



**Meridian Medical Centre Limited v National Hospital Insurance Fund (Civil Suit 345 of 2013) [2021] KEHC 365 (KLR) (Commercial and Tax) (17 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 345 OF 2013  
A MABEYA, J  
DECEMBER 17, 2021**

**BETWEEN**

**MERIDIAN MEDICAL CENTRE LIMITED ..... PLAINTIFF**

**AND**

**NATIONAL HOSPITAL INSURANCE FUND ..... DEFENDANT**

**RULING**

1. On 4<sup>th</sup> June, 2021, this Court (Odero J) entered judgment for the plaintiff against the defendant as follows: -
  - a) A sum of Kshs. 12,469,330/- being the amount outstanding for the 6<sup>th</sup> month of the Pilot Project.
  - b) A sum of Kshs. 118,117,688/- being the amount outstanding for the 2<sup>nd</sup> quarter 1<sup>st</sup> April, 2012 to 30<sup>th</sup> June 2012.
  - c) Interest on the above at Court rates from the date of filing suit until payment in full”.
2. Subsequently, a decree was extracted in those terms and issued on 8/7/2021. However, a dispute arose as to what rate of interest was applicable with the plaintiff insisting that the correct rate should be 12% pa. while the defendant maintained that the same should be 6% pa.
3. By a Motion on Notice dated 27/7/2021, taken out under sections 34(1) and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules 2010*, the plaintiff sought that this Court do settle the terms of the said judgment and decree as regards the rate of interest applicable.



4. Vide the supporting affidavit of Stephen Kipkorir Bundotich, Advocate sworn on 27/7/2021, it was contended for the plaintiff that the defendant had disputed the applicable rate of interest as the Court did not specify the same. That while the plaintiff proposed 12% pa, the defendant had proposed a rate of 6% pa. That the latter rate would be too punitive taking into consideration the inflationary trends. That the Court should uphold the proposed rate of 12% pa as the rate applicable.
6. The defendant opposed the application vide the replying affidavit of Rose Nakhungu sworn on 20/8/2021. It was contended that the Court had awarded interest at Court rate. That since the actual rate was not specified, the court rate under section 26(2) of the *Civil Procedure Act* was 6%.
7. The deponent referred to the decisions of *B.O.G Tambach Teachers Training College v. Mary Kipchumba* [2018] Eklr and *Gervasio Muliira & 8 others v. Mutbeka Farmers Co-op Society Limited* [2020] Eklr in support of her contention. That there was no basis for the plaintiff to claim the rate of interest at 12% pa as the rate of 6% provided for by section 26 of the Act was statutory and binding.
8. I have carefully considered the cases relied on by the defendant. They were decisions of Courts of concurrent jurisdiction and are therefore only persuasive. I am unable to agree that the effect of section 26(2) of the Act is that where judgment or decree is silent on the rate of interest applicable, the rate applicable shall be deemed to be 6% pa.
9. It should be noted that the Chief Justice's Practice Note of 1982 fixed the rate of interest under section 26(1) of the Act at 12% pa. Section 26(1) of the Act provides: -
  - “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 such earlier date as the court thinks fit.
  - (2) Where such 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.
10. From the foregoing, it is quite clear that the application of interest under section 26(1) of the Act is twofold. These are;
  - a) firstly, interest on the principal sum from the date of the suit to the date of the decree in addition to any interest on such principal sum for any period before the institution of the suit; and
  - b) further interest at such rate as the court deems reasonable on the aggregate sum from the date of the decree to the date of payment or such earlier date as the court may think fit.
11. In 1982, the then Chief Justice of the Republic of Kenya, Hon Justice Alfred Simpson gave a Practice Note No.1 to the effect that, “In the absence of any valid reason for ordering a higher or lower rate of interest, the rate of interest should now be 12%”.



12. It was the respondent's contention that since the decree was silent on the rate of interest applicable, the provisions of section 26(2) of the Act apply. That the rate of interest applicable should be 6% pa on the decretal sum as provided in that sub-section.
13. As I have already stated, the court rate of interest set by the Chief Justice way back in 1982 under section 26(1) of the Act is 12% pa. That section applies to the two scenarios, the interest from the date before the filing of suit and from the date of filing suit to the date of judgment.
14. On the other hand, section 26(2) of the Act applies to only one limb of section 26(1). The sub-section clearly states, "Where such 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".
15. In this regard, sub-section 2 applies when the decree is silent on 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 ...". It is clear therefore that, that sub-section applies to the interest chargeable on the aggregate amount after the date of judgment and not earlier. That is, the aggregate sum that comprise the interest from the date of filing suit until judgment plus the principal sum.
16. Accordingly, I hold that when a judgment is silent on the rate of interest, the court rate applicable will be two fold, 12% from the date of filing suit until judgment. But from the date of judgment until payment in full the rate applicable to the aggregate amount, ie. the principle sum plus interest, the rate chargeable is 6%.
17. In this regard, the decretal sums set out in paragraphs a) and b) of the judgment shall attract interest at the rate of 12% pa from the date of filing suit until 4/6/2020. From that date until payment in full, the aggregate sum shall attract interest at 6% pa.
18. Accordingly, the application partially succeeds and therefore each party shall bear own costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF DECEMBER, 2021.**

**A. MABEYA, FCI Arb**

**JUDGE**

