



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 43 OF 2002**

**BIO-MEDICAL LABORATORIES LIMITED.....PLAINTIFF**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL.....DEFENDANT**

**RULING**

1. The plaintiff has asked this court to settle the terms of the Decree arising from the Judgment delivered on 5<sup>th</sup> July 2012.
2. In the alternative, the plaintiff asked the court to review or vary the Judgment and the resultant Decree, so that the interest on the compensation should be calculable on compounded basis. It was the plaintiff's contention that the compensation should not attract interest on "*simple straight line method*".
3. It is common ground that the learned trial Judge decided that the plaintiff was entitled to interest;

*"At the commercial rate prevailing and I award the same as prayed in the plaint at 28% from 1<sup>st</sup> January, 2002, until payment in full".*

4. The defendant understood that holding to mean that the compensation would attract interest calculable using the simple interest method of calculation.
5. However, the plaintiff held a contrary view. According to the plaintiff, it had spelt out in the plaint that;

*"(6) Interest on principal sum borrowed from a local bank at monthly interest rate of 28% upto January 2002", which had by then accrued, at the time of filing suit, at Kenya Shillings Seven Hundred and Twenty Two Thousands Two Hundred (Kshs. 722,200/-)".*

6. In the submissions made by the defendant at the close of the trial, the defendant emphasized that the plaintiff ought to be compensated with interest at court rates. That submission was said to have been informed by the fact that the contract between the two parties herein did not contain a credit financing clause or a clause on interest.
7. In settling the terms of the Decree the court is required to make it clear what exactly the Judgment meant. The need for the court to clarify the meaning of the judgment arises when the parties to the case were unable to agree on the meaning of the said judgment.
8. The plaintiff has made that clear by making reference to, *inter alia*, the provisions of Order 21 Rule 8 (4) of the Civil Procedure Rules. That rule reads as follows;

*“On any disagreement with the draft decree any party may file the draft decree marked as “for settlement” and the registrar shall thereupon list the same in chambers before the Judge who heard the case or, if he is not available, before any other Judge, and shall give notice thereof to the parties”.*

9. When a Judge is settling the terms of a Decree or Order, his role does not extend to a re-evaluation of the evidence and submissions which led the trial court to arrive at its decision.
10. The task of the Judge who is settling the terms of the Decree or Order is to resolve any disagreements that had arisen either between the parties or as between any party and the Deputy Registrar.
11. In this case, the plaintiff claimed the Principal sum of Kshs. 7,500,000/-.
12. The second claim was for interest on that principal sum. In respect to that aspect of the claim, the plaintiff calculated interest upto and including January 2002. The calculations showed that the sum amounted to Kshs. 722,200/-.
13. The computation of that component of interest may well have been on the basis of 28% compounded monthly. However, in respect to further interest, from 1<sup>st</sup> January 2002, the plaintiff expressly stated it as follows;

*“(b) Interest thereon at the rate of 28 % from 1<sup>st</sup> January 2002, until payment in full”.*

14. That is the claim which the plaintiff put forward, in the plaint.
15. During the trial and in the final submissions, the plaintiff tried to impress upon the learned trial Judge to grant compound interest.
16. Even assuming that the trial court was persuaded that the plaintiff ought to have been awarded compounded rates of interest, I am unable to appreciate how that could then have happened when the relief sought in the plaint was for simple interest.
17. To my mind, the trial court rejected the defendant’s contention, which was that the compensation should attract interest at court rates.
18. Thereafter, the court proceeded to grant to the plaintiff exactly what the plaintiff had sought in the plaint, which was interest at 28% from 1<sup>st</sup> January 2002, until payment in full.
19. That holding is capable of only one interpretation, if any such interpretation was ever needed. The interpretation is that the damages amounting to Kshs. 8,225,000/- would attract simple interest at the rate of 28%. That therefore constitutes this court’s settlement of the terms of the Decree.
20. To my mind, the plaintiff appears to have been well aware that the court would settle the terms in the manner it has done, hence the feeble attempt to seek the alternative relief of Review or of Variation of the Judgment.
21. I have described the quest for Review or of variation as feeble, because the plaintiff did not appear to put forward any serious case to warrant any Review or Variation of the judgment.
22. Finally, as the defendant was right, in its interpretation of the Decree, the plaintiff is ordered to pay the costs of the application dated 27<sup>th</sup> August 2014.

**DATED, SIGNED and DELIVERED at NAIROBI this 27<sup>th</sup> day of November 2014.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

C.N. Kihara for the Plaintiff

T. Kihara for the Defendant

Collins Odhiambo – Court clerk.