



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CIVIL APPLICATION NO. 252 OF 2011

REPUBLIC.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

EX PARTE: EVELYNE KHAMASI AMBOYI

RULING

1. On 9th December, 2014, this Court issued an order of mandamus compelling the accounting officer responsible for the National Police Service to pay the applicant the decretal amount of Kshs 742,891/= as at 22nd March, 2011 and costs of Kshs 98,311/= as at the same date together with interest at court rate thereon till payment in full.

2. The said order arose from a judgement in Milimani CMCC No. 7341 of 2009 from which a decree was extracted in which the Respondent was ordered to refund to the Applicant the sum of Kshs 640,000.00 with costs and interests of the suit.

3. From the foregoing it is clear that the only amount on which interest could accrue was Kshs 640,000.00. Since the Applicant was claiming a specific sum of money the law is that interests accrue from the date of filing suit. This was the position in **Dipak Emporium vs. Bond's Clothing Civil Appeal No. 64 of 1972 [1973] EA 553** where it was held that:

“Where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing suit. Where, however, damages have to be assessed by the court, the right to those damages does not arise until they are assessed and therefore interest is only given from the date of judgement.”

See also **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (No. 2) Civil Appeal No. 37 of 1969 [1970] EA 469.**

4. The law is however clear that unless the Court holds otherwise, interest does not accrue interest hence interest can only be charged on the principle sum and costs where the court expressly states so. However where the decree is silent on interest on costs, the same cannot be imposed by implication. This was the position adopted by **Wendoh, J** in **Arthur Kinuthia Albert vs. Permanent Secretary, Ministry of Health [2008] eKLR** which position I associate myself with and in which the learned Judge expressed

herself *inter alia* as follows:

“The question I pose is whether it is this court to determine what sum is payable in terms of interest. Judicial review merely deals with the decision making process but not the merits of the decision. In my view, the applicant’s Counsel is calling upon this court to determine whether or not interest was payable to them and I am of the view that that is not the purview of this court’s jurisdiction. The figure of interest included in the decree is foreign to the judgement in CMCC 773/03. Interest may vary according to what the Plaintiff has pleaded in the plaint. It is outside this court’s jurisdiction to assume and to determine whether or not interest was payable or how much is payable. Since the court in CMCC 773/03 had not specifically ordered for payment of interest it was upon the Applicant to move the court which gave the judgement for a review of its orders on account of there being an error on the face of the record. This court’s jurisdiction is limited to compelling the Respondent to pay based on the judgement, decree and certificate of order but it is not to determine what is due to the Applicant and this court would decline to grant the order prayed.”

5. Since the Notice of Motion herein was not opposed, it can only be deduced that the sum of Kshs 742,891/= was comprised of Kshs 640,000.00 plus accrued interest up to 22nd March, 2011. Thereafter interest would only accrue on the sum of Kshs 640,000.00 at court rate till the date of full payment of the said principal sum. To the sum due would be added the costs of Kshs 98,311/=.

6. In this case, it is contended that the Respondent paid the Applicant the sum of Kshs 898,311.00 in December, 2014. The Applicant has however sought orders seeking to have the Respondent punished for contempt for failing to settle the full sum due. It is however clear that there is uncertainty as to the actual sum due. Therefore before the Court can punish the Respondent for contempt it is necessary that the actual sum be determined. The said sum in my view is Kshs 742,891/= which was due as at 22nd March, 2011 plus interest on Kshs 640,000.00 at Court rate till December, 2014, plus costs of Kshs 98,311/= less Kshs 898,311.00.

7. I therefore direct that this matter be placed before the Deputy Registrar to compute the sum due, if any, in accordance with the directions hereinabove and thereafter forward the file back for further orders.

8. Orders accordingly.

Dated at Nairobi this 23rd day of September, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Kamwara for the Mr Ombete for the Applicant

CA Gitonga