

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

HCCA NO.E045 OF 2025

BETACARE HOSPITAL APPLICANT

VERSUS

ALICE KWAMBOKA RESPONDENT

(Being an Appeal against the Judgment and Decree of the Principal Magistrate's Court at Githunguri in Civil Suit No.E008 of 2024 delivered on 6th March, 2025 by Hon. P. Muholi (PM))

RULING

1. On 29th September, 2025, the Applicant's counsel informed court that they had filed a **Notice of Withdrawal** seeking to withdraw the application dated 16th May, 2025 with no orders as to costs. However, while not opposed to the application for withdrawal of application, the Respondent's counsel urged that the court grants them costs given that he had filed a **Notice of Appointment and Grounds of Opposition**. In rejoinder, the Appellant/Applicant's counsel stated that the said application was filed without instructions hence granting costs would amount to punishing him for actions taken by the previous advocates. He thus prays for court's leniency on the issue of costs.

2. To determine whether or not the Respondent is entitled to costs pursuant to the application by Applicant/Appellant's counsel to have the application withdrawn, it is clear that the Appellant was first represented by **M/S H. Kago Advocate** who filed **Memorandum of Appeal and Notice of Motion** application dated 16th May, 2025. Immediately after this, the Appellant filed a **Notice of Change of Advocates** dated 20th May, 2025 and appointed **M/S Omore and Otieno Associates Advocates**. The Respondent filed **Grounds of Opposition** dated 26th May, 2025 on the basis that a similar application had been filed in **HCCCMISC. No.E071 of 2025** between the same parties which then led to the filing of the subject Notice of Withdrawal of the application by the Appellant.
3. Looking at the matter, the court notes that the **Notice of Withdrawal** was filed barely two (2) months into the filing of the suit and only Grounds of Opposition had been filed. In view of this, this Court in exercise of its discretion, and in the interest of justice, having noted the change of advocates, finds it would be unfair to penalize the current advocates for the mistake of the previous advocates. For this reason, the court proceeds to allow the Applicant's application and orders that:-

a) The application dated 16th May, 2025 be and is hereby withdrawn with no orders as to costs.

b) The Appellant to file and serve a Record of Appeal within twenty-one (21) days from the date hereof.

c) Mention on for parties to confirm compliance and take further directions on hearing of the appeal.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 14TH DAY OF NOVEMBER, 2025.**

**D. O. CHEPKWONY
JUDGE**

**In the presence of:
Mr. Odayo Ochieng counsel for the Appellant
Mr. Gatoto counsel for the
Court Assistant – Martin**