



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

CIVIL APPEAL NO. 16 OF 2010

JANE OVUYANZI RAPHAEL (*Suing as the legal representative*

*of the estate of JAPHETH AMAAYI.....***APPELLANT**

VERSUS

SALINA TRANSPORTERS.....RESPONDENT

RULING

1. The court delivered its judgement in the instant matter and awarded the Appellant costs and interest.
2. The Appellant approached the court with the instant application dated 6.7.2020 where she seeks that the court does make a pronouncement that the interest that was awarded should run from the date of judgement of the lower court.
3. The guiding principles in respect of interest as set out in section 26 of the Civil Procedure Act that states 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.*
4. Justice Ngugi in interpreting the above section in the case of **Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR** stated that

“First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd [1988] KLR 380.

29. *Second, Under Section 26(1) of the Civil Procedure Act, the Court has discretion to award and fix the rate of interests to cover two stages namely:*

 - a. *The period from the date the suit is filed to the date when the Court gives its judgment; and*
 - b. *The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”*
5. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omuniyokol Akol Johnson v Attorney General (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015)* stated in part, as follows:

“It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment. In the present case, the respondent has conceded that the trial judge erred in awarding interest on general damages from the date of dismissal. It does appear to me that the error was caused by the trial judge in lumping special damages together with general damages. The appellant never pleaded or prayed for such a high interest. Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment. The rate of interest of 20% should have been awarded on special damages from the date of interdiction or dismissal till payment in full.”

6. The above case placed consideration in the case of **Mukisa Biscuits Manufacturers Co Ltd v Nile Distributors Ltd No. 2 (1970) E.A 475**. From the foregoing expositions of the law on this point it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement.

7. In view of the foregoing observations, I find merit in the application dated 6.7.2020. The same is allowed in terms of **prayer (b)**. I make no order as to costs.

It is so ordered.

Dated and delivered at **Machakos** this **17th** day of **December, 2020**.

D. K. Kemei

Judge