



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NO. 149 OF 2007

PETER MAINA T/A ESPER FLOWER.....PLAINTIFF

VERSUS

PYRETHRUM BOARD OF KENYA.....DEFENDANT

RULING

This Ruling relates to an application by way of a Notice of Motion dated 11th October 2012 in which the Applicant sought three orders -

1. *that the application be certified urgent and heard on a priority basis,*
2. *that the court do review the judgment and decree given on 15th day of April 2011 so as to indicate the specific period for computation of the interest awarded,*
3. *that the costs of the Application be borne by the Defendant/Respondent.*

The application was supported by the Affidavit of the Applicant sworn on 11th October 2012 and the grounds on the face thereof.

The Application arose from the Applicants suit against the Respondent filed on 5th July 2007 seeking a liquidated claim of shs 3.5 million. However in a judgment delivered on 15th April 2011, the Applicant was awarded a sum of Kshs 2,909,610/= with costs and interest. The judgment did not however indicate the period from which the interest was to be paid on the said sum.

The payment of interest is governed by Section 26 of the Civil Procedure Act, (*Cap. 21, Laws of Kenya*) and Order IXA 3(1) (now Order X) of the Civil Procedure Rules. Section 26(1) provides as follows -

“26(1) where and in so far as a decree is for the payment of money, the money, in the decree order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the 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 that of payment or to such earlier date as the court thinks fit.

(2) Where such decree is silent with respect to payment of further interest, on such aggregate sum so aforesaid from the date of the decree to the date of payment, or other earlier date, the court shall be deemed to have ordered interest at 6 percent per annum.”

And Order X rule 3(1) provides that where judgment may entered in default of appearance or defence for a liquidated sum “*together with interest thereon from the date of filing the suit*” at such rate as the court thinks reasonable to the date of the judgment and costs.”

The guiding principle in Order X rule 3(1) is that interest on a liquidated sum “*is payable from the date of filing suit*” in respect of default appearance or defence.

In this case, the matter went to full trial at which evidence was given by both parties, and a judgment rendered in which the Respondent was found liable in the sum of shs 2,909,610/=.

Under Section 26(1) of the Civil Procedure Act the court's discretion to order payment of interest may be exercised in three ways -

- i. ***payment of interest on the sum adjudged from the date of filing suit to the date of the decree,***
- ii. ***payment of interest on principal adjudged for any period before the institution of suit,***
- iii. ***further interest on the aggregate (of (i) & (ii) at the rate ad-judgment reasonable.***

Under the first principle above, the interest is payable on the sum adjudged is from the date of filing suit to the date of the judgment and the decree thereon.

The contract did not provide the payment of any interest judgment. The second principle does not therefore apply in this case. There is however interest payable from the date of judgment until payment in full.

In summary therefore there shall be interest payable from -

- I. ***the date of filing suit (5.07.2007) to the date of judgment (15.04.2011) and***
- II. ***there will be interest on the aggregate sum (principal adjudged on 15.04.2011, plus interest from the date of filing suit (5.07.2007) to the date of judgment (15.04.2011), and***
- III. ***there will be interest on the aggregate sum (i) & (ii) to the date of payment from 16.04.2011 to the date of that payment.***

The record indicates that Respondent has been making payments on a reducing scale. The parties will therefore be guided accordingly.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 21st day of June, 2013

M. J. ANYARA EMUKULE

JUDGE