



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION & ADMIRALTY DIVISION

CIVIL SUIT NO 191 OF 2008

ORIX OIL (KENYA) LIMITED.....PLAINTIFF

Versus

PAUL KABEU..... 1ST DEFENDANT

FRANCIS KIRIU.....2ND DEFENDANT

**TERESA WAITHIRA KIRIU.....3RD
DEFENDANT**

ALL trading as ROYAL FILLING STATION

RULING

Payment of interest

[1] Contrary to what the Plaintiff has submitted, the question is not; whether interest is payable; or who should bear the costs of the suit because those issues were settled in no uncertain terms in the consent judgement recorded herein. The real questions are:

a) When does interest start to run, at what rate and for which period; and

b) What is the amount of costs that should be paid by the Defendants to the Plaintiff?

[2] What I have stated above is discernible from the recording by Mabeya J on 30th October, 2013 of the consent judgment entered into by the parties. See the said consent judgment reproduced below for ease of reference:

[a] ‘By consent judgment be entered for the Plaintiff against the Defendants for the sum of Kshs. 2,725,113 only.

(b) The Plaintiff do have the costs of the suit to be agreed or taxed.

(c) Parties to agree on the interest payable on the judgment sum within 21 days of today I/d, the parties to submit on the same on 28th November, 2013.

(d) Submissions on 28/11/13.

[3] There are notable things which I should mention. The advocates for the parties signed the said consent judgment. Neither has the said consent judgment been set aside or stayed, nor appeal preferred against it. In light thereof, I do not think, the arguments by the Defendants that in their understanding, the judgment sum was to be all inclusive, can be any defensible. The said consent judgment is conclusive judgment as recorded and I should take it as such.

[4] Having said that, I wish to dispose of issue (b) for it is fairly straight forward. From the consent judgment above, the Plaintiff was awarded costs to be agreed or taxed. Invariably, in the absence of an agreement on the quantum of costs, the assessment of costs should be taxed by the taxing officer on application in that behalf. Accordingly, I order that costs be taxed by the taxing officer on application in that behalf. In any event, even if costs had not been awarded the court should have been guided by the law that costs follow the event, and the Plaintiff being the successful party should ordinarily be awarded costs unless its conduct is such that it would be denied the costs or the successful issue was not attracting costs. None of those deviant factors are present in this case and the court would still have awarded costs to the Plaintiff, which I do. See **SUPERMARINE HANDLING SERVICES LTD. v KENYA REVENUE AUTHORITY [2010] eKLR, ALEZANDER – TRYPHON DEMBENIOTIS v CENTRAL AFRICA CO. LTD [1967] E.A 310** and **DEV RAM MANJI DAL TANI v DANDA [1949] 16 EACA 35**,

[5] As I have stated earlier, I need not determine whether interest is payable or not. The consent judgment was clear that the interest is payable, except how much is payable. That in turn calls for a determination of when it starts and ends, and on what rate. Nonetheless, the law on when interest is payable is as stated in the decision by the Court of Appeal in the case **SUPERMARINE HANDLING SERVICES LTD v KENYA REVENUE AUTHORITY [2010] eKLR** that the justification for an award of interest on the principal sum is meant to compensate a plaintiff for the deprivation of any money, or specific goods through the wrong act of a defendant. Earlier decisions laid down that principle of law; such as **PREM LATA v PETER MUSA MBIYU [1965] E.A 592**, that:

“In both these cases the successful party was deprived of the use of goods or money by reason of the wrongful act on the part of the defendant, and in such a case it is clearly right that the party who has been deprived of the use of goods or money to which he is entitled should be compensated for such deprivation by the award of interest”

[6] The Plaintiff’s claim is for a liquidated sum for supply of oil products to the Defendants which the defendant did not pay for as agreed. There is a deprivation of goods and money in that wrongful act by the Defendants, which entitles the Plaintiff to an award of interest. For avoidance of doubt, the Plaintiff is hereby awarded interest on the judgment sum.

Interest accrues from the date of filing suit.

[7] Whereas the plaintiff in its plaint only prayed for interest without specifying from when it should be paid; it is for the discretion of the court to determine the time from when the interest should be payable. The exercise of discretion must, however, be founded on some defined legal principles, not whimsically or capriciously. There are copious judicial decisions on this subject. See the case of **PREM LATA v PETER MUSA MBIYU (supra)**, that:

...interest should normally be awarded on special damages, if the amount claimed has been actually expended or incurred at the date of filing suit

[8] Equally, I find and hold the plaintiff has a judgment on a liquidated amount which it had been deprived through the wrongful act of the Defendant, and therefore, it should be awarded interest from the date of filing the suit. Just for better grounding see the cases cited by the Plaintiff which are quite relevant on the issue. In **MUKISA BISCUIT MANUFACTURING CO. LTD. v WEST END DISTRIBUTORS LTD. [1970] E.A 469**, the court reinforced the position I have stated and relied on the

following passage in the case of **PREM LATA v PETER MUSA MBIYU (supra)** that:

“... The principle that emerges is 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 judgment...”

See also the case of **AUTOLOG KENYA LIMITED V. NAVISAT TELEMATICS (KENYA) LIMITED 2013 eKLR**, where **Mabeya J** stated that,

“...in that case the rate of interest should be 12% from the date of filing suit... In the circumstances I award interest on the decretal sum at the rate of 12% per annum from the date of filing suit until payment in full...”

Across the border, the High Court of Uganda in the case of **PAN AFRICAN INSURANCE COMPANY (U) LTD. v INTERNATIONAL AIR TRANSPORT ASSOC. (HCT-00-CC-CS-0667 OF 2003)** was as categorical that,

“As regarded interest, the principle is that where a party is entitled to a liquidated amount or specific goods and has been deprived of them through the wrongful act of another party, he should be awarded interest from the date of filing the suit. Where however, damages does not arise until they are assessed, in such event, interest is only given from the date of judgment.”

[9] I have said enough. I should round up.

FINDINGS AND ORDERS

[10] The overall impression I make out of the above analysis of the law and facts in this case is that it is a claim of liquidated amount which the plaintiff had been deprived through the wrongful act of the Defendant, and therefore, I award interest from the date of filing the suit until payment in full at the court rate of 12% per annum. Costs of the suit goes to the Plaintiff in accordance with the consent judgment herein, such costs to be taxed on scale by the taxing officer on application in that behalf and on filing of bill of costs. It is so ordered.

Dated, signed and delivered in open court at Nairobi this 27th May, 2014

F. GIKONYO

JUDGE