



REPUBLIC OF KENYA



KENYA LAW
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**Muhoho v Star Newspaper & another (Civil Suit 137 of 2015)
[2022] KEHC 13648 (KLR) (Civ) (25 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 13648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT 137 OF 2015
DO CHEPKWONY, J**

JULY 25, 2022

BETWEEN

GEORGE MUHOHO PLAINTIFF

AND

STAR NEWSPAPER 1ST DEFENDANT

MKAMBURI MWAWASI 2ND DEFENDANT

RULING

1. The notice of motion herein is dated October 29, 2021 and is seeking for orders that;
 - a) Spent;
 - b) Spent;
 - c) This honorable court be pleased to review its judgment delivered on October 15, 2020 and make an appropriate order for interest to be paid to the plaintiff on the damages awarded with effect from the date of judgment as prayed in the plaint;
 - d) Costs of this application be provided for.
2. It is premised on the grounds on the face of it and the depositions in the supporting affidavit of George Muhoho sworn on October 29, 2021. It is stated therein that this honourable court delivered judgment on October 15, 2020 in favor of the plaintiff for general damages of Kshs 5,000,000/=, aggravated damages of Kshs 1,000,00/= and Kshs 500,000/= in lieu of an apology and costs of the suit. That the court did not make an order on interest on damages despite having been prayed for in the plaint. Further that this omission is an error apparent on the face of the record which this court has the power



to correct. It is the plaintiff's prayer that it is in the interest of justice that this court makes an order on the interest on damages.

3. The application is opposed vide the grounds of opposition dated February 14, 2022. It is stated that the application offends section 80 of the Civil Procedure Act, Cap 21 Laws of Kenya since an appeal has already been filed against the judgment sought to be reviewed. Further, that the application does not meet the threshold set out under order 45 of the Civil Procedure Rules 2010. It is also stated that there has been an inordinate delay in bringing this application hence the same is an afterthought. Further, that the application is vexatious, frivolous and an abuse of the court process.
4. By consent of parties, this application was canvassed by way of written submissions which I have read and considered. The plaintiff's submissions are dated March 29, 2022 while the defendant's submissions are dated April 28, 2022.
5. To determine the application dated October 29, 2021, I have read through the affidavit in support thereof dated October 29, 2021 and the respondent's grounds of opposition dated February 14, 2022. It is clear that what is for determination is:-
 - a) Whether the court has jurisdiction to hear the application;
 - b) And if the court has jurisdiction, whether the plaintiff has met the threshold under order 45 of the Civil Procedure Rules, 2010.
 - c) Whether interest is payable on the judgment sum of Kshs 6,500,000/= and costs from the date of judgment.
6. With regard to the issue of jurisdiction, it was the defendant contention that the plaintiff's application for review offends section 80 of the Civil Procedure Act because he already filed an appeal against the judgment sought to be reviewed. To this, the plaintiff states that he has only filed a notice of appeal but is yet to take directions on hearing the same. He goes on to state that the notice of appeal is untenable by virtue of the provisions of section 82 of the Court of Appeal Rules, 2010 where it states:-
 - 1) Where two or more parties have given notice of appeal from the same decision, the second and all subsequent notices to be lodged shall be deemed to be notices of address for service within the meaning of rule 79 and the party or parties giving those notices
 - 2) A party whose notice of appeal is deemed to be a notice of address for service shall not be required to comply with rule 79 if that party has served copies of that notice of appeal on all persons on whom under that role he or she would have been required to serve notice of his or her address for service

That clearly, the plaintiff is yet to lodge an appeal on the judgment, hence the plaintiff may apply for a review.

7. Under order 45 rule 1(1)(2) of the Civil Procedure Rules, it is provided that:-

Order 45

- (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time



when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.'
8. On the issue of whether the plaintiff has met the threshold of review, the plaintiff claims that there is an error on the face of judgment which ought to be removed. The Court of Appeal in the case of [*National Bank of Kenya Limited -vs- Ndungu Njau \[1997\] eKLR*](#) held: -
- ' A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.'
9. The other question then follows; Is failure by the court to address itself on the question of interest an error apparent on the face of the record? To answer this question, reliance is placed on the case of [*Patrick Mwaura Wagatira -vs- Equity Bank Limited & Another \[2021\] eKLR*](#), wherein the court held;
- ' The complaint in the present case is that there was an error on the face of the record as the court failed to address the issue of interest even after having awarded the damages. The court holds that, that failure is an error on the face of the record as the court should have addressed that issue which had been submitted to it for determination.'
10. I have perused the plaint annexed to the instant application and marked as 'GM1'. It clearly confirms that indeed the applicant prayed for interest at prayer (c), and such, I find that the applicant has satisfied the requirements of order 45 rule 1(1)(2) of the [*Civil Procedure Rules*](#). The question then becomes; Is the applicant entitled to interests?

Section 26 of the Civil Procedure Act provides: -

- ' 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.'



11. In the instant case, the applicant was awarded an aggregate sum of Kshs 6,500,000/=. He has prayed for interest from the date of judgment. The same is allowed at court rates from the date of judgment until payment in full.

12. Each party to bear own costs of this application.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF JULY, 2022.

DO CHEPKWONY

JUDGE

In the presence of:

Mr N Lutta counsel holding brief for Mr P Lutta counsel for Plaintiff

No appearance for and by Respondent

Court Assistant - Kevin

