrate erred in law and fact in holding the Appellant 100% liable in negligence.

   (2) That the learned trial Magistrate erred in law and fact by failing to apportion liability on the basis of contributory negligence on the part of the deceased in view of the evidence adduced.

   (3) That learned trial Magistrate erred in law and fact in failing to consider the submissions by the Appellant on body issues of liability and quantum.

   (4) That the learned trial Magistrate erred in law and fact in using the wrong principles in the assessment of damages thereby arriving at an erroneous decision.

   (5) That the learned trial Magistrate erred in law and fact by awarding Kshs. 100,000/= for pain and suffering which was very excessive in the circumstances.

   (6) That the learned trial Magistrate erred in law and fact by awarding Kshs. 200,000/= which was very excessive in the circumstances.

   (7) That the learned trial Magistrate erred in law and fact by awarding a global sum of Kshs. 4,000,000/= which was very excessive in the circumstances.

   The Appellant urged this court to allow their appeal in terms of its prayers in the Memorandum of Appeal.

5. The Appeal was canvassed through written submissions.

Appellant's Submissions

6. On the issue of liability, the Appellant submits that the Respondents had failed to discharge the burden of proof as set out under Section 107 and 108 of the *Evidence Act*, Chapter 80, Laws of Kenya. It is its submissions that the evidence before court showed a divergence between the evidence of the two parties herein and since the trial Magistrate was presented with two versions as to how the accident occurred, then the duty was upon the Respondents to prove on a balance of probabilities, that the accident occurred as stated by them.

7. The Appellant's submissions are that although PW1, the Inspector of Police had stated that the suit motor vehicle failed to give way and knocked down the motor cycle, the eye witness, PW4, testified on cross-examination that he saw the bus about 100 metres away prior to the accident but failed to inform the deceased that the driver of the suit vehicle was turning so that he could slow down or apply brakes in order to avoid the accident. It is its further submissions that although PW1 stated that the diver of the suit motor vehicle was charged, the police abstract indicated that the matter was pending investigations and no traffic proceedings were produced. Additionally, the Appellant submits that its witness, DW1, testified that on the material day, upon reaching the location of the accident, he indicated that he was turning right to allow passengers to alight and in the process the motor cycle hit the left rear tyre of the suit motor vehicle while he was driving. On cross-examination, he reiterated that he had already turned when the road was clear and the rear part of the bus was still on the tarmac. The Appellant submits that the trial Magistrate erred in holding the driver of the suit motor vehicle liable and contends that the best approach in view of the conflicting evidence was to find both equally liable. The Appellant relies on the cases of Hussein Omar Farah -vs- Lento Agencies [2006] eKLR, Matunda Fruits Bus Services Ltd -vs- Moses Wangila & Another [2018] eKLR and Eliud Papoi Papa -vs- Jigneshkhumar Rameshbai Patel & Another [2017] eKLR while maintaining that the fact that the police charged the driver would not suffice to blame the said driver and that no sketch of the accident scene was drawn hence the point of impact was not identified.

8. On general damages, the Appellant submits that this court should review the same downwards and cites the case of Johnson Evan Gicheru -vs- Andrew Morton & Another [2005] eKLR. The Appellant submits that the general damages for pain and suffering should be reviewed to Kshs. 10,000/= with respect to the award for loss of expectation of life, it submits that a conventional sum of Kshs. 100,000/= would be reasonable and relies on the case of Kenya Power & Lighting Company Limited -vs- Charles Obegi Ogeta (Suing as the Legal representative of the Estate of Esther Nyanchoka Otegi [2016] eKLR. In regard to lost years, the Appellant submits that there was no proof of earning and it would be difficult to determine how the deceased would turn out in life. For that reason, the Appellant says the award made was excessive. Citing several cases relating to persons who met their death while studying at the University, the Appellant urged the court to reduce the award to between Kshs. 1,500,000/= and Kshs. 2,000,000/=. The Appellant also seeks costs of the appeal.

Respondents' Submissions

9. In turn, the Respondents submit that she proved, on a balance of probabilities that the Appellant's driver was to blame for the accident. They state that whereas the Appellant called the driver of the suit motor vehicle only to give evidence, she called two (2) independent witnesses who testified concerning the accident and how it occurred. She avers that PW1, the Police Inspector confirmed that the suit motor vehicle had infringed on the lane of the motor cycle and the driver was even charged in Traffic Case No. 56 of 2020 and fined Kshs. 50,000/= on his own plea of guilty. The Respondent contends that since there was no evidence to corroborate the Appellant's Driver's evidence on how the accident occurred, then the trial court arrived at a just determination on liability.

10. On the issue of general damages, the Respondents maintain that the awards under each head reflect the trend of previous, recent and comparable rewards as held in the case of Stanley Maore -vs- Geoffrey Mwenda [2004] eKLR. They submit that on pain and suffering, the trial court made an award of Kshs. 100,000/= while relying on the case of Acceler Global Logistics -vs- Gladys Sasambu Waswa & Another [2020] eKLR and the same is reasonable and ought not to be disturbed. On the award of Kshs. 100,000/= for loss of expectation of life, the Respondents submit that the same is appropriate putting into consideration the inflationary trends in the country and recent awards adopted by court.

As for the award of Kshs. 4,000,000/= for lost years, the Respondents argue that the same is reasonable since the deceased was a fourth year Bachelor of Education student with a salary expectation of a net of Kshs. 42,832.35 per month upon graduation. The Respondents posit that the global sum awarded is within the limits of awards as opposed to the sum of Kshs. 11,993,058/= which they had proposed to the trial court upon computation of the expected earnings of the deceased.

Analysis and Determination

11. This being a first appeal, the court is duty bound to subject the whole evidence before the trial court to a fresh scrutiny and re-evaluation in order to arrive at its own independent conclusion bearing in mind the fact that it did not see and hear the witnesses first hand. This duty was enunciated in the case of Selle -vs- Associated Motorboat Company Ltd [1968] EA 123. In the case of Gitobu Imanyara & 2 others -vs- Attorney General [2016] eKLR, the Court of Appeal stated as follows:-

> " The appeal to this Court from a trial by the High Court is by way of 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 allowances in this respect."

12. The golden thread that runs through the court's past decisions is that the trial court has the opportunity to see and hear the witnesses and, in observing their demeanour, determine which witness' testimony is credible. The principles that guide an appellate court in deciding whether or not to disturb a decision are therefore well settled.

13. The Respondents refer this court to the cases of Bundi Murube -vs- Joseph Omkuba Nyamuro [1982-88] 1 KAR 108 where the court had this to say:-

> " However, a court on appeal will not normally interfere with a finding of fact by the trial court unless, it is based on no evidence or on a misapprehension of the evidence or the Judge is shown, demonstrably, to have acted on wrong principles in making the findings he did."

14. In Khambi & Another -vs- Mahithi & Another [1968] EA, it was held that:-

> " It is well settled that where a trial Judge has apportioned liability according to the fault of the parties, his apportionment should not be interfered with on appeal, save for exceptional circumstances, as where there is some error in principle or the apportionment is manifestly erroneous and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge."

15. I have carefully evaluated the evidence tendered before court while bearing in mind the well established principles on the duty of an appellate court. I find that the Respondent did prove that the deceased was a student at the University of Kabianga and was in his fourth year of studies. The Respondent produced original documents titled "authorization to sit University Examinations" from the said University as well as the deceased's student Debit Card issued by Equity Bank.

16. In regard to who was to blame for the accident, both parties adduced evidence attributing the accident to the other party. The Appellant conceded through its driver, that at the time of the accident, the suit motor vehicle was on the deceased's side of the road. The driver, DW1 stated that he turned right to park to enable his passengers alight because there was no space on the left side of the road. In the

circumstances, DW1 was squarely on the wrong side of the road at the time of the accident and this was a confirmation of the evidence of PW4, the pillion passenger who witnessed the accident.

17. PW4 averred that on the material date, at Khumalo Junction, the deceased was clear to make a turn to Khwisero Road and as he made a turn, the Climax bus approaching from the opposite side made a sudden turn and rammed into the motor cycle. He blamed the bus driver for turning abruptly without indicating hence crossing into their path and hitting the motor cycle. Although the Appellant submitted that PW4 conceded that he noticed the bus at about 100 metres, I did not find any such evidence in the record.

18. It was the trial court's finding that the Appellant's driver was fully liable for the accident because of the testimony of PW4 and the fact that DW1 pleaded guilty to two counts of causing death by dangerous driving and one count of causing injuries. The trial court referred to proceedings marked as P.Exh.5 as proof of the charges. I have tried to look for the proceedings in the Record of Appeal and in the original record to no avail. I have also perused the proceedings and there is no point at which the traffic proceedings were produced.

19. It is trite law that he who alleges must prove. I find that the Respondent failed to prove that the Appellant's driver was charged or convicted with a traffic offence consequent to the accident. Even if the Respondents had proved that the Appellant's driver was convicted for causing death by dangerous driving, the conviction per se would not preclude the Appellant from pleading negligence on the part of the deceased. In Robinson -vs- Oluoch [1971] EA 376, the Court of Appeal held thus:-

> " It is quite proper for a person who has been convicted of an offence involving negligence in relation to a particular accident, to plead in subsequent civil proceedings arising out of the same accident that the Plaintiff, or any other person, was also guilty of negligence which caused or contributed to the accident."

20. What this court can deduce from the above mentioned decision of the Court of Appeal is that a guilty plea in a traffic matter is not a bar to the convicted driver to raise a counter claim in civil proceedings against him flowing from the accident, that the Plaintiff or other party(ies) contributed to the accident by an act or omission that rendered the accident inevitable.

21. Whereas the accident herein occurred when the Appellant's motor vehicle was on the deceased's side of the road, there are certain issues arising from the accident that I need to weigh. In the first instance, PW1, did not produce an investigation file nor a sketch map. The sketch map would have helped the court to ascertain whether the deceased attempted to break or swerve in order to avoid the accident. This was crucial because the Appellant's driver was insistent that he indicated before turning. Secondly, the evidence was that the suit motor vehicle was hit on the left side, pointing to a fact that the motor vehicle was already on the rider's side of the road at the time of the accident. The absence of the investigation file and sketch map therefore means that PW1's evidence on how the accident occurred held little probative value bearing in mind that he only produced the Police Abstract which only confirmed that the accident occurred.

22. The Appellant has urged the court to find both the driver and the rider equally liable. They have referred the court to the cases of Hussein Omar Farah -vs- Lento Agencies [2006] eKLR, Matunda Fruits Bus Services Ltd -vs- Moses Wangila & Another [2018] eKLR and Eliud Papoi Papa -vs- Jigneshkumar Rameshbai Patel & Another [2017] eKLR. The Appellant's reasoning is that there are two conflicting sets of evidence as to how the accident occurred and therefore if court is unable to find, one way or another who is to blame for the accident, then both should be blamed equally.

23. In Hussein Omar Farar -vs- Lento Agencies (Supra), the Court held as follows: -

> " In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame."

24. An analysis of the evidence in the present appeal do not point to a scenario where the court is unable to determine who is to blame. The eyewitness stated clearly how the accident occurred and his testimony was corroborated by PW1 and DW1's evidence. It is the Court's finding that the Appellant's driver was substantially to blame for the accident. However, in view of the fact the point of impact was on the left side of the suit motor vehicle, a point which was confirmed on cross-examination by PW4, there is a possibility that had the deceased been careful enough, he would have avoided the accident since it was day time and the road was clear.

25. Having carefully evaluated the evidence, I find that although the Appellant's driver was substantially to blame for the accident, he should not have been held fully liable in light of the circumstances under which the accident occurred. I therefore set aside the trial court's finding of liability against the Appellant. The deceased shall bear 10% liability, as he contributed to the accident by failing to swerve, break or in any other way control his motor cycle so as to avoid the collision.

26. With respect to the appeal against quantum, I am guided by the case of Kemfro Africa Limited T/ A Meru Express Services & Another -vs- Lubia & Another [1987] KLR 30 where the court observed that:-

> " 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 to be that; it must be satisfied that either 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 ..."

i. Pain and Suffering

27. The award of Kshs. 100,00/= for pain and suffering was faulted by the Appellant who submitted that the death was instantaneous and hence an award of Kshs. 10,000/= is most appropriate. The evidence of the 1st Respondent was that on the fateful day, she was at her job at Khumalo area at Khwisero Junction when a boda boda rider summoned her with information that the deceased had been involved in a road traffic accident. He took her to the scene where she found the deceased unconscious and bleeding from the nose. She said he was alive when she arrived at the scene. According to her, the deceased died on the spot. The court understands this to mean that the deceased died before he could be taken to the hospital and not instantaneously. General damages for pain and suffering range from Kshs. 10,000/= where death is instantaneous to Kshs. 100,000/= where death occurs later. In Hyder Nthenya Musili & Another -vs- China Wu Yi Limited & Another [2017] eKLR, the Court stated thus:-

> " As regards damages awarded under the *Law Reform Act*, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life.

In Rose vs Ford, (1937) AC 826 it was held that damages for loss of expectation of life can be recovered on behalf of a deceased's estate. Further, in Benham vs Gambling, (1941) AC 157 it was further held that only moderate awards should be granted under this head for the following reasons:

> "In assessing damages for this purpose, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness, the test is not subjective and the right sum to award depends on an objective assessment of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course no regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not loss of future pecuniary prospects."

The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/- while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death."

28. I have analyzed the evidence by the 1st Respondent and PW1. I have also perused the postmortem report which states that the deceased died on the spot. I have also considered the findings in the post mortem report in which the pathologist observed the following injuries among the multiple injuries:-

    (a) 3 lacerations on the left scalp with dried brain matter ranging from 3x0.4 cm to 2x 0.1 cm.

    (b) Unstable cervical fracture involving C4/5/6

    (c) Severed blood vessels of left arm

    (d) Extensive left scalp contusion

    (e) Depressed open fracture, left temporal bone with herniating brain substance

    (f) Macerated left cerebrum with haemorrhage

29. Considering the aforesaid injuries, among many others, it is more likely that the deceased died instantaneously as opposed to the mother's evidence that he was alive when she examined him on her arrival at the scene of the accident.

30. The trial court cited the case of Acceler Global Logistics -vs- Gladys Sasambu Waswa & Another [2020] eKLR in support of its award of Kshs. 100,000/=. However, the holding in the said case was in respect to loss of expectation of life and not general damages for pain and suffering. In fact, the Judge reiterated the trite principles that where the period of suffering is short, only nominal damages are awarded. In the said case, the Judge, confirmed the trial Court's award of Kshs. 50,000/= for pain and suffering. Similarly, in the case of Moses Ngania & 2 Others -vs- Adulu (Suing as personal representative of the Estate of Clinton Morgan Kiprotich [20204] KEHC 4005 (KLR) A. C. Mrima J. confirmed an award of Kshs. 50,000/= under the head of pain and suffering where he found that death was spontaneous. Being guided by the said precedents, I therefore find that the award of Kshs. 100,000/= for pain and suffering was inordinately high. The said award cannot be stated to be nominal. I therefore set aside the said award and substitute it with an award of Kshs. 50,000/=.

(ii) Loss of Expectation of Life

31. The conventional award under this head is Kshs. 100,000/=. In the case of Acceler Global Logistics (supra), the court made an award of Kshs. 200,000/=. Relying on the case of Kenya Power & Lighting Company Limited -vs- Charles Obegi Ogeta (Suing as Legal Representative of the Estate of Esther Nyanchoka Obegi [2016] eKLR, the Appellant urged the court to review the same to Kshs. 100,000/=.

32. The deceased was aged twenty five (25) years old at the time he met his death. In the case of Zachary Abusa Magoma -vs- Julius Asiago Ogentoto & Another [2020] eKLR, the Court reviewed an award under this head from Kshs. 150,000/= to Kshs. 100,000/=.

33. There is no evidence led by the Respondents to justify the award of Kshs. 200,000/= for loss of expectation of life. I therefore set aside the award of Kshs. 200,000/= which is excessive and substitute therefore an award of Kshs. 150,000/=.

(iii) Lost Years

34. The trial court adopted the global/lumpsum approach in assessing general damages. This approach is normally taken by courts where there is no proof of monthly earnings. In considering the award, the Court took into account the fact that the deceased was a fourth year University student.

35. The Appellant contends that the award of Kshs. 4,000,000/= is inordinately high on account of the fact that it would be difficult to determine how the deceased would end up in life. In Chen Wembo & 2 Others -vs- IKK & Another (Suing as the Legal Representatives and Administrators of the Estate of the CRK (Deceased) [2017] eKLR, Hon. Meoli J stated:-

> "Even where there is evidence that a child was undertaking a professional course in a University, was brilliant and promising, the path is always fraught with imponderables. The speculative nature of the matter renders the court's exercise of its discretion delicate. More so, as is the case where minimal material is supplied to the courts by the claimants."

36. The deceased was training as a teacher. He was about to complete his studies and there is nothing to suggest that he would not have gained employment. However, the Court is unable to determine when he would have been employed in view of the prevailing circumstances in the education sector. Nonetheless, the Court notes that the deceased was nearing graduation and was a responsible person who was already engaged in the boda boda business. He had a promising future which was cut short by the accident.

37. I have considered the authorities cited by the Appellant. In the case of Peter Kibogoro Wanjohi -vs- Christine Wakuthi Mwaniki & Another [2009] eKLR, the deceased an award of Kshs. 2,500,000/= was made for a student studying Bachelor of Education. In the case of Zachary Abusa Magoma (supra) Kshs. 1,500,000/= was awarded more recently for a deceased who was studying food and beverage at Gusii Institute (not the University as submitted by the Appellant). In Teresia Wanjiru Githinji -vs- Lucy Kanana M'rukaria & Another (Suing as Legal Representatives of Ernest Gutuura Nabea (deceased) [2021] eKLR, Kshs. 1,500,000/= for a student at Chuka University. I have also considered the cases cited by the trial court and other authorities not cited by the parties.

38. In opting to apply the global sum approach in assessing general damages, the court in doing so, was exercising its discretion. The issue before me is whether this court should interfere with the trial court's

decision. In the case of Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 others [2003] KLR 125, the Court of Appeal held as follows:-

> "... an appellate court may only interfere with the exercise of judicial discretion if satisfied either;
>
> a. The judge misdirected himself on law, or
>
> b. That he misapprehended the facts, or
>
> c. That he took account of considerations of which he should not have taken an account, or
>
> (d) That he failed to take account of consideration of which he should have taken account, or
>
> (e) That his decision, albeit discretionary one, was plainly wrong."

39. The Respondents adduced evidence through PW3, a teacher with the Teachers Service Commission (TSC) which proved that a teacher earns a gross salary of Kshs. 48,870/=. When subjected to statutory deductions, the monthly salary comes to Kshs. 42,823.35. This evidence was not rebutted. The deceased was then expected to earn the said amount upon employment by the TSC.

40. The trial court in exercising its discretion must endeavour to do justice to all parties. In the present appeal, had the trial court adopted the Respondent's proposal and applied a multiplier of twenty five (25) years and dependency ratio of $^{1}/3$ for the loss of dependency, the award would have been as follows:-

Kshs. 42,823.35 x 12 x 25 x $^{1}/3$ = Kshs. 4,282,335/=

The said award would have been based on the assumption that the deceased would have secured employment after eight (8) years and retired at fifty eight (58) years.

41. In the case of Rosemary Mwasya -vs- steve Tito Mwasya & Another [2018] eKLR, the Court of Appeal awarded the sum of Kshs. 9,484,080.00 being general damages for lost years for an Accounts student at Strathmore University where the Plaintiffs had furnished the Court with a survey of salaries showing that Accountants were earning Kshs. 118,546/= and the court applied a multiplier of thirty (30) years for a nineteen (19) year old on the presumption that he would have commenced working at the age of twenty five (25) years and retired at fifty five (55) years.

42. Having taken into consideration the cited cases, this court is of the view that the sum of Kshs. 4,000,000/= awarded as general damages for lost years was reasonable and does not warrant any disturbance for reasons that a claimant should not suffer prejudice due to the court's decision to apply the global sum approach.

43. The upshot is that the appeal partially succeeds. The trial court's Judgment on liability is set aside and in lieu thereof Judgment is entered with apportionment of liability at 90%:10% in favour of the Respondent. In the end, the final award shall be as follows:-

Liability 90%:10%

a) Pain and Suffering Kshs. 50,000/=

b) Loss of Expectation of life Kshs. 150,000/=

c) Lost years Kshs. 4,000,000/=

Total Kshs. 4,200,000/=

Less 10% Kshs. 420,000/=

Kshs. 3,780,000/=

Add Special Damages Kshs. 36,375/=

Total Award - Kshs. 3,816,375/=

44. For avoidance of doubt, the Special damages shall attract interest from the date of filing the suit. General damages shall attract interest at court rates from the date of Judgment in the lower court. Costs of the lower court shall be borne by the Appellant. There shall be no order as to costs in respect to the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 25TH DAY OF OCTOBER 2024.

A. C. BETT

JUDGE

In the presence of:

Ms. Tesot for Appellant

Ms. Mureithi for Respondents

Court Assistant: Polycap