



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO 724 OF 2012 (O.S)

JOSEPH NJOGU MUITA.....APPLICANT

VERSUS

MUREITHI PATRICK KIMITI T/A

P.K. MUREITHI & CO ADVOCATES.....RESPONDENT

JUDGMENT

INTRODUCTION

1. In its Ruling of 31st March 2014, this court directed that the Respondent do deliver to the Applicant a detailed cash account in respect of monies it received on his behalf in respect of the sale of L.R. No 9503/3 (hereinafter referred to as “the subject property”) to one Joseph M Muchiri and further ordered that the Respondent herein files its Bills of Costs for taxation by the Taxing Master.
2. On 3rd March 2015, E.K. Makori, the Taxing Master in the Environment and Land Court Division, delivered his Ruling in which he taxed the Respondent’s Bill of Costs at Kshs 243, 931/=.
3. When parties appeared before this court on 17th March 2015, they both asked the court to deliver its judgment as in Paragraph 32 of its said Ruling, this court had pointed out that it was deferring its final decision until after the Respondent’s Bill of Costs was taxed.

LEGAL ANALYSIS

4. As the Taxing Master found that the Respondent was entitled to the said sum of Kshs 243,931/= as its fees, the court could only order that the Applicant be paid a total of 806,069/= being the sum of Kshs 1,050,000/= demanded by the Applicant less the sum of Kshs 243,931/=.
5. However, save for contending that the Respondent ought to be ordered to remit sums due to the Applicant together with interest at twenty (20%) per cent with effect from 6th December 2010, in its Written Submissions that were dated 3rd May 2013 and filed on 16th May 2013, the Applicant did not justify why it was entitled to interest from such date and at such rate. The Respondent did not also submit on the same issue in its Written Submissions dated 16th June 2013 and filed on 17th June 2013. The question of what was the applicable rate of interest and the date from which interest would be payable were thus pertinent issues for determination by the court.

6. Section 26 (1) of the Civil Procedure Rules, 2010 which addresses the aforesaid issues provides as follows:-

“ Where in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rates (emphasis court) as the court deems reasonable to be paid on the principal sum adjudged from the date of 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 (emphasis court) as the court thinks fit.”

7. Evidently, the court has discretion to award interest on the principal sum on such rates and rests that it would deem reasonable or fit to grant depending on the circumstances of each case. These periods are from any period before the institution of the suit, from the date of the filing of the suit and from the date of decree- See Jane Wanjiru Gitau vs Kenya Power & Lighting Company Limited [2006] eKLR and Civil Appeal No 135 of 2001 Ajay Indravan Singh vs Guilders International Bank Limited (unreported).

8. For interest to be payable before the institution of a suit, there must be justification why such interest should be granted from the period before the institution of the suit. One such justification would be that there was a contractual obligation on a party to have paid interest at the time they entered into a contract that provided for such payment of interest. In all other instances, the general principle of awarding interest ought to be from the date of filing- See Isaac Aduvagh vs Standard Chartered Bank Limited [2012] eKLR.

9. It is important to point out that an award on interest should be realistic-See Halsbury’s Laws of England (4th Edition) Volume 37 Paragraph 549. In the case of Tate & Lyle Food and Distribution Limited vs Greater London Council & Another (1981) 3 ALL ER 717, it was held as follows:-

“...the guide to interest in commercial cases was, therefore, the rate at which a Plaintiff with the general attributes of the actual Plaintiff could have borrowed the money wrongfully withheld, and not the earning capacity of the money if the Plaintiff had invested it during the time he was kept out of it.”

10. In the holding of Mabeya J Autolog Kenya Limited vs Navista Telematics (Kenya) Limited [2013] eKLR which met the approval of this court, he referred to the Practise Note No 1 of 1982 where the then Acting Chief Justice Simpson had directed as follows:-

“...In the absence of any valid reason for ordering a higher or lower rate of interest, the rate of interest should now be 12%”

11. A perusal of the Agreement for Sale Exhibit marked ‘JNM 1’ that was annexed to the Originating Summons dated 1st October 2012 and filed on 20th November 2012 reveals that the Applicant may have claimed interest from the date of the said Agreement for Sale, that was 6th October 2010. The said Agreement for Sale was between the Applicant and the said Joseph M. Muchiri. There was no provision of payment of interest as regards any transactions between the Applicant and the Respondent. The Applicant did not also provide the court with any evidence to demonstrate that he had been denied an opportunity to invest the monies from the date of the Agreement for Sale.

12. Appreciably, Clause 1.4 of the said Agreement for Sale set out the manner in which the purchase price was to be released to the Applicant. The said Clause stipulated as follows:-

The balance of the purchase price being Kenya Shillings Eleven Million (Kshs 11,000,000/=) shall be released to the Vendor in the following manner:-

a. Kshs 5,000,000/= to be released upon obtaining an official search from the Ministry of

Lands confirming legal position of the property.

b. Kshs 6,000,000/= to be released on the date of confirmation of registration of the title in the purchaser's name in accordance with the Vendor's instructions."

13. Accordingly, having considered the pleadings, the affidavit evidence, and the written submissions in support of the respective parties, there was no evidence that could lead the court to conclusively find that the balance of the purchase price was to be released on 6th October 2010, which was the date of the said Agreement for Sale. The Applicant failed to show that there was a contractual obligation between him and the Respondent that mandated the Respondent to pay him interest at the rate of twenty (20%) per cent with effect from 6th October 2010. The court was thus of the view that the only applicable rate of interest could only have been at courts rates and from the date of filing of the cause herein.

DISPOSITION

14. For the foregoing reasons, judgment be and is hereby entered in favour of the Applicant against the Respondent in the sum of Kshs 806,069/= together with interest at court rates from 20th November 2012 until payment in full.

15. It is so ordered.

DATED and DELIVERED at NAIROBI this 19th day of May 2015

J. KAMAU

JUDGE