



## REPUBLIC OF KENYA

### IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ &P, Mwilu; DCJ & VP, Wanjala, Njoki & Lenaola, SCJJ)

**APPLICATION NO. E022 OF 2025**

—BETWEEN—

**MICRO-CITY COMPUTERS LIMITED.....APPLICANT**

—AND—

**BOARD OF TRUSTEES SOCIAL SECURITY FUND.....RESPONDENT**

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*(Being an application for review of the Ruling of the Court of Appeal at Mombasa (Murgor, Laibuta & Ngenye-Macharia, JJ. A), delivered on 18<sup>th</sup> July 2025 in Civil Application (Sup) No. E045 of 2024 allowing certification and leave to appeal to the Supreme Court)*

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#### **Representation:**

Mr. Mwakisha for the Applicant  
(Moses Mwakisha & Company Advocates)

Ms. Wafula for the Respondent  
(Cootow & Associates Advocates)

### **RULING OF THE COURT**

**[1] UPON PERUSING** the Notice of Motion dated 31<sup>st</sup> July 2025 and filed on 1<sup>st</sup> August 2025, brought under Article 163(4)(b) & (5) of the Constitution, Sections 15(1) and 16(2) of the Supreme Court Act, 2011, seeking *to review the ruling of the SC Application No. E022 of 2025*

*Court of Appeal (Murgor, Laibuta & Ngenye-Macharia, JJ. A) delivered on 18<sup>th</sup> July 2025, certifying the intended appeal to this Court against the judgment of the Court of Appeal delivered on 12<sup>th</sup> April 2024 in Civil Appeal No. 49 of 2020 as consolidated with Civil Appeal No. 59 of 2020, as constituting matters of general public importance; and costs; and*

**[2] UPON EXAMINING** the grounds on the face of the application and the supporting affidavit sworn by *Paul Okolo Ananga* on even date, wherein it is contended that: the Court of Appeal erred in certifying the identified issues as amounting to matters of general public importance; the judgment of the appellate court applied settled principles that special damages must be strictly pleaded and proved; parties are bound by their pleadings; the amendment to pleadings was done with leave of court and did not introduce new or higher damages but only itemized the components as pleaded in the original claim; the appellate court's finding that the award for loss of anticipated profits was speculative and therefore erroneous; and

**[3] UPON FURTHER EXAMINING** the questions of general public importance identified by the respondent, to wit: *whether anticipated profits are exempted from the standard of proof in special damage claims, particularly the legal principle that a special damage claim must be strictly proved; whether the failure of a party in a special damage claim to plead the particulars of special damages can be rectified through amendment of pleadings after tendering evidence and the suit cured through the doctrine of relation back; and whether the evidence of an expert witness can only be challenged by that of another expert witness; and*

**[4] UPON CONSIDERING** the applicant's submissions dated 31<sup>st</sup> July 2025, restating the grounds set out in the affidavit and urging that, there is no general point of public interest and no substantial point of law that transcends the dispute between the parties herein, (citing *Chunilal & Mehta & Sons Limited Vs*

**Century SPG & Manufacturing Co. Limited** 1962 AIR 1314, 1962 SCR Supl (3) 549; in support thereof); and

[5] **FURTHER NOTING** the respondent's replying affidavit sworn by *Kellen Njue* on 8<sup>th</sup> August 2025, and submissions of even date, to the effect that; the intended appeal raises three issues of general public importance *to wit*: the requirement for strict proof of special damages; the legal requirement that the particulars of special damages must be pleaded; and finally, the issue of expert opinion and the weight placed on cross-examination; and

[6] **BEARING IN MIND** the facts which precipitated the dispute following a claim for breach of contract, the subject of the intended appeal; and the Judgment of the High Court (*P. J. Otieno, J.*) wherein the court held that the respondent had unlawfully terminated a valid contract, to the detriment of the applicant, as a result of which it awarded the latter general and special damages; and

[7] **NOTING** the appeals before the Court of Appeal, (*Nyamweya & Odunga JJ. A, Gatembu, JA.* Dissenting) wherein the applicant challenged the trial court's failure to uphold its claim for loss of profits, while the respondent faulted the trial court's reliance on a further amended plaint without supporting evidence, to award Kshs. 10,000,000/- in general damages and Kshs. 6,056,378/- in special damages to the applicant; and

[8] **GUIDED** by the principles enunciated by this Court in ***Steyn Vs Ruscone*** [2013] KESC 11 (KLR) and ***Bell Vs Moi & another*** [2013] KESC 23 (KLR) that:

***"...for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest..."***

***where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest...***” and;

**[9] HAVING CONSIDERED** the decisions of the superior courts below, totality of the pleadings, affidavits, and rival arguments by the parties, **WE OPINE** as follows:

- i. Whereas the respondent identified three issues for certification as matters of general public importance, the Court of Appeal only certified two, i.e.:
  1. *Whether the appellate court departed from the settled principle that special damages must be specifically pleaded and strictly proved, and*
  2. *What is the applicable scope and evidentiary standard of proof for awarding anticipated profits as special damages for breach of contract.*
- ii. We note that the amendment of pleadings by the applicant was done with leave of the trial court, and did not derogate from the requirement that special damages be specifically pleaded. The amendment merely aligned the pleadings with evidence already on record, itemized a global sum into distinct heads, introduced no new facts, and caused no prejudice to the respondent who had fully participated in the proceedings and cross-examined the relevant witnesses. Crucially, the respondent never filed a Notice of Appeal against that ruling, and having failed to trigger the appellate jurisdiction at the appropriate stage, it was precluded from reopening the issue before the Court of Appeal or this Court.
- iii. We further note that the majority judgment of the Court of Appeal (*Nyamweya & Odunga JJ. A*) did not depart from the settled standard

of proof of special damages. In its judgment of 12<sup>th</sup> April 2024, the appellate court reaffirmed the principle that special damages, including anticipated profits, must be strictly proved, with flexibility limited to the modes of proof employed. The issue as to whether special damages have to be specifically and strictly proved, has long been settled by the courts. We therefore, see no aspect of this principle that would require the further input of this Court.

- iv. Regarding the aspect of *anticipated profits* as being a limb for which special damages may be awarded, we are in agreement with the Court of Appeal that, this still remains a vexed question. Indeed, this matter raises a substantial question of law, the determination of which, will have a significant bearing on the public interest.

[10] **ACCORDINGLY**, we admit the intended appeal on the basis of the following issue only :

***“What is the applicable scope and evidentiary standard of proof, for awarding anticipated profits as special damages for breach of contract?.”***

[11] **ULTIMATELY**, we make the following orders:

- i) The Motion dated 31<sup>st</sup> July 2025 and filed on 1<sup>st</sup> August 2025 is hereby dismissed.***
- ii) The Ruling of the Court of Appeal delivered on 18<sup>th</sup> July 2025, allowing leave to appeal to this Court, is hereby partially affirmed.***
- iii) Each party shall bear its own Costs.***

It is so ordered.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> Day of January, 2026.**

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

.....  
**P. M. MWILU**  
**DEPUTY CHIEF JUSTICE &**  
**VICE PRESIDENT OF**  
**THE SUPREME COURT**

.....  
**S. C. WANJALA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

.....  
**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

**REGISTRAR,**  
**SUPREME COURT OF KENYA**