



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL SUIT NO. 172 OF 1997**

STEPHEN MUKIRI NDEGWA.....1<sup>ST</sup> PLAINTIFF

CONTINENTAL MARKETING LIMITED.....2<sup>ND</sup> PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....DEFENDANT

**RULING**

1. Judgement was delivered in this matter on **2<sup>nd</sup> May, 2008**. In that judgement were orders amongst which was judgement for prayer 1 for **USD 32, 869.25** with interest at court rate from the date of filing suit until payment in full.

2. The plaintiffs have through their Notice of Motion dated **17 February, 2018** sought the order that:

***“This Honourable Court do grant and order for computation of interest of the decretal sum at commercial compound interest.”***

3. Although the 1<sup>st</sup> plaintiff through his affidavit in support of the application first stated that the court had not in the judgement stated the rate of interest applicable the judgement amount, the plaintiffs did later accept that the court had awarded interest at Court rate but added that the Court had not stated, in that judgement whether that rate of interest was to be calculated at simple or compound interest.

4. I need to state that although the defendants have faulted the application on the basis that there was a signed consent providing for total amount to be paid to the plaintiff as Kshs.7.5 million and for costs at Kshs.3.2 million, in full and final settlement, that consent has to date not been adopted as an order of the Court and accordingly I will not consider the issue of that consent any further.

5. Plaintiff relied on the authority **FEROZ NURALJI HIRJI –V- HOUSING FINANCE COMPANY OF KENYA LTD AND ANOTHER (2015) eKLR**. The distinguishing issue in that case Vis-à-vis this case is that when judgment was entered in that case the issue of the rate of interest was not determined. This I get from the second sentence of the Ruling of that case. In this present case the court did not leave the issue of interest, or the rate thereof, to be determined afterwards. It was determined in the judgment of **2<sup>nd</sup> May 2005**, as stated above.

6. The plaintiffs also relied on the case **VELEO (K) LTD –V- BARCLAYS BANK OF KENYA LTD (2013) eKLR**. In that case parties approached the court seeking interpretation of the decree. The court in that case had awarded interest at the rate of 18% without stating whether it was simple or compound interest. Again I believe the facts of that case are distinguishable to the case at bar because in this case the interest awarded was stated in the judgment.

**DETERMINATION**

7. Having considered the parties affidavits, submission and authorities the court is of the view that the application must and does fail.

8. It firstly fails because delay defeats equities. Equity does not aid the indolent. That is the foundation of the doctrine of laches. The judgement in this matter was delivered on **2<sup>nd</sup> May 2008**. That is more than 10 years ago. The plaintiff waited for 10 years to seek to have the rate of interest enhanced. Such an order would be unjust to the defendant who may have reorganized its affairs on the basis of the judgement of **2<sup>nd</sup> May 2008**.

9. The application also fails because what the plaintiffs seek a review of the judgement of **2<sup>nd</sup> May 2008**. Order 45 of the Civil Procedure

Rules, under which power to order review, requires a party seeking review to apply without unreasonable delay. I dare say that 10 years is too long a period to wait before seeking review.

10. I also form the opinion that the court, by the judgement of *Justice Lesii*, of *2<sup>nd</sup> May 2018* having determined the rate of interest applicable to the judgement amount, by the present application the plaintiffs seek this court to second guess what the Learned Judge meant by awarding interest at court rate.

11. For the above reasons the Notice of Motion dated *1<sup>st</sup> February 2018* is *dismissed with costs*.

**DATED, SIGNED and DELIVERED** at **NAIROBI** this **29<sup>th</sup>** day of **November**, 2018.

**MARY KASANGO**

**JUDGE**

**Ruling read and delivered in open court in the presence of:**

Court Assistant.....Sophie

..... for the Plaintiffs

..... for the Defendant

**MARY KASANGO**

**JUDGE**