



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**CIVIL APPEAL NO. 101 OF 2014**

**JOSEPH M. MAFUNGA.....PLAINTIFF**

**VERSUS**

**CHABADIYA ENTERPRISES LTD.....DEFENDANT**

*(An Appeal from Ruling in original Bungoma CM Civil Suit 9 of 2014*

*delivered on 16/12/2014 By Hon. L.A. OLEL (RM)*

**R U L I N G**

This is an application dated 20/5/2019 by the **CHABADIYA ENTERPRISES LTD** the Respondent in the appeal seeking orders:

That the Judgment and orders of **Hon. Lady Justice Abida Aroni** made on 12/10/2012 be reviewed, varied, or interpreted”.

The brief history of this matter is that **Joseph Mulati Mafunga** filed a suit in Bungoma Chief Magistrate’s Court Civil Case 9/2014 seeking general damages for pain and suffering from injuries sustained in the Respondents workplace where he was employed as a worker. The trial Court **Hon. Olel Resident Magistrate** dismissed the said on 16/12/2014 with an order that each party to bear their own costs.

Dissatisfied with the dismissal of the suit, then Joseph the applicant appealed to the High Court in Bungoma High Court Civil Appeal 101/2014 and by Judgment delivered by **Aroni Judge** on 12/12/2017 in Paragraph 15 of the Judgment stated:

***“The upshot is that the appeal succeeds on the following terms;***

<b>1. General damages</b>	<b><i>Kshs.80,000/-</i></b>
<b>2. Specials</b>	<b><i>Kshs.5,300/-</i></b>
	<b><i>Kshs.85,300/-</i></b>
<b>Less 30% contribution</b>	<b><i>Kshs.25,590/-</i></b>
<b>Total payable</b>	<b><i>Kshs.59,710/=</i></b>
<b>Costs to the Appellant</b>	

**Dated and Delivered at Bungoma this 12<sup>th</sup> day of October, 2017”.**

The respondent submits that the **Aroni Judge** awarded costs, which only related to the costs on appeal. He submits that the appellant’s prayer for costs of the trial Court is erroneous and that this Court should interpret **Hon. Justice Aroni’s** decision on costs as to whether in relation to the costs of appeal only or on both appeal and lower Court.

Mr. Bw’Onchiri for Respondent/Appellant submits that costs follow the event and as the appellant was awarded costs the costs awarded would cover both the trial Court and appeal Court.

There is no doubt that the appellant filed an appeal in the High Court against the Judgment and decree of the trial Court. The extracted decree annexed to the Record of appeal states;

***“DECREE***

***CLAIM***

- (a) General damages for pain, suffering and loss of amenities.***
- (b) Loss of actual earnings to the date of trial and loss of future earning capacity.***
- (c) Special damages of Kshs 8,300/=.***
- (d) Costs and interest.***
- (e) Any other further relief this Honorable Court deems just to grant.***

This matter coming up for judgment on the 16<sup>th</sup> day of December 2014 before Hon. L. OLEL in the presence of Mr. Masinde for the defendant.

***IT IS HEREBY ORDERED AN DDECREED AS FOLLOWS:***

- i. That this suit hereby dismissed with each party to bear their own costs.”***

My understanding is that the appellant having been dissatisfied with the judgment and decree he appealed against the whole Judgment which included the issue of costs. The Honourable Judge awarded costs to the appellant. As costs follow the event, the award of costs in the appeal would also include costs in the lower Court. I therefore find that the applicant was allowed costs for both appeal and the Court Chief Magistrate’s Civil Case 9/2014.

I therefore find no merit in the application which is hereby dismissed with costs.

**Dated at Bungoma this 6<sup>th</sup> day of February, 2020.**

**S. N. RIECHI**

**JUDGE**