



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO 536 OF 2006

SINDANI WASWA BONZEMO

(suing as personal representative of

ANN K N SINDANI, Deceased).....PLAINTIFF

VERSUS

1. AL-MALIK BROTHERS MOTORS LTD
2. STEPHEN NGUNGU WANYOIKE
3. SAMUEL MBURU GATORO.....DEFENDANTS

RULING

1. In this case the Plaintiff sought damages (under the **Law Reform Act, Cap. 26** and the **Fatal Accidents Act, Cap 32**), costs and interest.

2. In a **judgment dated and delivered on 28th May 2009** the Court (Ali-Aroni, J) awarded the Plaintiff a total of KShs 3,726,470/00 in damages. The judgment is totally silent on issues of costs and interest.

3. The Plaintiff subsequently applied by **notice of motion dated 8th February 2012** for an order to review the judgment in order to make appropriate orders with regard to costs of the suit and interest. The application is opposed by the 2nd and 3rd Defendants by grounds of opposition dated 28th March 2012). Those grounds are –

- (i) That the application has been made with inordinate delay which has not been properly explained.
- (ii) That the Plaintiff's advocates should have been more vigilant.
- (iii) That it is in the interests of justice that the application be refused.

4. I have considered the submissions of the learned counsels appearing. I have also perused the judgment.

6. It is quite clear that the issues of costs and interest completely escaped the learned Judge's mind. She did not consider and deny them. They were simply not addressed!

7. Learned counsels for both sides themselves had at one time proceeded upon the basis that costs had been awarded, and the Plaintiff's costs had been taxed *inter partes* before they realized that the judgment was devoid of the issue of costs.

8. I am satisfied that failure to address the twin issues of costs and interest in the judgment was an accidental omission capable of correction under **section 99** of the **Civil Procedure Act, Cap. 21** (the **Act**) under which the Plaintiff would have applied. The omission is also capable of correction by way of review under **Order 45** of the **Civil Procedure Rules** as applied as there is a sufficient reason to grant the order sought.

9. The Plaintiff fully succeeded in her suit. Under **section 27(1)** of the Act costs are at the discretion of the Court; but they must follow the event unless the court shall for good reason otherwise order.

10. Had the issue not escaped the learned trial Judge's mind, I have no doubt at all that she would have awarded costs of the suit to the Plaintiff. Likewise, she no doubt would have awarded interest.

11. I will therefore allow the application. The judgment dated and delivered on 28th May 2009 is hereby reviewed in order to address the issues of costs and interests as follows –

(i) **Costs of the suit are awarded to the Plaintiff plus interest thereon at court rates from the date of filing suit.**

(ii) **There will be interest at court rates on the general damages awarded from the date of judgment until payment. There will be similar interest on the special damages awarded, but from the date of filing suit.**

12. There will be no order as to costs of this application.

13. Those will be the orders of the Court.

DATED AND SIGNED AT NAIROBI THIS 26th DAY OF NOVEMBER 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 29TH DAY OF NOVEMBER 2013