

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 220 OF 2012

GENERAL MACHINERY.....1ST APPELLANT

PASCAL NDAGUZA.....2ND APPELLANT

DERRICK KIMANTHI.....3RD APPELLANT

VERSUS

OMAR WARIO ALL.....RESPONDENT

RULING

1. The judgment in this Appeal was delivered on 25th September, 2017 wherein the Appeal was partly allowed and the judgment of the lower court set aside and substituted with one for the sum of Ksh.435,150/= damages. The issue of interest was not a subject of the Appeal herein.

2. The parties thereafter failed to agree on the interest applicable and from which date. The Appellant submitted that the interest on general damages ought to accrue from the date of the delivery of the judgment in the Appeal herein. On the other hand, the Respondent's submission was that the interest applicable for the general damages be at 12% being the applicable court rates from the date of the judgment of the lower court till payment in full and for special damages from the date of filing suit.

3. I have considered the court record and the submissions made.

4. Section 26(1) Civil Procedure Act gives the court the power to award interest. The said provision stipulates :

“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.”

5. The discretion to award interest must be exercised judicially. As stated by the Court of Appeal in the case of **Shariff Salim & another v Malundu Kikava [1989] eKLR:**

“There is no gainsaying the fact under Section 26 of the Civil Procedure Act, the award of interest on a decree for the payment of money for the period from the date of the suit to the date of the decree is a matter entirely within the discretion of the court. But this discretion being a judicial one must be exercised judicially. The whole idea at the end of the day is to do justice to both parties. In the case of Prem Lata v Peter Musa Mbiyu [1965] EA 592, the appellant, in a suit for damages for personal injuries, was awarded Ksh.24,000/=, as general damages and Ksh.1,742.80 as special damages but the judge refused an application to award interest on these two sums from the date of filing suit until judgment. On appeal, the court of Appeal for East Africa held that in personal injury cases, interest on general damages should not be awarded for the period between the date of filing suit and judgment but that interest should normally be awarded on special damages if the amount claimed has been actually expended or incurred at the date of filing the suit.”

(See also **Lei Masaku v Kalpma Builders Ltd [2014] eKLR, Oluoch Eric Goga v Unicorsal Corporation Ltd [2015]** and **Heinz Broer v Buscar (K) Ltd & others HCCA No. 603 of 2013**).

6. Judgment was entered for the Plaintiff in the lower court for the sum of Ksh.1,050,300/= interest and costs. In the judgment herein the said figure was substituted with a total sum of Ksh.435,150/=, with Ksh.150/= being special damages (after 50% contribution). The special damages reflect the money expended and therefore the interest thereof ought to be from the date of filing suit. The interest in respect of general damages ought to accrue from the time of the judgment in the lower court which is 20th April, 2012 till payment in full. The rate of interest applicable is at court rates. Orders accordingly.

Date, signed and delivered at Nairobi this 5th day of March, 2020

B. THURANIRA JADEN

JUDGE