

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 418 OF 2011

WANJIRU NG'ANG'A & PATRICK WANYOIKE NG'ANG'A (SUING ON THEIR OWN BEHALF AND AS THE ADMINISTRATORS OF THE ESTATES OF THE LATE MICHAEL NG'ANG'A WANYOIKE)... APPELLANTS

VERSUS

PAUL KINUTHIA MUNGAI

RESPONDENT

RULING

1. The Appellant herein, took out the motion dated 9th August 2015 in which she sought for this court's direction as to the costs of the suit. The motion is supported by the affidavit of James Ndungu, learned advocate for the Appellant. When served, the Respondent filed the replying affidavit of Mutembei Marete, learned advocate to oppose the motion.
2. When the motion came up for interpartes hearing, learned advocates appearing in the matter urged this court to consider the material placed before it and come up with a decision. I have considered the grounds set out on the face of the motion plus the affidavits filed in support and against the application. The Appellant has urged this court to award her costs of the suit since she was a successful litigant. It pointed out that the trial court had proposed to give costs of the suit to the plaintiff (Appellant) if she was successful. The Respondent is of the view that this court had made an order directing each party to meet its own costs hence the motion is misplaced and lacks merit.
3. The history behind this motion is short and straight forward. The Appellants herein, in their capacity as the legal representative of the estate of Michael Ng'ang'a Wanyoike, deceased filed a compensatory suit for the fatal injuries the deceased suffered as a result of a road traffic accident involving the Respondent's motor vehicle. The suit was heard before the Resident Magistrate's court, Gatundu. The Resident Magistrate's court dismissed the suit prompting the Appellants to prefer this appeal. The learned trial Resident Magistrate gave the quantum he would have awarded had the suit succeeded as enjoined by law to do so. Costs was also awarded to the Appellants.
4. On appeal the Appellants appeal partially succeeded in that they got judgement on liability apportioned at 50%. This court was silent on the question of costs. There is no doubt that the Appellants are successful litigants save that they will shoulder 50% liability. Pursuant to the provisions of Section 27 of the Civil Procedure Act, they are entitled to costs since costs follow the event.
5. Pursuant to the provisions of Sections 99 and 100 of the Civil Procedure Act, I apply the slip rule and award the Appellants costs of the suit based on the amount already subjected to the 50% liability.

Dated, Signed and Delivered in open court this 11th day of December, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellants

.....for the Respondent