



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO 444 OF 2011

FRANCIS MWANZA MULWA.....
.....**PLAINTIFF**

VERSUS

AFRISON EXPORT IMPORT LIMITED.....**1ST**
DEFENDANT

HUELANDS LIMITED.....**2ND**
DEFENDANT

JUDGMENT

INTRODUCTION

1. The Plaintiff's Complaint dated and filed on 4th October 2011 sought the following reliefs:-
 - a. **The sum of Kshs 20,000,000/=.**
 - b. **Costs of this suit.**
 - c. **Interest on (a) and (b) above at 14% from 9th November 2010.**
2. The Defendants' Statement of Defence and Counter-Claim was dated 25th October 2011 and filed on 27th October 2011.
3. When the matter came up for hearing on 23rd September 2014, parties recorded a consent in the following terms:-
 - a. **THAT Judgment be entered in favour of the Plaintiff against the Defendant for the sum of Kshs 20,000,000/=.**
 - b. **THAT parties to negotiate on interest and costs and if there is no agreement, the costs shall be taxed and parties shall tender their respective arguments on interest in court.**
 - c. **THAT the sum of Kshs 20,000,000/= be paid on or before 15th December 2015.**
 - d. **THAT the matter be mentioned on 28th January 2015 to confirm compliance and for further orders and/or directions.**
4. As parties were unable to agree on the interest payable herein, on 2nd March 2015, the court gave

directions on the filing of their respective Written Submissions. The Plaintiff's Written and Supplementary Written Submissions were dated 3rd February 2015 and 6th March 2015 and filed on 5th February 2015 and 9th March 2015 respectively. The Defendant Written Submissions were dated 9th February 2015 and filed on 11th February 2015.

5. The judgment herein was therefore based on the said Written Submissions as the parties waived their right to highlight the same.

LEGAL ANALYSIS

6. The entry of judgment in the sum of Kshs 20,000,000/= arose out of a Retainer Agreement (hereinafter referred to as "the Agreement") that had been entered into between the Plaintiff/Advocates and the Defendant. The Plaintiff pointed out that it could not file a Bill of Costs as the said Agreement had been entered into as stipulated under the provisions of Section 35 (6) of the Advocates Act Cap 16 (Laws of Kenya).
7. In his Written Submissions, the Plaintiff urged the court to award it interest on the sum of Kshs 20,000,000/= at the rate of fourteen (14%) per cent from 9th November 2010 which was the date when the Defendant terminated the Plaintiff's services. He placed reliance on the provisions of Schedule (sic) 7 of the Advocates (Remuneration) Order 2009 that provides as follows:-

"An advocates may charge interest at 14% per cent per annum on his disbursements and costs, whether be scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full."

8. In a complete departure of his said submissions, in his Supplementary Written Submission, he submitted that interest ought to be paid from the date of filing suit as the sum was a liquidated amount and urged the court to so award. In this regard, the Plaintiff relied on the case of **Prem Lata vs Peter Musa Mbiyu (1965) EA 592** in which it was held as follows:-

"The principle that emerges is that where a person is entitled to a liquidated amount or to specific good and has been deprived of them through the wrongful act of another, he should be awarded interest from the date of filing suit."

9. On their part, the Defendants referred the court to the case of **Lubullelah & Associates Advocates vs N.K. Brothers Limited [2014] eKLR** in which this very court held that:-

"It is clear that the said Rule 7 deals with interest charged by an advocate of its claim for disbursements and costs which is chargeable from the expiration of one (1) month from the date of delivery of its bill to its client... if an advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. The court can only award interest at court rates."

10. They also referred the court to the cases of **Pan African Insurance Company (U) Ltd vs International Air Transport Assoc. (HCT-00-CC-CS-0667 of 2003)** and **William Kinyanyi Onyango vs IEBC & 2 Others [2013] eKLR** where the common thread was that interest would be payable from the date of judgment which they contended, was 15th December 2014 when the sum of Kshs 20,000,000/= was to be paid.
11. As seen in his Written Submissions, the Plaintiff submitted that he was entitled to interest from 9th November 2010 which was the date the Defendants terminated their services while in his Supplementary Written Submissions, he contended that interest ought to be paid from the date of filing suit which was on 4th October 2011. In view of the two (2) arguments that were advanced by the Plaintiff, it was not clear what exactly he argued was the correct position as far as the payment of interest was.
12. Having said so, there was no doubt in the mind of this court that the Plaintiff was not entitled to interest at fourteen (14%) per cent as per the Advocates Remuneration Order as he did not file any

bill of costs. The fact that he had a retainer agreement with the Defendants that could not allow him to file a Bill of Costs could not be stretched to bring his claim for interest within the provisions of Paragraph 7 of the Advocates Remuneration cited hereinabove.

13. As could be seen in the case of **Lubullelah & Associates Advocates vs N.K. Brothers Limited** (Supra), interest at fourteen (14%) per cent only accrues from the expiration of one (1) month from the date of delivery of its bill to its client which was clearly not the case herein. In the absence of such proof, the rate of interest can only be at court rates, whatever that rate is.
14. Under Section 26 of the Civil Procedure Act Cap 21 (Laws of Kenya), 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 of payment of interest until payment in full are :-

- a. **From any period before the institution of the suit;**
- b. **From the date of the filing of the suit; and**
- c. **From the date of decree**

15. It therefore follows that the interest herein could either have been chargeable from any of the dates stipulated hereinabove. However, there must be justification why 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.
16. In all other instances, the general principle of awarding interest ought to be from the date of filing suit, which was the second argument that the Plaintiff advanced. Indeed, this is a position that was held in the case of **Isaac Aduvagh vs Standard Chartered Bank Limited [2012] eKLR** which this court fully associated itself with.
17. The court was of the view that the Plaintiff had been kept out of and/or deprived of the use of the sum of Kshs 20,000,000/= right at the institution of the suit herein.
18. Having said so, it is also abundantly clear from Section 26 (1) of the Civil Procedure Rules that the court can only award interest on a principal sum which in this case was Kshs 20,000, 000/= till payment of the principal sum.
19. Having considered the written submissions and the case law that was relied upon by the parties, the court found and held that as the Plaintiff did not deny having received the said sum on any date later than 15th December 2014 and no evidence was tendered by either of them to demonstrate a contrary date when the said sum was paid, the court was of the firm view that interest on the said principal sum of Kshs 20,000,000/= would run from the date of filing suit until 15th December 2015 when interest ceased to run.
20. Notably, the court came to a similar conclusion on the cessation of running of interest in the case of **Patmose Technical Services (K) Limited vs Rural Electrification Authority [2014] eKLR** in which it had due regard to **Halsbury's Laws of England (4th Edition) Vol 32 Paragraph 114** wherein it was stipulated as follows:-

“If the principal amount is merged in a judgment or discharged by payment or if the amount due is tendered (emphasis court), **interest ceases to run.”**

DISPOSITION

21. For the foregoing reasons, the upshot of this court's decision was that judgment be and is hereby entered in favour of the Plaintiff against the Defendants jointly and severally for interest that accrued on the sum of Kshs 20,000,000/= at court rates from the date of filing suit until 15th December 2014.
22. It is so ordered.

DATED and DELIVERED at NAIROBI this 30th day of June 2015

J. KAMAU

JUDGE