

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL APPEAL NO. 74 OF 2010

BETWEEN

EMMANUEL OTIENO KONGILI.....1ST APPELLANT

SOUTH NYANZA SUGAR CO. LTD.....2ND APPELLANT

AND

JIMMY JOSEPH O. OWUOR.....RESPONDENT

(An Appeal arising from the Judgment and Decree of Hon. G. Oduor SRM dated 23rd March 2010 in Kisii CMCC No. 229 of 2006)

RULING

I am constrained to allow the appellants' Notice of Motion dated 5th June 2015. The issue is straightforward. The appeal was allowed partially and substituted the trial court's award amounting to Ksh. 170,500/=. The appellate court did not make an award of interest or indeed mention the same. In my view, the issue of interest was never a ground of appeal and the substitution was only in respect of the total award in the trial court hence the interest ordered by the trial court remained and applied to the substituted award. Accordingly, to the interest ordered by the trial court, which was not effected by the order allowing the appeal "partially" is applicable. The decree of the trial court dated 23rd March 2010 states that the "*Defendant do pay the plaintiff interest on the awarded sum until payment in full*". In this case "*the awarded sum*" is now the High Court appeal substituted award in the trial court which attracts interest.

As parties have requested, the matter will be mentioned on 24th July 2018 for the final order on interest payable.

D.S MAJANJA , J

19/6/2018

Court: Ruling read and delivered in open court.

D.S MAJANJA, J

19/6/2018