



REPUBLIC OF KENYA



**Cheruiyot v AIC Litein Cottage Hospital (Civil Appeal E001 of 2023)
[2025] KEHC 16323 (KLR) (12 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E001 OF 2023
JK NG'ARNG'AR, J
NOVEMBER 12, 2025**

BETWEEN

PRISCILLA CHERUIYOT APPLICANT

AND

AIC LITEIN COTTAGE HOSPITAL RESPONDENT

JUDGMENT

1. The Applicant filed a Notice of Motion Application dated 22nd July 2025 seeking this court's direction on payment of costs. The Application was brought under section 3A of the *Civil Procedure Act*. The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Priscilla Cheruiyot sworn on 22nd July 2025.

The Applicant's case.

2. The Applicant stated that she was the Plaintiff in the trial court and the Judgment in the trial court was delivered on 29th December 2022. That the Judgment of this court on appeal did not set aside the trial court Judgment as it only reduced the award from Kshs 1,076,540/= to Kshs 500,000/= as general damages and Kshs 176,540/= as special damages.
3. It was the Applicant's case that the trial court granted costs and interest. That the Judgment from this court did not direct payment of costs. It was the Applicant's case that the Appellant/Respondent did not dispute the issue of costs.
4. Through her written submissions dated 17th September 2025, the Applicant submitted that she was partially successful in the Appeal. That even though quantum was reduced on appeal, liability was affirmed. The Applicant further submitted that she was entitled to at least a third of the costs of appeal and the costs of the lower court remain undisturbed. She relied on section 27 of the *Civil Procedure Act* and Farah Awad Gullet VS CMC Motors Group Ltd (2018) eKLR.



5. It was the Applicant's submission that the court's discretion in awarding costs should be exercised judiciously and based on legal principles. That costs follow the event.

Response

6. The Respondent filed a Replying Affidavit sworn by Richard Koech on 25th August 2025 and stated that this court reduced the trial court award and did not address itself on the issue of costs but stated that the Appeal had succeeded. That litigation must come to an end. The Respondent further stated that the Applicant was engaging in litigation overreach and it amounted to abuse of the court process.
7. It was the Respondent's further case that the Application did not meet the threshold of Review under section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. That the Applicant was inviting this court to sit on an Appeal of its own Judgement.
8. At the time of writing this Ruling, the Respondent had not filed its written submissions.
9. I have gone through and considered the Notice of Motion Application dated 22nd July 2025, the Replying Affidavit dated 25th August 2025 and the Applicants' written submissions dated 17th September 2025. The only issue for my determination was whether the Application has merit.
10. The issue of costs is governed by section 27 (1) of the *Civil Procedure Act* which provides: -

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

11. The Supreme Court of Kenya in *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR) held: -

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.....

..... Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.” (Emphasis mine)



12. Further, in *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR), the Court of Appeal held: -

“.....it is our finding that the position in law is that costs are at the discretion of the court seized of the matter with the usual caveat being that such a discretion should be exercised judiciously, meaning, without caprice or whim and on sound reasoning (see *Githiaka versus Nduriri* [2004] 2KLR). Secondly that a Court can only withhold costs either partially or wholly from a successful party for good cause to be shown.”

13. In the present case, the Respondent was successful in its Appeal dated 10th January 2023 when the award on general damages was reduced from Kshs 1,076,540/= to Kshs 500,000/=. In its Judgement dated 20th February 2025, this court did not address itself on the issue of costs and this is what prompted the present Application.

14. As illustrated above by statute and the authorities above, this court has discretion in awarding costs and it takes into account the circumstances of each case when doing so.

15. After considering the circumstances of the trial court case, the Appeal and the present Application, I hereby make the following orders: -

- i. The costs in the trial court shall remain as awarded by the trial court.
- ii. Each party shall bear their own costs in the Appeal.
- iii. Each party shall bear their costs in this Application.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 12TH DAY OF NOVEMBER, 2025.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

Langat for the Applicant

Rono for the Respondent

