



**Kanje Contractors Ltd & another v Angaine (Civil Appeal  
44 of 2018) [2023] KEHC 271 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 271 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL 44 OF 2018  
TW CHERERE, J  
JANUARY 26, 2023**

**BETWEEN**

**KANJE CONTRACTORS LTD ..... 1<sup>ST</sup> APPELLANT**

**STEPHEN MBOROKO MUTETHIA ALIAS SM MUTETHIA ... 2<sup>ND</sup> APPELLANT**

**AND**

**JENNIFER ANGAINE ..... RESPONDENT**

*(Being an appeal from the ruling in Meru CMCC No  
1A of 2006 by Hon S. Abuya (SPM) on 25th May, 2018)*

**JUDGMENT**

1. By a judgment in Meru CMCC No 1A of 2006 dated May 29, 2017, the trial magistrate found the Appellants' claim for KES 838,501/- proved and entered judgment for the same with interest at court rates.
2. Consequently, by an application dated September 27, 2017, Appellants sought for orders that the judgment of the court be amended/corrected and or rectified to express that interest at court rates was to accrue from the date of filing suit.
3. The learned trial magistrate considered the application and by a ruling dated April 25, 2018 found it unmerited and dismissed it.
4. It is against the backdrop of that dismissal that Appellants preferred this appeal faulting the learned trial magistrate for failing to exercise the court's discretion under section 26 of the *Civil Procedure Act* in their favour.
5. Section 26 provides that:



- (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
  - (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.
6. In the case at hand, the learned trial magistrate awarded interest at court rates but did not indicate the period for which interest was to accrue and that by interpretation of subsection 2 above is from the date of the decree.
7. The *Civil Procedure Act* Cap 21 Laws of Kenya Section 26 enables the court to order interest on the principal sum adjudged in a decree both before and after the date of the decree to be paid at such rate as the court deems reasonable.
8. From the foregoing, I find that the trial court fell into error when it failed to award interest from date of filing suit. Accordingly, the decretal sum of KES 838,501/- shall attract interest at court rates from the date of filing of the suit until payment in full.
9. Circumstances dictate that each party shall bear own costs of the appeal.

**DATED AT MERU THIS 26<sup>TH</sup> DAY OF JANUARY 2023.**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Morris Kinoti**

For Appellants - Mr. Gikunda for Gikunda Anampiu & Company Advocates

Respondents - z for Kiogora Arithi & Associates

