REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

(Coram: Koome; CJ & P, Ibrahim, Wanjala, Njoki & Lenaola, SCJJ)

PETITION NO. E031 OF 2023

–BETWEEN–

ALEX OTUKE ONDIMU ..... 1ST APPELLANT

MOTOR WORLD LIMITED ..... 2ND APPELLANT

–AND–

COMMISSIONER OF POLICE ..... 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL

INVESTIGATIONS DEPARTMENT ..... 2ND RESPONDENT

THE HON. ATTORNEY GENERAL ..... 3RD RESPONDENT

JOSEPH MUTHUI KIRAGU ..... 4TH RESPONDENT

(*Being an appeal from the Judgment of the Court of Appeal at Nakuru* ***F. Ochieng, L. Achode & W. Korir****, JJ. A at Nakuru in Civil Appeal No. E044 of 2022 dated* ***22nd September 2023****)*

Representation

Mr. Fred Ratemo for the Appellants
(*F.M. Ratemo & Company Advocates*)

Ms. Janet Chepkirui for the 1st -5th Respondents
(Attorney Generals Chambers)

JUDGMENT OF THE COURT

A. INTRODUCTION

[1] In this Petition dated 30th October, 2023, the Appellants seek orders setting aside the Judgment and Order of the Court of Appeal (*F. Ochieng, L. Achode & W. Korir, JJ.A)* delivered on 22nd September 2023. The Court of Appeal upheld the High Court's (*Ngetich, J.)* Judgment in ***HCCC No. 223 of 2012*** delivered on 30th March 2022 where the High Court declared that the Respondents' actions of search and entry of the 1st and 2nd Appellants' premises was illegal and a violation of the Appellants' rights under Articles 31 and 40 of the Constitution. The High Court further awarded the Appellants' damages in the sum of Kshs.3,000,000/= together with interest and costs.

B. BACKGROUND

[2] The 1st Appellant, Alex Otuke Ondimu, was engaged in the motor vehicle industry where he would purchase second-hand motor vehicles by first paying a deposit, then reselling the vehicles at a profit and thereafter make the final payment to the vendor. In 2009, the 1st Appellant and his father, Julius Barasa Ondimu, incorporated Motor World Limited, the 2nd Appellant, which operated in Nakuru. The 1st Appellant then transferred his motor vehicle business to the 2nd Appellant.

[3] Initially, the Appellants acquired the motor vehicles locally from other motor vehicle dealers and would resell at a profit or on commission-basis. Subsequently, the Appellants began importing motor vehicles directly. In the course of business, a dispute arose between the Appellants and Yuasa International Limited, one of their suppliers based in Mombasa. Through several agreements, the 1st Appellant purchased vehicles from Yuasa International and paid a deposit thereon with the balance payable in instalments. However, at some point, the 1st Appellant and Yuasa International were unable to agree on the outstanding amount, culminating

in Yuasa International instructing auctioneers to repossess the motor vehicles. Consequently, on 1st October, 2010 the 1st Appellant filed a suit in the High Court at Nakuru being, ***HCCC No. 249 of 2010*** to challenge that action.

[4] In the meantime, in January 2011, a complaint was made by Mr. Owino Wahongo, the Director of Speedbat Freighters Ltd., a clearing and forwarding company, at the Criminal Investigations Department (CID) in Mombasa. The complaint was in respect of an alleged theft of various motor vehicles on transit from the Port of Mombasa to Uganda and Juba via the Port of Malaba. Sgt. Joseph Muthui Kiragu, the 4th respondent, who was then attached to CID Mombasa, was tasked with carrying out the investigations. According to the 4th respondent, the investigations led to the 1st Appellant who was suspected to be in possession of the said motor vehicles in Nakuru.

[5] On 23rd January 2011, the 4th respondent and police officers from Nakuru went to the 1st Appellant's residence situated at Section 58 Nakuru. Upon the 1st Appellant being informed of the presence of the said police officers, he jumped over his perimeter fence and ran away. Thereafter, the police officers searched his residence and took a briefcase containing several documents including logbooks, his primary school leaving certificate, passport and personal identification number (PIN) certificate. They also towed two motor vehicles, a VX Toyota Land Cruiser registration number KBL 111S, and a Toyota Prado registration number KBN 181L, from his residence to Nakuru Central Police Station. It is instructive to note that at the material time, the police officers did not have a search warrant, which the 4th respondent urged could not be obtained on the said day being a Sunday. The following day, on 24th January 2011, the police officers searched the 2nd Appellant's premises and towed away a Nissan Caravan registration number KBN 141T, from the showroom to Nakuru Central Police Station.

[6] Moreover, according to the 4th respondent, the investigations had also unearthed other complaints/criminal offences against the 1st Appellant unrelated

to the complaint made by the Director of Speedbat Freighters Ltd. In that regard, criminal proceedings were instituted in ***Mombasa***., ***C.M.CR.C. No. 188 of 2011***, on 18th January 2011, and warrants for his arrest issued therein. The 1st Appellant was arrested, arraigned before the Mombasa Chief Magistrate's Court and charged with one count of stealing by agent contrary to Section 283(c) of the Penal Code. The particulars of the charge were that on or about 5th January 2010, the 1st Appellant and Ali Khalid (co-accused) jointly stole Kshs. 3,000,000/= being the purchase price of motor vehicle registration number KBK 865S, a Mitsubishi Rosa, which was received from George L. M. Gichimo for or on account of Yuasa International. They were charged with an alternative count of obtaining property by false pretences contrary to Section 313 of the Penal Code. The particulars of the alternative count were that on 5th January 2010, the 1st Appellant and his co-accused jointly, with the intention to defraud, obtained the aforementioned motor vehicle from Yuasa International by falsely pretending that they were in a position to pay the purchase price of the vehicle, which they knew was false. The 1st Appellant and Ali Khalid (co-accused) were charged with a second count of obtaining money by false pretences contrary to Section 313 of the Penal Code. The particulars were that on or about 9th January 2010 at Vineyard Hotel, Nakuru, with the intention to defraud, obtained Kshs. 3,000,000/= from George L.M. Gichimo by falsely pretending that they were the importer and registered owners of motor vehicle registration number KBK 865S and capable of availing the logbook after payment of the purchase price. Lastly, the 1st Appellant and his co-accused were charged with a third count of obtaining property by false pretences contrary to Section 313 of the Penal Code. The particulars were that on or about 16th February, 2010 at Vineyard Hotel Nakuru, with the intention to defraud they obtained Kshs. 4,000,000/= from George L. M. Gichimo by falsely pretending that they were the importers and registered owners of motor vehicle registration number KBH 491Z, a Toyota Land Cruiser, and that they were in a position to avail the logbook thereof after payment of the purchase price which they knew to be false.

[7] It is worth noting that the two vehicles subject of the aforementioned charges in ***Mombasa C.M.CR.C. No. 188 of 2011***, that is, KBK 865S and KBH 491Z, were also subject of ***HCCC No. 249 of 2010*** which had earlier on been instituted by the 1st Appellant against Yuasa International. In addition, the 4th respondent lodged ***Criminal Misc. Appl. 16 of 2011*** at the Chief Magistrate's Court in Mombasa, and on 28th January, 2011 obtained orders directing the Appellants' bankers, that is, Oriental Commercial Bank, Nakuru Branch and Eco Bank (K) Ltd., Nakuru Branch, to release to him logbooks of various motor vehicles deposited by the 1st Appellant for safekeeping and/or held as security for purposes of aiding the investigations. Further, Kenya Revenue Authority was directed to place a caveat/caution to prevent transfer of the motor vehicles relating to the logbooks surrendered by the banks.

[8] Perturbed by the seizure of the three motor vehicles and institution of ***Mombasa C.M.CR.C No. 188 of 2011***, the 1st Appellant lodged H.C.***JR No. 7 of 2011*** seeking the following orders:

1. *Certiorari to move into the High Court and quash the order issued by the Commissioner of Police (1st respondent herein), the Director of CID (the 2nd respondent herein) and the OCS of Nakuru Police Station authorizing the search of the Appellants premises and impounding and detaining of motor vehicles registration number KBL 11S, KBN 141T and KBN 181L.*

2. *Prohibition to prohibit or stop the 1st and 2nd respondents as well as the OCS of Nakuru Police Station from continuing to detain motor vehicles registration number KBL 11S, KBN 141T and KBN 181L.*

3. *Prohibition to prohibit or stop the 1st and 2nd respondents from prosecuting the 1st Appellant, and the Chief Magistrate, Mombasa*

Law Courts from proceeding with the trial of the 1st Appellant in ***C.M.CR.C. No. 188 of 2011****.*

The High Court issued interim orders on 4th February 2011 to the effect that two of the vehicles that had been seized by the police namely, motor vehicles registration number KBL 111S and KBN 181L, be released to the Appellants. However, the court directed that the said vehicles were not to leave Nakuru or be transferred to a third party. Further, that the documents of ownership of the two vehicles were to be surrendered to the investigating officer.

[9] While ***JR No. 7 of 2011*** was still pending, the 1st Appellant was charged on 24th March, 2011 in a second criminal case, ***Mombasa. C.M.CR.C No. 977 of 2011***, together with Seme Mochoge (co-accused) with two counts relating to the complaint by the Director of Speedbat Freighters Ltd. The offence in count 1 was stealing of motor vehicles on transit contrary to Section 279(c) of the Penal Code. The particulars thereof were that on unknown dates between the 2nd day of October, 2010 and 8th January, 2011 at an unknown place along Mombasa/Malaba road within the Republic of Kenya, the 1st Appellant and his co-accused jointly with others not before the court, stole two motor vehicles on transit to Uganda and Sudan make Toyota Premio chassis number ST2100039726 and Volkswagen Passat chassis number WVWZZZ-YE025907, all valued at Kshs. 3,000,000/= the property of M/S of Speedbat Freighters Ltd.

[10] As for count 2, the offence was conspiracy to defraud contrary to Section 317 of the Penal Code. The details of the charge were that between the months of August, 2010 and 6th October, 2010 between Nairobi and Mombasa, the 1st Appellant and his co-accused, jointly with others not before the court, conspired to defraud the Government of Kenya of Kshs. 959,000/= being the import duty and tax on the aforementioned motor vehicles by falsely pretending that they were imported by Tabitha Kwar Juk and Isaac Kigongo Musa of Juba Sudan and Uganda respectively, a fact they knew to be false.

[11] In addition, the 1st Appellant faced a third count of forgery contrary to Section 349 of the Penal Code. The particulars read that at an unknown time and place within the Republic of Kenya, the 1st Appellant with the intent to deceive, forged a document *to wit*, an undated Kenya Primary School Leaving Certificate from Jamhuri Primary School Nakuru in his name purporting it to be a genuine and valid certificate issued by the said Primary School, a fact he knew to be false.

[12] In a Ruling delivered on 28th October 2011, the High Court (*Ouko, J. as he then was*) declined to issue orders of certiorari since the applicants had not established the existence of an order calling for the impoundment and detaining of motor vehicles registration numbers KBL 111S, KBN 141T and KBN 181L. Secondly, the court noted that the rule on double jeopardy does not permit the 1st Appellant to be tried for matters which are simultaneously and directly being litigated and pending in a civil suit. This was because motor vehicles registration No. KBK 865S and KBH 491Z which were the subject of ***C.M.CR.C. No. 188 of 2011*** were also the subject of ***HCCC No. 249 of 2010***, which had been filed prior to the said criminal proceedings. The Court held that the respondents acted in excess of their powers by detaining the motor vehicles. Further, there was nothing to show that the motor vehicles detained were indeed the ones destined for neighbouring countries but diverted into the local market. The Court also issued orders of prohibition terminating the proceedings in ***C.M.CR.C No. 188 of 2011.***

[13] Ultimately, the High Court issued orders in the following terms:

> *i. If motor vehicle registration number KBN 141T is in the custody of the police the same be released to the Appellants forthwith;*
>
> *ii. The restrictions imposed on 4th February, 2011 on the Appellants not to deal with the motor vehicles in a particular manner are vacated;*
>
> *iii. The 2nd respondent and specifically the 4th respondent to release to the Appellants all the impounded documents forthwith (sic);*

iv. *The Chief Magistrate, Mombasa Law Courts is prohibited from proceeding with the trial of the 1st Appellant in* ***C.M.CR.C. No. 188 of 2011****.*

[14] It is important to take note that the second criminal case, ***C.M.CR.C No. 977 of 2011***, was concluded after the JR proceedings were determined. In particular, by a judgment dated 19th November 2015, the 1st Appellant and his co-accused were acquitted of all the charges therein under Section 215 of the Criminal Procedure Code.

C. LITIGATION HISTORY

i. Proceedings at the High Court

[15] In 2012, the Appellants filed a suit in the High Court, ***HCCC No. 223 of 2012***, against the respondents. The subject of the suit was the searches conducted in the Appellants' premises, seizure of the three vehicles (KBL 111S, KBN 181L & KBN 141T) and a briefcase, that took place on the 23rd and 24th January, 2011 as well as the institution of ***C.M.CR.C. No. 188 of 2011***.

[16] By an amended plaint dated 7th December, 2020 the Appellants averred that the events that took place on 23rd and 24th January 2011, as set out above, were illegal and unlawful. Further, that the respondents without any probable cause, illegally and maliciously instituted ***C.M.CR.C. No. 188 of 2011*** against the 1st Appellant. They urged that the respondents' actions which received wide publicity caused the Appellants' business to suffer losses, and eventually, close down in 2014. Additionally, that the 1st Appellant had been subjected to mental anguish, trauma, anxiety and suffered damage to his reputation and dignity among his peers.

[17] Consequently, the Appellants sought the following reliefs:

i. *A declaration that the entry and search of the 1st Appellant's house and the 2nd Appellant's premises and subsequent seizure and detention of motor vehicle registration number KBL11S, KBN 141T and KBN 181L as well as the seizure and detention of their*

documents was illegal, unlawful, arbitrary, capricious and malicious and was only meant to harass and intimidate the Appellants and violated their right to privacy and property as guaranteed under Articles 31 and 40 of the Constitution. (sic)

ii. *Kshs. 28,113,722 for loss of business and income.*

iii. *A declaration that the institution of* ***Mombasa C.M.CR.C. No. 188 of 2011*** *against the 1st Appellant was illegal, arbitrary, unlawful, capricious, malicious and an abuse of power and/or authority and the 1st Appellant's right to dignity and not to be subjected to psychological torture guaranteed and protected under Articles 28 and 29(d) of the Constitution have been violated by the respondents. (sic)*

iv. *General damages for violation of rights under Articles 28, 29(d), 31 and 40 of the Constitution.*

v. *Costs and interest on (ii) and (iv) above.*

[18] By their joint defence, the respondents denied the Appellants' allegations and the particulars of loss. They maintained that the three vehicles were towed away to the police station to verify if they were some of the vehicles which were reported to have been stolen on transit. Furthermore, it was averred that ***C.M.CR.C. No. 188 of 2011*** was instituted after investigations were carried out and there was sufficient evidence incriminating the 1st Appellant.

[19] In support of their case, the Appellants called three witnesses, the 1st Appellant, his wife, Teresa Njambi, and Stanley Mbeche, a Certified Public Accountant. The 1st Appellant gave evidence that following the respondents' actions, their suppliers lost trust in them and demanded payment of the full purchase price before the release of motor vehicles to the Appellants. He testified that the Appellants' creditors grew suspicious of them and demanded immediate payment of the outstanding debts. In the end, the 1st Appellant contended that the 2nd Appellant was forced to close down its business in 2014. Stanley Mbeche testified that he examined the 2nd Appellant's books of accounts for the period of 2010 and 2011. He stated that the 2nd Appellant began to operate in 2010 and its sales dropped from Kshs. 54,450,000/= in the year 2010 to Kshs. 12,800,000/=

in the year 2011. As such, it was his evidence that the 2nd Appellant had made significant losses amounting to Kshs.28,113,722/=. PW3 was Teresa Njambi Wachira, the 1st Appellant's wife. She testified that the 4th respondent and 3 other ununiformed police officers stormed her house, raided the garage and took away motor vehicles, all in the presence of the media. She corroborated the 1st Appellant's testimony and that the circumstances led to them closing their business in the year 2013.

[20] The respondents called the 4th respondent as their witness. He reiterated that the investigations and the institution of ***C.M.CR.C. No. 188 of 2011*** were not malicious or illegal. He stated that the search and seizure were justified and conducted according to the lawful mandate of the police. He also testified that ***C.M.CR.C. No. 188 of 2011*** was not tried due to the orders issued in ***JR No. 7 of 2011***.

[21] The High Court (*Ngetich, J.*) held that the suit turned on two issues, that is, *whether the search and seizure of personal documents of the 1st Appellant and motor vehicles was illegal*; and *whether the Appellants were entitled to the reliefs sought*.

[22] *On the search and seizure,* the court held that the respondents were required to inform the 1st Appellant of the alleged seizure of the motor vehicles and call upon him to prove legal possession of the same. That failure to do so rendered the respondents' action a violation of the Appellants' constitutional rights. *On the issue of reliefs,* the court expressed that it was evident from the audited accounts produced by the Appellants that there was a downward trend of sales in 2011 compared to 2010. Nonetheless, the court found that the losses incurred could not solely be attributed to the respondents' actions as other factors that would affect the business could not be ruled out. As such, the court awarded the Appellants damages of Kshs.3,000,000/= for violation of the Appellants' rights.

[23] In the end, the learned Judge by a judgment dated 30th March, 2022 allowed the Appellants' suit in the following terms:

i. *I hereby declare the actions of the respondents of entry and search of the 1st Appellant's house and the 2nd Appellant's premises and subsequent seizure and detention of motor vehicles registration number KBL 111S. KBN 141T and KBN 181L were illegal, and a violation of the Appellants' rights under Articles 31 and 40 of the Constitution.*

ii. *The Appellants are awarded general damages in the sum of Kshs. 3,000,000/=.*

iii. *Interest on (ii) above at court rates from the date of this judgment until payment in full.*

iv. *The costs be borne by the respondents.*

ii. Proceedings at the Court of Appeal

[24] Dissatisfied with the decision of the High Court, the Appellants lodged an appeal in the Court of Appeal, ***Civil Appeal No. E044 of 2022***. The appeal was anchored on 5 grounds that the learned Judge erred in law and fact in-

i. *Failing to attribute the Appellants' loss of business and income solely to the respondents' actions.*

ii. *Considering extraneous matters to deny the Appellants an award of loss of business and income.*

iii. *Failing to pronounce herself on all the reliefs sought by the Appellants.*

iv. *Awarding the Appellants general damages that is manifestly low to redress violation of constitutional rights.*

v. *Rendering an ambiguous judgment by failing to separately award general damages for the violation of rights to each Appellant.*

[25] In a nutshell, the Appellants argued that the evidence adduced by the certified accountant in the form of audited accounts of the 2nd Appellant was not controverted by the respondents. Besides, they claimed that the learned Judge did

not give reasons for declining to issue an award with respect to the losses claimed by the Appellants. They urged that the learned Judge failed to pronounce herself on the prayer for a declaration that the institution of ***C.M.CR.C. No. 188 of 2011*** was illegal, arbitrary and an abuse of power by the respondents, and that the 1st Appellant's right to dignity and not to be subjected to psychological torture under Articles 28 and 29(d) of the Constitution had been violated by the respondents. The Appellants contended that each of them had presented a separate and distinct claim against the respondents and the learned Judge ought to have made separate awards of damages to each Appellant. Lastly, they posited that the award of damages for violation of the Appellants' rights under Article 31 and 40 was manifestly low.

[26] The respondents supported the High Court's findings and opposed the appeal. They posited that an award of damages lies within the discretion of the trial court and the appellate court should not readily interfere with such discretion.

[27] The Court of Appeal (*Ochieng, Achode & Korir, JJ. A*) distilled the grounds of appeal and framed the following three issues as arising for determination: *whether the Judge erred in failing to attribute the Appellants' loss of business and income solely to the respondents' actions; whether the general damages awarded to redress violation of the constitutional rights were manifestly too low*; and *whether the Judge rendered an ambiguous judgment by failing to award general damages for violation of rights to each Appellant separately*.

[28] *On the loss of business and income,* the Court of Appeal found that the Appellants' evidence raised more questions than answers. In that, it did not specify how the respondents' actions resulted in low sales in 2011 compared to 2010 and eventually, closure of the business. Accordingly, the court found that the Appellants had not strictly proved the special damages they sought. Pertaining to the *quantum of general damages,* the court held that the amount granted was proportional and rational in the circumstances of the case. *On the apportionment*

of damages between the Appellants, the court acknowledged that the learned trial Judge did not clarify the portion due to each Appellant. However, it held that the learned Judge could not be faulted since the Appellants failed to plead different causes of action and separately seek reliefs against the respondents. In any event, the court observed that the 2nd Appellant had closed down its business long before the suit was concluded, and was not in existence. Ultimately, by a judgment dated 22nd September, 2023, the court dismissed the Appellants' appeal and directed each party to bear their own costs.

iii. At the Supreme Court

[29] Aggrieved by the decision of the Court of Appeal *(F. Ochieng, L. Achode and W. Korir, JJ.A)*, the Appellants filed the present appeal as of right pursuant to Article 163(4)(a) of the Constitution. The Appellants seek the following orders from the Court:

a. *This appeal be allowed.*

b. An order setting aside the judgment and order of the Court of Appeal.

c. A declaration that the respondents violated the 1st Appellant's constitutional rights under Articles 28 and 29(d) of the Constitution.

d. A declaration that each petitioner is entitled to a distinct and separate award of general damages for violation of their constitutional rights under Articles 28, 29(d), 31 and 40 of the Constitution.

e. A declaration that the award of general damages of Kshs.3,000,000/= is manifestly too low.

f. A declaration that the loss of Kshs.28,113,722/= suffered by the 2nd Appellant in loss of business and income is attributable to the respondents' unlawful and unconstitutional actions.

g. A declaration that the institution of ***Mombasa Chief Magistrates' Court Criminal Case No. 188 of 2011*** *against the*

1st Appellant was illegal, arbitrary, unlawful, capricious, malicious and an abuse of power and/or authority.

h. An order awarding the Appellants separately enhanced general damages for violation of constitutional rights under Articles 28, 29(d), 31 and 40 of the Constitution.

i. An order that the respondents pay to the 2nd Appellant Kshs.28,113,722/= with interest at Court rates from the date of filing the suit at the High Court.

j. An order awarding costs of the proceedings at the Court of Appeal and before the Supreme Court to the Appellants.

[30] The Appellants raised the following grounds of appeal:

i. The superior Courts below misinterpreted and misapplied Articles 28 and 29(d) of the Constitution in failing to declare that ***Mombasa C.M.CR.C. No. 188 of 2011*** instituted against the 1st Appellant was illegal, arbitrary, unlawful, capricious, malicious and an abuse of power/authority and a violation of Articles 28 and 29(d) of the Constitution.

ii. Failing to award the 2nd Appellant any relief despite finding that the respondents' actions violated its rights on the mistaken assumption that it had closed down long before the determination of the suit contrary to its rights under Article 27 of the Constitution.

iii. Failing to interpret the Constitution in a way that promotes its purposes, values and principles.

iv. Failing to award the Appellants separate damages for violation of their rights and enhance the said general damages.

v. Failing to correctly appraise the evidence tendered; and considering extraneous matters not before the Court.

D. PARTIES' RESPECTIVE CASES

i. The Appellants' Submissions

[31] In their submissions dated 11th December 2023, the Appellants summarized 5 issues for determination as follows:

a. *Whether the Court of Appeal erred in not pronouncing itself on all the grounds of appeal and the reliefs sought by the Appellants.*
b. *Whether the Court of Appeal erred in not awarding the Appellants Kshs.28,113,722/= in loss of business and income.*
c. *Whether the Court of Appeal erred in not finding that the general damages awarded to redress violation of constitutional rights were manifestly too low.*
d. *Whether the Court of Appeal erred in not interfering with the High Court's ambiguous judgment.*
e. *What reliefs should the Court grant.*

[32] The Appellants submitted that both Superior courts below did not make a determination on their prayer for a declaration that the institution of ***C.M.CR.C.No. 188 of 2011*** was illegal, arbitrary, unlawful, capricious, malicious and an abuse of power and the 1st Appellant's right to dignity and not to be subjected to psychological torture under Articles 28 and 29(d) of the Constitution. They urged that it is an established principle that a court must consider and make a determination on each prayer in line with the case of ***Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 Others,*** SC Petition 15 of 2020; [2023] KESC 14 (KLR). In support of their assertion that this Court has the jurisdiction to make a determination and grant remedies not granted by the Court of Appeal, the Appellants cited the cases of ***Geoffrey M. Asanyo & 3 Others v Attorney General,*** SC Petition No. 21 of 2015; [2018] eKLR; ***Base Titanium Ltd v The County Government of Mombasa & Another,*** Petition 22 of 2018; [2019] KESC 9 (KLR); ***Dhanjal Investments Limited v Kenindia***

Assurance Company Limited, SC Petition No. 7 of 2016; [2018] eKLR; and ***Samson Gwer & 5 others v Kenya Medical Research Institute & 3 Others,*** Petition No. 12 of 2019; [2020] eKLR.

[33] The Appellants also argued that the High Court (*Ouko, J (as he then was))* held in ***JR No. 7 of 2011*** that the police acted contrary to their duty to respect and uphold the rights and fundamental freedoms, in bad faith and in excess of their duty by instituting a criminal case against the 1st Appellant whilst a civil matter was ongoing based on the same facts. The High Court in ***JR No. 7 of 2011*** prohibited further proceedings in the ***C.M.CR.C. No. 188 of 2011.*** However, ***C.M.CR.C. No. 977 of 2011*** proceeded and the 1st Appellant was acquitted on 19th November 2015. The Appellants submitted that the ***C.M.CR.C. Nos. 188 of 2011*** and ***977 of 2011*** caused the 1st Appellant to suffer anguish, despair and economic stress thereby violating his right not to be subjected to psychological torture under Article 29(d) of the Constitution.

[34] On the loss of income and business, the Appellants argued that they established this through the 2nd Appellant's audited accounts and supporting documents produced by PW2, Stanley Invako Mbeche, a Certified Public Accountant and other evidence. They further postulated that given that the respondents did not file a cross-appeal at the Court of Appeal, the Court had no basis to question the decision of the High Court and cited the case of ***Housing Finance Co. of Kenya Ltd. v Samuel Kiti Lewa,*** Civil Appeal No. 110 of 2018; [2019] eKLR in support. Furthermore, the Appellants alleged that the respondents admitted their claim in their submissions. In addition, the Appellants urged that the respondents failed to adduce any evidence as to any other factors that would have caused the Appellants' business to fall.

[35] While detailing the 4th respondent's action with regard to the Appellants motor vehicle business, the Appellants faulted the Court of Appeal for failing to properly appraise the evidence tendered which would have led to the

uncontroverted conclusion that the cumulative effect of the respondents' unlawful actions caused losses to their business. Citing the case of ***Kennedy Masinde v Ann Wanja,*** Civil Suit No. 431 of 2016; [2017] eKLR, they submitted that having proved the respondents' caused their business to incur immense loss, the superior courts below erred in failing to apportion liability and award them the requisite compensation.

[36] Citing this Court's decision in ***Gladys Boss Shollei v Judicial Service Commission & Another,*** SC Pet No. 34 of 2014; 2022] KESC 5 (KLR) the Appellants faulted the Court of Appeal for upholding the High Court on different grounds from those proffered by the High Court.

[37] The Appellants also submitted that given the Court of Appeal's finding that the losses could not be attributed solely to respondents' action, it ought to have apportioned liability. In support they cited the case of ***Kenneth Stanley Njindo Matiba v Attorney General***, Pet. No. 94 of 2014; [2017] eKLR.

[38] On the assessment of the general damages awarded, the Appellants submitted that a court is enjoined to consider the gravity, extent, nature and immensity of harm caused by a violation of rights. Citing the case of ***Wamwere & 5 Others v Attorney General***, SC Petition 26, 34 & 35 of 2019 (Consolidated); [2023] KESC 3 (KLR), they acknowledged that the purpose of remedies in constitutional violations is to assert the right as opposed to compensating the victim. The Appellants submitted that the award by the High Court was too low and faulted the superior courts below for not considering the precedents they shared/filed.

[39] The Appellants submitted that they filed a claim which highlighted the different causes of action and different reliefs. They faulted the Court of Appeal for failing to correct the ambiguous award made by the High Court despite acknowledging that the claim was filed by 2 distinct persons. They also submitted that the Court of Appeal erred in holding that the 2nd Appellant was no longer in

existence since that conclusion allegedly did not stem from the evidence adduced by the parties. Therefore, the Appellants argued, that the Court of Appeal did not interpret the Constitution in a manner that promoted its values, principles and purposes. They urged the Court to uphold the petition of appeal.

ii. The Respondents' Submissions

[40] The respondents filed their submissions dated 16th January 2023 and filed on 18th January 2024. They submitted that ***C.M.CR.C. No. 188 of 2011***, was filed in good faith and after due process. It was terminated shortly thereafter following the ruling in ***JR No. 7 of 2011*** and therefore, the Appellants rights were not violated.

[41] The respondents reiterated the guidelines a Court should consider when awarding remedies, that is vindication of the claimants' rights and the court's powers, use of legitimate means and fairness. Relying on the case of ***Reuben Njuguna Gachukia & Another v Inspector General of the National Police Service & 4 Others,*** Constitutional Petition No. 436 of 2017; [2019] eKLR**,** they reiterated that an award of damages for constitutional violations are reliefs under public law remedies and are within the trial court's discretion. They submitted that the award of Ksh.3,000,000/= was just and fair in the circumstances and having failed to separately plead for the amount, the Appellants could not raise it in the appeal.

[42] The respondents submitted that the Appellants failed to establish a correlation between the downward trajectory of the 2nd Appellant's sales in 2011 and the 1st Appellants arrest contrary to Section 107(1) of the Evidence Act, Cap 80 of the Laws of Kenya. They were therefore not entitled to the claim for damages amounting to Kshs.28,113,722/=.

E. ISSUES FOR DETERMINATION

[43] It is important to note that in their submissions, the Appellants refer to ***C.M.CR.C. Nos. 188 of 2011 and 977 of 2011***. They allege that the respondents quickly instituted ***C.M.CR.C. No. 977 of 2011*** after the High Court issued orders prohibiting further prosecution of that matter. Notably, the suit before the High Court pertained to ***C.M.CR.C. No. 188 of 2011*** only. It follows, therefore, that having failed to raise the issue of the ***C.M.CR.C. No. 977 of 2011***, before the superior courts below, the Appellants cannot bring it up now for determination before this Court. For that reason, we decline to hear any submission with regard to ***C.M.CR.C. No. 977 of 2011.***

[44] Upon hearing the submissions by the parties and upon perusal of the record of appeal, the following issues have crystallized for determination by this Court:

i) Whether the superior courts below failed to consider and pronounce themselves on all the reliefs sought, and if so

ii) Whether the 1st Appellant's right to dignity and not to be subjected to physiological torture under Articles 28 and 29(d) of the Constitution was violated by the respondents

iii) Whether the Appellants established loss of business/income by the 2nd Appellant and if so, whether it is attributable to the respondents?

iv) Whether the Court should review the quantum of damages issued or apportion the general damages between the Appellants.

F. ANALYSIS

i) Whether the superior courts below failed to consider and pronounce themselves on all the reliefs and/or orders sought

[47] The Appellants submitted that both superior courts below failed to address themselves to a prayer for declaration that the filing of charges in ***C.M.CR.C. No. 188 of 2011*** against the 1st Appellant was illegal, arbitrary, unlawful, capricious, malicious, an abuse of power/authority and a violation of the 1st Appellant's right

to dignity. Further that the institution of that case subjected him to psychological torture.

[48] We have looked at the Judgments of the two courts below and found that indeed, that despite being raised as a ground of appeal, this prayer was not addressed. In the case of ***Dhanjal Investments Limited v Kenindia Assurance Company Limited,*** SC Pet. No. 7 of 2016; [2018] eKLR, where this Court faced a similar argument, in which the Court of Appeal failed to address the merits of the grounds of affirmation, we had the following to say:

> ***"[61] In our assessment of the Court of Appeal's decision, we have not come across any reference to the notice of the grounds of affirmation or the contents therein. This may be so because the High Court decision related to the legality and procedure of the appointment of the arbitrator whereas the Court of Appeal decision faulted that appointment. It was therefore unnecessary in the Court of Appeal's view for it to engage in analyzing a consequence founded on an unlawful action.***
>
> ***[62] While the above position was convenient to the Court of Appeal, it was prudent for it to specifically address the grounds and make a finding on each of them even if to dismiss them later or find that there was no need to consider them in light of its findings …" [Emphasis ours]***

We thus held that failure to consider the notice of grounds of affirmation rendered the issue undetermined and therefore leaving the litigants in a state of uncertainty. It therefore follows that this Court ought to consider the grounds that the superior Courts below did not address, and we shall consider the said prayer and make a determination on it.

(ii) Whether the 1st Appellant's right to dignity and not to be subjected to physiological torture under Articles 28 and 29(d) of the Constitution was violated by the respondents.

[51] Notably, none of the parties submitted on the peculiar aspects of the trajectory of the criminal proceedings, that is how long it took, the amount of bail imposed, any challenges in raising the bail, or whether the proceedings were stopped on account of the pending ***JR case***. The 1st Appellant only stated that he was incarcerated for one day and that he shuttled from Mombasa to Nakuru over a long period of time to attend to the criminal case. That fact notwithstanding, the *Prevention of Torture Act*, Cap. 88 of the Laws of Kenya was enacted to give effect to Articles 25(a) and 29(d) of the Constitution and the principles of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Section 4 of the said Act defines torture as:

> ***"4. For the purposes of this Act, "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person-***
>
> ***[a] for the purposes of-***
>
> ***[i] obtaining information or a confession from him or her or any other person;***
>
> ***[ii] punishing him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or***
>
> ***[iii] intimidating or coercing him or her or any other person to do, or to refrain from doing, anything; or***
>
> ***[b] for any reason based on discrimination of any kind.***

when such pain or suffering is inflicted by or at the instigation of, or with the consent of acquiescence of a public officer or a person acting on behalf of a public officer, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Clause 2 of the Schedule to the Act lays out instances that may be classified as mental or psychological torture.

[52] The definition above is similar to the one adopted by the Constitutional Court of South Africa in the case of ***Sonke Gender Justice NPC v President of the Republic of South Africa and Others (CCT307/19) [2020] ZACC 26, 2021 (3) BCLR 269 (CC) (4 December 2020),*** in the following terms:

"It is increasingly acknowledged that the definition of "torture" does not stop at physical suffering. Psychological torture has been interpreted to include all methods, techniques and circumstances which are intended, foreseen or designed to inflict severe mental suffering, even absent physical pain. This includes, for example, isolation, the induction of anxiety through misinformation and violent threats against the incarcerated person or their family, the manipulation of cultural phobia, the withdrawal of access to privileges such as bedding or reading material, the imposition of contradictory or absurd rules, public humiliation and constant surveillance."

[53] Similarly, the Inter-American Court of Human Rights in the case of ***Buenos-Alves v Argentina,*** in discussing the question of torture, held that the elements of torture are: 1) an intentional act; 2) which causes severe physical or mental suffering; and 3) committed with a given purpose or aim.

[54] In ***Monica Wangu Wamwere & 5 Others,*** SC Petition No. 26 of 2019 (as consolidated with Petitions Nos. 34 & 35 of 2019)**,** this Court went into great detail to discuss the definition of torture, what would constitute psychological torture and the parameters thereof. Notably, we held that:

> ***"[82] ...Therefore, the 'essential elements' of what constitutes torture can be identified from Article 1 of "CAT" include: a) the infliction of severe mental or physical pain or suffering; and b) for a specific purpose, such as gaining information, punishment or intimidation.***
>
> ***....***
>
> ***[84] It is evident that the exact boundaries between 'torture' and other forms of 'inhuman or degrading treatment punishment or other treatment' are often difficult to identify; and may depend on the particular circumstances of the case as well as the characteristics of the particular victim. Nonetheless, both terms cover mental and physical ill-treatment that has been intentionally inflicted by or with the consent or acquiescence of state authorities.'***
>
> ***"61. Every human being has the inherent need for communal trust. Confronted with the overwhelming power of the State, individuals must be able to compensate for their own powerlessness by relying on the community's ability and willingness to exercise self-restraint, most notably through adherence to the rule of law and the principles of due process. <u>As long as administrative or judicial error, negligence or arbitrariness can be effectively, if at times imperfectly, addressed and corrected through a regular system of institutional complaints and remedies, the resulting</u>***

inconveniences, injustices and frustrations may have to be tolerated as an inevitable side effect of the constitutional processes that govern democratic societies. [Emphasis ours]

Therefore, where the systems fail to adequately address and check such violations, an individual may indeed suffer severe mental suffering and trauma.

[58] We take judicial notice of the fact that various issues can affect one psychologically, for instance, family matters, divorce, bereavement, work, lawsuits and so forth. It however is upon a litigant pleading psychological torture to establish in exact terms, how and when they suffered such. Consequently, the 1st Appellant needed to establish what particular elements caused him psychological torture. It is expected that litigation in itself would invariably affect a party psychologically, the seriousness thereof however, would depend on a myriad of factors. It is not enough to merely state that the 1st Appellant shuttled between Nakuru and Mombasa to attend his trial, suffered anguish, despair and economic stress. In the circumstances, we are not convinced that the Appellants have met the parameters set out elsewhere herein, and we find that the Appellants have not established that the 1st Appellant suffered psychological torture.

[61] Further, we note that the prayer that was not considered by the superior Courts below, reads as follows:

"c) A declaration that the institution of CRIMINAL CASE NO. 188 of 2011 against the 1st plaintiff was illegal, arbitrary, unlawful, capricious, malicious, and an abuse of power and/or authority and the 1st plaintiff's right to dignity and not to be subjected to psychological torture guaranteed and protected under Articles 28 and 29(d) of the Constitution have been violated by the respondents."

[62] As rightly noted by the High Court (*Ouko, J (as he then was)* in ***JR No. 7 of 2011,*** the Director of Public Prosecutions is tasked and mandated by the Constitution under Article 157 of the Constitution to perform his functions in the following terms:

> ***[6] The Director of Public Prosecutions shall exercise State powers of prosecution and may-***
>
> > ***[a] institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;***
> >
> > ***[b] take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and***
> >
> > ***[c] subject to clause [7] and [8] discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph [b].***

[63] The Director of Public Prosecutions was and still is not a party to the proceedings before the superior courts below. The Court in the ***JR Case No. 7 of 2011*** stated that it could not issue orders of prohibition to stop the prosecution because the Director of Public Prosecutions is the only body vested with prosecutorial powers and they were not parties to the suit. We agree with the fact that the Constitution of Kenya, 2010, birthed the Director of Public Prosecutions which is vested with prosecutorial powers which includes instituting and undertaking criminal proceedings. Sections 57(1) and (2) (a) and (b) of the Office

of the Director of Public Prosecutions Act, Cap 6B of the Laws of Kenya, provide that all prosecutions, appeals, revisions and other proceedings, service of documents in connection with criminal proceedings shall be deemed to have done in the name of the ODPP. This means that for all intents and purposes, ***C.M.CR.C. No. 188 of 2011*** was instituted by the DPP.

[64] It would have been prudent for the Appellants to amend their pleadings and include the DPP as a party to this matter for regularity. In the circumstances, to award the Appellants damages for the violation of their rights under Articles 28 and 29[d] of the Constitution on account of the institution of ***C.M.CR.C. No. 188 of 2011***, would translate to condemning the Director of Public Prosecutions unheard, which goes against the principles of natural justice. While it is indeed evident that the Appellants sued the Attorney General, that was insufficient in view of the separate and distinct constitutional mandate of the Director of Public Prosecutions and the Attorney General. For the foregoing reasons, we are not inclined to make any declaration on the alleged violation of Articles 28 and 29(d) of the Constitution.

iii) Whether the Appellants established loss of business/income by the 2nd Appellant and if so, whether it is attributable to the respondents.

[65] The Appellants submitted that they called as a witness, Stanley Invako Mbeche, a Certified Public Accountant of M/s PGN & Partners Certified Public Accountants who produced the 2nd Appellant's audited accounts. According to the evidence produced, the sales dropped from Kshs.54,450,000/= in 2010 to Kshs.12,800,000/= in 2011 hence the claim for Kshs.28,113,722/=. The respondents submitted on the other hand that the downward trend in sales in 2011 did not mean that it was on account of the 1st Appellant's arrest and the Appellants did not produce any evidence in support of their claim.

[66] The learned Judge of the High Court stated that: "**However in my view, other factors affecting businesses cannot be ruled out and losses listed cannot solely be attributed to the defendants (sic) actions."** The Court of Appeal, on its part, held that the claim for Kshs.28,113,772/= was in the nature of special damages which must be strictly proved. The Court of Appeal further held that the evidence adduced by the Appellants did not establish that the low sales in 2011 was solely caused by the respondents' actions. It was also not established that the increased financial costs in the year 2011 were a direct result of the respondents' actions.

[67] We have considered the record and the evidence of PW2, Stanley Invako Mbeche. It would appear that indeed the sales in 2011 were lower than those in 2010. We are nonetheless inclined to agree with the findings of the superior courts below. Special damages must be strictly proved. The 1st Appellant testified that the matter was published in the Nation newspaper and that the 4th respondent damaged his name. In the amended plaint, the Appellants averred that there was wide negative publicity that caused the 1st Appellant's business to drastically decline. However, there was no evidence adduced relating to this. We therefore agree with the findings of superior courts' below that the Appellants failed to establish the nexus between the respondents' actions and the decline in the Appellants' business. Beyond producing the audited accounts, there was nothing that tied the decline in sales to the respondents' actions.

[68] The Appellants further faulted the respondents for failing to adduce evidence that there were other factors that led to the decline in business. It is trite that he who asserts must prove. *See Sections 107-109 of the Evidence Act, Cap 80 of the Laws of Kenya*. Had the Appellants' discharged the burden of proof, then it would have been proper to shift the burden of proof to the respondents and call upon them to prove the existence of other factors that led to the closure of the Appellants' business.

[69] In addition, the Appellants submitted that the respondents admitted that their conduct negatively affected their business. In ***Choitram & Another v Nazari,*** Civil Appeal No. 8 of 1982; [1984] eKLR, the Court of Appeal had this to say with regard to admissions:

> ***" .... admissions can be express or implied either on the pleadings or otherwise, e.g. in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations onto a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admission by analysis. Indeed, there is no other way, and analysis is unavoidable to determine whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties. In considering the matter, the judge must neither become disinclined not lose himself in the jungle of words even when faced with a plaint such as the one in this case..."***

[70] The Appellants quoted the following words in the respondents' submissions in support of the allegation on admission: **"... the trial court sufficiently took into account <u>the conduct of the respondents and the implication they had on the Appellant's business</u> while awarding general damages".**

Applying the foregoing to the instant case, it is obvious that what the Appellants label as an admission is indeed far from one. We therefore reject this argument.

[71] The Appellants also alleged that contrary to this Court's decision in ***Gladys Boss Shollei v Judicial Service Commission & Another,*** SC Pet No. 34 of 2014; [2022] KESC 5 (KLR), the Court of Appeal upheld the High Court's decision on different grounds to those advanced by the High Court. In particular, the Appellants submitted that while the High Court did not attribute the business losses to any specific factor, the Court of Appeal went ahead to give possible reasons. We have considered our decision in the ***Gladys Boss Shollei Case***. In that case, we held that the Court of Appeal erred in formulating its own reasons for upholding the Judicial Service Commission's (JSC) refusal to accord the Appellant a public hearing, which reasons were not those given by the JSC. The facts therein are clearly distinguishable from the present matter. The decision of the JSC was ideally the cause of action in the ***Gladys Boss Shollei Case*** and by proffering its own reasons, it meant that the Court of Appeal was mutating the cause of action. However, in the present case, the Court of Appeal was exercising its jurisdiction as a first appellate court - that is, to consider the issues by reevaluating the evidence adduced in the trial court and arrive at its own conclusions of fact and law, and it could depart from the trial court's findings if the same were not based on the evidence on record or where the trial court proceeded on the wrong principles of law. This line of argument by the Appellants therefore fails.

iv) Whether the Court should interfere with the quantum of damages for the violation of the Appellants' rights

[72] In awarding Kshs.3,000,000/= as damages, the High Court found that the Appellants rights were violated when the respondents seized their motor vehicles without calling upon the Appellants to prove legal possession. However, it also found that the Appellants failed to establish that the respondents' actions solely caused the decline and subsequent closure of their business.

[73] The Court of Appeal on its part held that an award of general damages is an exercise of judicial discretion and outlined the guidelines to be considered in a request to disturb an award of damages. In restating that compensation for violations of constitutional rights is meant to vindicate the right violated, it held that the award was proportional and rational in the circumstances.

[74] In the case of ***Parliamentary Service Commission v Martin Nyaga Wambora & 5 Others,*** SC Application No. 8 of 2017; [2018] eKLR, this Court affirmed the rationale in the case of ***Mbogo & Another v Shah;*** [1968] EA 93 at 96 that ***"...a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been mis-justice."***

[76] We find that the Appellants have failed to establish that there was any misdirection in the exercise of the High Court's discretion to award damages. We therefore decline the invitation to interfere with the damages awarded by the High Court and affirmed by the Court of Appeal.

v) Whether the Court should apportion the general damages between the Appellants.

[77] Evidently, the High Court, awarded the Appellants Kshs.3,000,000/= as damages. The Court of Appeal, on their part, held that whilst the award was ambiguous, the Appellants had not pleaded different causes of action, separate and distinct reliefs. In addition, the Appellant company had long closed down.

[78] We have perused the record and we agree with the Appellants that their claims were easily distinguishable and discernible, from the pleadings right to the

prayers. The Court of Appeal therefore fell into error in finding that the Appellants failed to plead different causes of action and different reliefs.

[79] However, we note that one of the Appellants' grounds of contention is that there was nothing on record to show that the 2nd Appellant was closed down long before the suit at the High Court was concluded. This appears to be the crux of faulting the Court of Appeal's decision. However, the record clearly reflects that the 1st Appellant's testimony, PW2's, Stanley Invako Mbeche, and PW3's testimony, Teresa Njambi who was also the 1st Appellant's wife, spoke to the closure of the 2nd Appellant's business. Further, the 1st Appellant testified before the High Court that the 2nd Appellant was no longer operational. On the other hand, in their oral submissions before this Court, the Appellants stated that the 2nd Appellant was still in existence.

[80] It is however evident that the status of the 2nd Appellant as advanced earlier by the 1st Appellant and his witnesses was that it was no longer operational. Further, it would appear that it closed its business in 2013 or 2014. Having considered the Appellants' counsel's oral submissions that the 2nd Appellant is still in existence, we find that the evidence as relates the 2nd Appellant is at best, unclear and uncertain. In the circumstances, we are not inclined to interfere with the High Court's award. We therefore decline to apportion the damages between the Appellants as prayed.

[81] In the circumstances and for the reasons given above, the appeal is partially successful. In line with our decision in ***Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others,*** SC Petition Application No. 4 of 2012; [2014] eKLR, we are inclined to order that parties bear their own costs.

ORDERS

[82] Consequently, and for the reasons aforesaid, we make the following Orders:

a. ***The Petition dated 30th October 2023 is partially successful only to the extent that the Court of Appeal erred in failing to consider all the grounds of appeal advanced by the Appellants.***
b. ***For the avoidance of doubt, all other prayers in the appeal are dismissed.***
c. ***Each party shall bear its own costs.***
d. ***We hereby direct that the sum of Kshs.6,000/=, deposited as security for costs upon lodging of this appeal, be refunded to the appellants.***

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this **9th** day of **August,** 2024.

.....

M. K. KOOME
CHIEF JUSTICE & PRESIDENT OF
THE SUPREME COURT

.....	.....
M. K. IBRAHIM	**S. C. WANJALA**
JUSTICE OF THE SUPREME COURT	**JUSTICE OF THE SUPREME COURT**
.....	.....
NJOKI NDUNGU	**I. LENAOLA**
JUSTICE OF THE SUPREME COURT	**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original.

REGISTRAR,
SUPREME COURT OF KENYA