



Mbeva (Suing as the Personal Representative of the Estate of Richard Mutuku Kalii - Deceased) v Wambua & another (Civil Appeal E503 of 2021) [2023] KEHC 26466 (KLR) (Civ) (23 November 2023) (Directions)

Neutral citation: [2023] KEHC 26466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E503 OF 2021

DO CHEPKWONY, J

NOVEMBER 23, 2023

BETWEEN

TABITHA NUNDU MBEVA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARD MUTUKU KALII - DECEASED) .. APPELLANT

AND

JOSEPH WAMBUA 1ST RESPONDENT

SINOHYDRO CORPORATION LIMITED 2ND RESPONDENT

(Being an Appeal against the Judgment and Decree of the Honourable Chief Magistrate L. L Gicheha (Mrs) delivered on 30th July, 2021 in Milimani Civil Suit No.11297 of 2018)

DIRECTIONS

1. The matter came up before court for directions on who bears the costs of the suit herein. This is following a request by the advocate for the Appellant through the Deputy Registrar, Civil Division, Milimani High Court vide a letter to the Deputy Registrar, Kiambu High Court dated September 20, 2023.
2. Consequently, I have read through the Judgment delivered by this court on 24th March, 2023 and in the last Paragraph, I note it inadvertently reads as follows:-

“ Each party to bear its own. The Appellant shall also have costs of this appeal”.
3. Notably, the above was an inadvertent typographical error which escaped the eyes of the court when signing the final copy of the Judgment (could blame it on pressure of work). However, under the simple



rule as provided for under section 99 of the Civil Procedure Act, the court is allowed to correct such errors.

4. The general rule is that unless for other reasons, a successful party is to be awarded costs following the rider that costs follow the event. In his case, it will be noted that the appeal partially succeeded with the Appellant succeeding in persuading the court on revising the award on Fatal Accident act whilst the respondent succeeded in persuading court on the other award on pain and suffering as awarded by the trial court.
5. Under those circumstances, the court intended that each party bears its own costs for a partially successful appeal and an award of costs for the primary suit to be maintained as directed by the trial court.
6. In that regard, Paragraph 32 of the Judgment dated March 24, 2023 is substituted pursuant to section 99 of the Civil Procedure Act with the following order:-
 32. “Each party to bear its own costs of the appeal. The respondent to bear the costs awarded to the appellant in the primary suit by the trial court.”

It is so ordered.

DIRECTIONS/RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF NOVEMBER 2023.

D.O CHEPKWONY

JUDGE

In the presence of:-

Mr. Mwangi counsel for Appellant

M/s Anne Kimani for Respondent

Court Assistant – Martin

