



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURT
CIVIL CASE NO.269 OF 2006

INTERCHEM CO. LTD.....1ST PLAINTIFF
SAFINA (EA) LTD.....2ND PLAINTIFF
HENCHEM LTD.....3RD PLAINTIFF
GOODWILL STORES LTD.....4TH PLAINTIFF
B.N GITONGAT/A BURMA FARMERS AGENCIES.....5TH PLAINTIFF
PATRICK MUREITHI T/A VETAGRO & PULPERS.....6TH PLAINTIFF
JOHN NGARI MWAURA.....7TH PLAINTIFF

VERSUS

KENYA PLANTERS CO-OPERATIVE UNION LTD.....DEFENDANT

RULING

On 28th May 2008, this court allowed the Plaintiffs' application that sought to have the defence filed by the Defendant struck out. This is what the court said:

“It is therefore clear that the plaintiffs have established a nexus between the orders issued by the defendant and the deliveries made to the farmers contracted to deliver coffee to the defendant. It was therefore evident that the defence filed by the defendant is a sham and is meant to delay the just determination of this case. The plaintiffs have established that the defendant indeed owe them the sum of Kshs.6,737,495.20 being in respect of agricultural inputs and other goods supplied to the farmers contracted to deliver coffee to the defendant. The defendant has no defence to the plaintiffs' claim. The defence filed on 26th June 2006 is hereby struck out. Judgment is entered for the plaintiffs jointly and severally for the sum of Ksh.6, 737,495.20. The plaintiffs shall have the cost of the application and cost of the suit.”

Pursuant to this judgment, the Plaintiff extracted the decree, taxed the costs and proceeded to execute the judgment. The decretal sum has partially been paid. However, it is apparent from the proceeding that the Defendant has failed to pay the entire balance of the decretal sum due. According to the notice to show cause issued by the court on 10th October 2017, the total sum owed has now accrued to Kshs.16,600,050.00. The Plaintiffs have attached an immovable property registered in the name of the Defendant in execution of the decree.

On 14th December 2017, the defendant filed an application pursuant to **Sections 1A, IB, 3A, 63(e) and 99** of the **Civil Procedure Act**, **Order 21 Rule 8, Order 22 Rule 19** and **22**, and **Order 51** of the **Civil Procedure Rules** seeking several orders from the court. Of particular interest in this application, is *Prayer No.4* where the defendant seeks the following order:

“That this honourable court be pleased to set aside, amend and or settle the decree issued on the 10th of August 2011 to comport with the ruling/ or orders of the Hon. Mr. Justice Kimaru made on 28th May 2008.”

From the grounds and the affidavit in support of the application, it was apparent that the thrust of the Defendant's application is that the Ruling of this court did not entitle the Plaintiffs to be paid interest on the sum that was found in their favour by the court. The Defendant argued that since the interest component was not directly mentioned in the judgment, in the extraction of the decree, the Plaintiffs should not have included that component. The Defendant is of the view that the decree extracted and any subsequent orders emanating therefrom, should be set aside and appropriate orders issued to compel the Plaintiffs to be paid the sum that was ordered by the court minus the interest component. The Plaintiffs opposed the application. They filed a replying affidavit through their counsel Mr. Andrew Ombwayo opposing the application. They also filed grounds in opposition to the application.

During the hearing of the application, this court heard oral rival submission made by Ms. Migiro for the Defendant and by Obwayo for the Plaintiffs. This court has carefully considered the submission made. It has also considered the authorities cited by the parties in support of their respective opposing positions. The issue for determination by this court is whether the Plaintiffs' properly extracted the decree on the basis of the Ruling that was delivered by this court on 28th May 2008. Whereas the Defendant argues that the Ruling being silent on the interest element, and therefore it was not open for the Plaintiffs to include that component in the extracted decree, the Plaintiffs submitted that under **Section 26** of the **Civil Procedure Act**, the inclusion of interest in a decretal sum awarded by the court is a matter of course unless the court specifically states that interest is not awardable.

This court takes the following view of this matter: the argument advanced by the Defendant would have been appealing if the Defendant had paid the principal sum immediately after the Ruling was delivered by this court and thereafter sought for a review by this court of the decree extracted by the Plaintiffs. This court agrees with the submission made by the Plaintiffs that under **Section 26(2)** of the **Civil Procedure Act** which provides that:

“Where such a decree is silent with respect to the payment of further interest in such aggregate sum as aforesaid, from the date of the suit, to the date of payment, or other earlier dates, the court, shall be deemed to have ordered interest at 6 percent per annum.”

Under the **Practice Note No.1 of 1982** issued by the then Chief Justice, the interest to be applied at court rate is 12%. This court therefore holds that the fact that it did not specifically state that interest would be paid in respect of the decretal sum in the Ruling, did not mean that the Plaintiffs were not entitled to be paid interest on the decretal sum. Indeed, **Section 26(2)** of the **Civil Procedure Act** applies where no other interest is specified, the court rate shall apply.

In the present case, the subject of the dispute was a commercial transaction. It would be unconscionable for the Plaintiffs to be paid the principal sum without interest especially where it is evident that the Defendant has been reluctant even to pay the said principal sum. What the Defendant is asking this court to do is to focus on a specific tree in the forest rather than focus on the entire forest. In other words, the Defendant wants the court to have a tunnel vision instead of viewing at the broader interest of justice in the circumstance of this case. This court declines the invitation by the Defendant to set aside the decree that was issued by this court on 10th August 2011. To do so would cause prejudice and injustice to the Plaintiffs.

For the above reasons, this court finds the application made by the Defendant dated 13th December 2017 to be without merit. It is hereby dismissed with costs. Any orders that may have been issued pursuant to the said application are hereby vacated and shall have no legal effect. It is so ordered.

DATED AT NAIROBI THIS 30TH DAY OF MAY 2018

L. KIMARU

JUDGE