



**Timber Manufacturers & Dealers Ltd v Nairobi Golf Hotels (Kenya) Ltd (Civil Case 5250 of 1992) [2022] KEHC 13717 (KLR) (Civ) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13717 (KLR)

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

**CIVIL**

**CIVIL CASE 5250 OF 1992**

**DO CHEPKWONY, J**

**SEPTEMBER 23, 2022**

**BETWEEN**

**TIMBER MANUFACTURERS & DEALERS LTD ..... PLAINTIFF**

**AND**

**NAIROBI GOLF HOTELS (KENYA) LTD ..... DEFENDANT**

**RULING**

1. In this matter, the Plaintiff has sought for directions on settlement of the calculation of the decretal sum between the Plaintiff and the court. According to the Plaintiff, the sum owed is Kshs.4,376.087/= while the indication on the Warrant of Attachment is Kshs.4,129,659/=. The Plaintiff's claim is that the difference arises from the calculation of interest.
2. The Plaintiff vide an Amended Plaint dated 2<sup>nd</sup> March, 2004 claimed a total of Kshs.2,000,302/= arising from a contract which had been executed by parties on 15<sup>th</sup> June, 1989. The said claim was allegedly made up of;
  - a) Kshs.859,260/= as re-imbusement for Value Added Tax; and
  - b) Kshs.1,141,042/= being the balance of the balance payable for the work rendered by the Plaintiff.

In its final Judgment dated 9<sup>th</sup> November, 2000, the court declined the claim for re-imbusement of Value Added Tax but awarded the claim for unpaid balance of Kshs.1,141,042/=.

3. On the other hand, the Defendant had put in an Amended Defence together with a Counter-Claim which did not succeed. In addition under Paragraph 63 of the said Judgment, the court awarded



interest at court rates which was to accrue as from 2<sup>nd</sup> March, 2004. Paragraph 63 of the said Judgment reads as follows:-

“Secondly, I do enter Judgment in favour of the Plaintiff for the sum of Kshs. 1,141,042/=. The said sum shall attract interest at court rates from 2<sup>nd</sup> March, 2004 when the Amended Plaint incorporated the claim for Kshs. 1,141,042”

4. Consequently, the Plaintiff extracted a decree dated 1<sup>st</sup> July, 2021, for Kshs.3,427,877.73 being the Judgment amount plus interest. It further filed a Bill of Costs dated 16<sup>th</sup> March, 2004 which was taxed at Kshs.577,612/= on 14<sup>th</sup> June, 2021. Thereafter, the Applicant took up a Warrant of Attachment dated 28<sup>th</sup> September, 2021 tabulated as follows;

Decretal amount ..... Kshs.1,141,042.00

Interest ..... Kshs.2,424,135.91

Taxed costs ..... Kshs.577,612.00

Further Court Fees ..... Kshs.1,500.00

Collection Fee ..... Kshs.1,500.00

Total ..... Kshs.4,145,785.00

5. Further, vide its letter dated 17<sup>th</sup> December, 2021 and another dated 22<sup>nd</sup> February, 2022, the Plaintiff argues that the decretal sum of Kshs.3,427,877.73 (made up of the Judgment amount plus interest) continued to earn interest after the date of Judgment pursuant to Section 26 of the *Civil Procedure Act* and the Law Society of Kenya forms on decree. However, the court did not state whether the interest would accrue until payment in full or at some point the interest would stop accruing.
6. Section 26(1) of the *Civil Procedure Act* Cap 21 of the Laws of Kenya states as follows;

26.

- (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.



7. Further, it may be useful to consider Mulla's Code of Civil Procedure 13<sup>th</sup> Edition in which at Pages 144 to 147 it is stated that interest that may be awarded to the Plaintiff in a suit in a money decree may be divide into three stages according to the period which it is allowed namely:-
- a) Interest accrued due prior to the institution of the suit on the principal sum adjudged.
  - b) Additional interest on the principal sum adjudged, from the date of the suit to the date of decree, at such rates as the court deems fit/reasonable.
  - c) And further interest on the aggregate sum adjudged, i.e the principal plus interest from the date of the decree (i) to the date of payment or (ii) to such earlier date as the court thinks fit at such a rate as the court deems reasonable.
8. In the present case, the crux of the dispute between the parties is with regard to the award of interest from the date of the suit as under scenario 7(c) highlighted above. In my view, the award of interests in the Judgment dated 9<sup>th</sup> November, 2020 was intended to accrue to the date of decree, 1<sup>st</sup> July, 2021 at court's rates. And thereafter, since the Judgment is silent on interests after the decree, then the provisions of Section 26(2) of the Civil Procedure Act comes into play.
9. Section 26(2) reproduced above suggests that where the court is silent on further interests after the decree, it will be deemed to have said that the aggregate sum will attract interest at 6% per annum from the said date of the decree to payment in full or any earlier date. Since the Judgment on this suit never stated the interest rate awarded would prevail until payment in full, it is deemed to have been silent on further interests after the date of decree and this court reiterates pursuant to Section 26(2) of the Civil Procedure Act, that the decretal sum of Kshs.3,427,877.73 as per the decree issued on 1st July, 2021 ought to attract interest at 6% per annum from the date of the decree until payment in full.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23rd DAY OF SEPTEMBER, 2022.**

**D. O. CHEPKWONY**

**JUDGE**

**In the presence of:**

M/S Sirawa counsel for Mr. Kiragu Kimani counsel for Plaintiff

No appearance for Defendant

Court Assistant - Sakina

