Notice of Motion to Execute a Medical Negligence Decree Before Costs Taxation

Educational sample 190 | Nairobi

Educational reconstruction from a reported Kenyan judgment. This is newly drafted text, not an original court filing and not a matter handled by our team. Identifying details are replaced with bracketed fields. Verify the facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI CIVIL DIVISION

CAUSE CIVIL SUIT OR APPLICATION NO [correct reference]

[CLAIMANT PLAINTIFF OR APPELLANT] v [RESPONDENT OR DEFENDANT]

NOTICE OF MOTION

1. The Decree Holders apply in the existing suit under section 94 of the Civil Procedure Act for permission to execute the judgment’s principal and any properly decreed interest before the party-and-party costs are ascertained. Untaxed costs are expressly excluded from immediate execution.

2. The supporting affidavit shall identify the authenticated judgment, decree, appeal disposition, unpaid balance and costs-taxation status. The source ruling recorded dismissal of the judgment appeal and no issued appellate stay. The present applicant must prove the actual current position rather than assume that history applies.

3. The grounds are the need for the disabled minor’s continuing care and the prejudice caused by awaiting taxation. The application identifies the actual care evidence and delay. It does not treat a pending review or appeal as automatically equivalent to an operative stay order.

4. Permission to execute before taxation does not dispense with Order 32 rule 6. A separate appropriate application or directions must protect receipt and use of the minor’s money, with security or other safeguards as the Court requires. No unrestricted payment to a next friend is sought.

5. The Applicants seek section 94 permission limited as above, costs of the application and lawful directions. The 2021 source application was allowed; this reconstructed motion is newly drafted and must be supported, served and adapted to the actual judgment, stay and minor-protection position.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

File in the actual existing suit with the authenticated judgment and decree, supporting affidavit, correct rule or section, grounds, precise prayers and service. Verify every current appellate stay. Under section 94 do not execute untaxed costs. Permission to execute does not itself permit unrestricted receipt of a minor money: obtain Order 32 rule 6 directions separately. Protect the minor and obtain Order 32 leave and directions where required. Historical care figures are not present medical advice or prices.

Supporting material schedule: [document date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach only genuine available records and mark missing records accurately.

Source and procedural limits

A mother alleged inadequate labour monitoring and delayed intervention in May 2007. The child suffered birth asphyxia and permanent cerebral palsy requiring extensive care. Liability was fixed at 90% against the defendants by consent in July 2015; the remaining hearing assessed damages. Medical reports, the mother's evidence and future-care estimates were considered. The second adult plaintiff did not testify.

The Court awarded KSh 60,791,198 before a 10% deduction, producing the stated judgment total KSh 54,712,078 jointly and severally, plus costs and interest. It used a 40-year rather than requested 50-year multiplier for several care heads, and twenty school years. In the 24 March 2021 ruling PKM & another v Nairobi Women's Hospital & another, the Court allowed execution before costs taxation under section 94, recording that the liability judgment appeal had been dismissed in November 2020. Receiving the minor's money still required Order 32 protection.

A next friend must comply with Order 32. Liability already settled by consent is not retried during assessment. Future care needs clinical and cost evidence; the historical amounts and multipliers are not current prices or medical prescriptions. Section 94 distinguishes execution of principal from untaxed costs. Order 32 rule 6 separately controls receipt of a minor's money. The source judgment rounds the 10% deduction; preserve its stated order and obtain the decree for enforcement.

[2018] eKLR — Civil Case 186 of 2009 — 16 May 2018. Original judgment: https://sheriahub.com/cases/ke/caselaw/p-k-m-suing-on-own-behalf-and-as-next-friend-of-a-j-b-g-s-m-v-nairobi-women-hospital-mutinda-2018-eklr

The original decision may identify participants. The specimen replaces their identifying details. A source decision is not proof that a draft was filed, that an allegation succeeded, or that the same result will follow in another case.