



REPUBLIC OF KENYA



KENYA LAW
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**Wanjiru v Kombo (Civil Appeal E207 of 2023)
[2024] KEHC 7679 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E207 OF 2023**

**H NAMISI, J
JUNE 28, 2024**

BETWEEN

MICHAEL NG' ANG'A WANJIRU APPELLANT

AND

EMMANUEL MAINA KOMBO RESPONDENT

*(Being an Appeal from judgement by Hon. Wangeci Ngumi, SPM
delivered on 15th May 2023 in Gatundu SPMCC No. E51 of 2022)*

JUDGMENT

Introduction

1. The Appellant, being dissatisfied by the judgement of Hon. Wangeci Ngumi, SPM dated May 15, 2022 filed a Memorandum of Appeal dated May 29, 2023 on the following grounds:
 - i. That the learned trial Magistrate proceeded on the wrong principles when declining to award costs of the suit to the successful plaintiff, now Appellant'
 - ii. That the learned trial Magistrate erred in law and in fact in ignoring the prayer for the costs of the suit;
 - iii. That the learned trial Magistrate erred in law and fact by misapprehending the facts;
 - iv. That the learned trial Magistrate erred in law and in fact by misapprehending the applicable law;
2. Directions were given on May 8, 2024 that the appeal would be canvassed by way of written submissions. At the time of preparing this Judgement, only the Appellant's written submissions dated May 8, 2024 were on record.



Brief Facts

3. By Plaintiff dated March 10, 2022, the Appellant instituted proceedings against the Respondent seeking general damages for pain, suffering and loss of amenities, special damages of Kshs 3000, cost of the suit and interest thereon. The cause of action was a road traffic accident that occurred on February 23, 2022 along Thika- Mangu Flyover, involving motor vehicle registration number KCV xxxx in which the Appellant was a passenger.
4. The Respondent entered appearance and filed a Statement of Defence denying liability for the accident.
5. The matter came up for hearing on 6th March 2023, the Appellant adopted his Witness statement dated April 28, 2022 as his evidence in chief. He did not call any other witnesses. The Respondent did not call any witness. Parties filed written submissions.
6. The trial court then entered judgement on May 15, 2023 for the Appellant and against the Respondent in the following terms:
Liability - 100%
General Damages - Kshs 75,000/-
Special Damages - Kshs 3,000/-
Total - Kshs 78,000/-
7. The trial court awarded interest on the damages at court rates from the date of judgment until full payment. The trial court did not address the issue of costs of the suit, which is the basis of this appeal. It is noteworthy that in their submissions in the trial court, neither party submitted on costs.

Issues for Determination

8. I have considered the Memorandum of Appeal, Record of Appeal as well as submissions of the Appellant. The only issue for determination in this appeal is costs in the lower court matter.

Analysis & Determination

9. It is well recognised that costs follow the event. This principle is used for purposes of compensating the successful party for trouble taken in prosecuting or defending a suit. Section 27(1) of the [Civil Procedure Act](#), Cap 21 provides as follows:

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 give all the necessary directions for the purposes aforesaid; and the fact that the court 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 direct.

10. In [Joseph Oduor Anode -vs- Kenya Red Cross Society](#), Nrb HCCC No. 66 of 2009 [2012] eKLR, Odunga, J observed thus:

"...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion



is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

11. In his work, *Judicial Hints on Civil Procedure*, 2nd Ed. (Nairobi; LawAfrica 2011) at page 94, Mr. Justice (Rtd) Kuloba observed:

“Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: *Chamilabs v. Lalji Bhimji and Shamji Jinabhai Patel*, High Court of Kenya, Civil Case No. 1062 of 1973.”

12. The basic rule, therefore, is that the successful party is awarded costs and that this rule should not be departed from without the exercise of good grounds for doing so. The trial court did not address the issue of costs nor did it give reason why the same was not awarded to the successful party. I find that there is no reason or basis for the court to depart from the general rule.

13. The appeal therefore succeeds to that extent. Costs of the suit are awarded at Kshs 45,000/=.

14. The final award is thus:

Liability - 100%

General Damages - Kshs 75,000/-

Special Damages - Kshs 3,000/-

Costs of the suit - Kshs 45,000/-

15. No orders as to the costs of the appeal.

DATED AND DELIVERED AT THIKA THIS 28 DAY OF JUNE 2024.

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

Ms. Munyua for the Appellant

Mr. Njuguna h/b Mr. Kabita for the Respondent

