



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 100 OF 2012**

**AFRICAN MERCHANT ASSURANCE CO. LTD.....APPELLANT**

**VERSUS**

**JANE OTIENO.....RESPONDENT**

**RULING**

1. This court delivered a judgment to this appeal in 19th June 2014 whereby the appellants appeal was dismissed with costs. The effect of that dismissal was to keep in place without disturbing the lower court's judgment which was in favour of the respondent in this appeal. By that lower court's judgment the respondent succeeded in having declaratory judgment entered in her favour against the appellant, an insurance firm.
2. This court having upheld that declaratory judgment the respondent was entitled to be paid the principal sum, which the parties agree is Ksh 869,675/= What however is now contested is the applicable rate of interest, toward that principal sum and which date is that interest applicable. Parties agreed to do written submission on those two issues and it is those two issues that this Ruling is addressing.
3. I must begin by stating that I have carefully considered the parties written submissions but in my view both parties largely expended their energies in those submissions on matters that I need not consider in this Ruling. For example the provisions of section 26 of the Civil Procedure Act or whether the court has, in this case, discretion to determine the interest payable and the date from which it should apply.
4. I hold the view that this court is restricted in its determination of the issues agreed by parties because this was the appellate court. Being so it was restricted to only determine the appeal before it. The court made that determination by its judgment of 19th June 2014, when it dismissed the appeal. This court was not faced by a cross appeal by the respondent. The respondent, therefore did not challenge the judgment of the lower court. It is therefore to the lower court that I shall look to, to determine the issues before me.
5. After the respondent obtained a judgment on 9th February 2011 in her favour in the lower court under the case Mombasa CMCC NO. 387 of 2006, a decree was drawn by that court dated 1st November 2011. That decree reflected judgment in favour of the respondent as follows:
  - Principal Amount Ksh 826,575.00
  - Interest at 8% Ksh 636,462.00
  - Decretal Amount Ksh 1,463,037.00
6. That decree did not show the date from which the interest was applicable. But the decree did note that judgment was as at 9th February 2011.

7. From the information above, and because the respondent did not cross appeal for the lower court decree to be disturbed I find that:

- **Interest rate is 8%.**

- **That interest will apply from 9th February 2011 until payment in full.**

**8. It is so ordered.**

**Dated and delivered at Mombasa this 25th day of June 2015.**

**MARY KASANGO**

**JUDGE**

25.6.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For Appellant:

For Respondent:

**Court**

The Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**