



REPUBLIC OF KENYA



KENYA LAW
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**Aosa v Ngacha & another (Civil Appeal E184 of 2023)
[2025] KEHC 11517 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E184 OF 2023
TW OUYA, J
JULY 31, 2025
FORMERLY KIAMBU E148 2023**

BETWEEN

LEVIN TOM AOSA APPELLANT

AND

PETER KANYIRI NGACHA 1ST RESPONDENT

JAMES KIMATA KAMENJU 2ND RESPONDENT

(Being a partial appeal from the judgement of Hon. Wangeci Ngumi, senior Principal Magistrate, in Gatundu SPMCC No. E055 of 2022 dated 22nd May 2022)

RULING

1. Through a Memorandum of Appeal dated 29th May, 2023 the Appellant is for Judgment to be entered as against the Respondents for the following Orders:
 - i. The judgement delivered in Gatundu Spmcc NO. E055 of 2022 be set aside and or varied.
 - ii. The appellant be awarded the costs of the said lower court case.
 - iii. The appellant be awarded the costs of this appeal.
2. The Appellant's claim arose from a road traffic accident which took place on 1st March 2022 involving the Respondents' motor-vehicle KBF 342D Toyota Hiace Matatu whereby, the Appellant being a pedestrian sustained soft tissue injuries.
3. The matter proceeded for trial whereby the Trial Court ruled in favor of the Appellant [then Plaintiff], found the Defendants 100% liable for the aforesaid accident and awarded the Appellant General Damages in the amount of Kshs.70,000 and Special Damages in the amount of Kshs.3,000.



4. The subject appeal is anchored on the following the grounds that the learned trial magistrate proceeded on the wrong principles when declining to award costs of the suit to the successful plaintiff, now appellant, erred in law and in fact by ignoring the principles of law applicable and in misapprehending the applicable law.
5. The appeal was dispensed by way of written submissions. The appellant filed written submissions dated 9th July 2024 through his Counsel and relied on the holding of the Court in the case of Joseph Muchiri Mbugua v Gatimu Ndirangu [2019]. The Respondent did not enter appearance nor resist the subject appeal.
6. The Court is satisfied from the Return of Service on record dated 15th July 2024 that proper service was effected upon the Respondents' Advocates notifying them that the matter was due for mention on 16th September 2024.
7. The appellant averred that the trial magistrate erred in law by declining to award him costs of the suit.
8. The only issue for determination in this Appeal is whether the Appellant was entitled to costs at the trial Court.
9. The law relating to the award of the costs of a suit is set out under Section 27 of the [Civil Procedure Act](#), which stipulates that:

“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.”
10. From the foregoing provision, it is evident that the successful party in a suit is entitled to costs except where special circumstances exist suing against the granting of such Orders, which reasons need to be recorded by the Court.
11. In the Party of Independent Candidates of Kenya v Mutula Kilonzo & 2 others [2013] eKLR, the Court cited with favour the reasoning in Nedbank Swaziland Ltd v Sandile Dlamini No [144/2010] [2013] SZHC30 [2013] as follows:

“It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial judge is given discretion But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, is a rule which should not be departed from without the demonstration of good grounds for doing so.”
12. The Court of Appeal in Farah Awad Gullet v CMC Motors Group Limited [2018] eKLR held as hereunder:

“The law of costs as it is understood by Courts in Kenya, is this, that where a plaintiff comes to enforce a legal right and there has been no misconduct on his part-no omission or neglect, and no vexatious or oppressive conduct is attributed to him, which would induce the Court



to deprive him of his costs- the Court has no discretion and cannot take away the plaintiff's right of costs. If the defendant, however innocently, has infringed a legal right of the plaintiff, the plaintiff is entitled to enforce his legal right and in the absence of any reason such as misconduct, is entitled to the costs of the suit as a matter of course."

13. Similarly, in the case of *Super Marine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR, the Court proclaimed as follows:

"Costs of any action, cause or other matter or issue shall follow the event unless the Court of Judge shall for good reason otherwise order ... Thus, where a trial Court has exercised its discretion on costs, an appellate Court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute "good reason" within the meaning of the rule."

14. Upon a careful inspection of the impugned judgement of the trial Court, it is evident that the trial Court made no order as to costs with no providing explanation whatsoever.

15. The Appellant [then Plaintiff) gave evidence before the trial Court which remained uncontroverted as the Defendants failed to call in any evidence of their own.

16. The Court finds and holds that the trial Court fell into error by not awarding costs to the Appellant who was the successful party in the suit before it and, thus, entitled to costs as stipulated under Section 27 of *Civil Procedure Act*. Further, the trial Court fell misdirected itself by failing to record the reasons [if any) for not granting costs to the Appellant, having found in his favour.

17. The Court hereby proceeds to make the following Final Orders:

- i. The appeal is hereby allowed. Judgement of Trial Court in Gatundu SPMCC No. E055 of 2022 delivered on 22nd May 2022) is set aside.
- ii. The Respondent to bear the Appellant's costs at the trial Court and in respect of the appeal.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 31ST JULY 2025.

HON. T. W. OUYA

JUDGE

