



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 387 OF 2009**

**IN THE MATTER OF ENFORCEMENT OF AN INDUSTRIAL COURT AWARD CAUSE NO. 18 OF 2004**

**ABEL ONSARE ONWONG’A & 30 OTHERS**

**(Members of Kenya Plantation & Agricultural**

**Workers Union).....  
APPLICANTS**

**VERSUS**

**KENYA TEA DEVELOPMENT AGENCY LIMITED ..... RESPONDENT**

**R U L I N G**

1. The substantive dispute between the parties herein was adjudicated upon by the **Industrial Court** vide its **Cause No. 18 of 2004**. An award dated 27<sup>th</sup> January 2005 was rendered.
2. An application by notice of motion dated 22<sup>nd</sup> April 2009 was filed herein for adoption of the Industrial Court award as the judgment of this court.
3. A consent letter dated 15<sup>th</sup> March 2011 was filed on the same date. It provided as follows: -

**“By Consent,**

**1. The Respondent do pay the first thirty-two (32) Applicants in the Schedule annexed hereto the total sum of KShs 7,158,11.20 within thirty (30) days from the date of filing this consent by way of RTGS through their Advocates NYACHOTI & Company whose account details are as hereunder:**

**BENEFICIARY: NYACHOTI & COMPANY ADVOCATES**

**ACCOUNT BANK: NATIONAL INDUSTRIAL CREDIT BANK**

**BANK CODE: 41**

**NAME: NIC HOUSE, NAIROBI**

**SWIFT/BIC: NINCKENA**

**ACCOUNT NUMBER: CA 21220000416**

**ACCOUNT BRANCH: WESTLANDS**

**BRANCH CODE: 105**

**2. This matter be mentioned thereafter on 25<sup>th</sup> March 2011 for the purpose of noting the progress made in finalizing the computations for the remaining six (6) Applicants with a view of recording a further consent on the amount owing to the remaining six (6) applicants in respect of salary arrears together with the amount owing to all the thirty eight (38) applicants save for Tabith K Obaga No. 31 on the list and Nemuel Onchangwa No. 35 on the list in respect of overtime together with costs of this suit.**

**3. That in default of Clause one (1) above, the Applicants, be at liberty to execute.”**

4. An order in terms of the consent was entered on 16<sup>th</sup> March 2011. The parties acted upon the consent in that the Respondent is said to have paid, and the Applicants accepted, the total sum of KShs 7,158,119/20.

5. The Applicants have now come to court by **notice of motion dated 16<sup>th</sup> June 2011**. The main outstanding prayers are Nos. 3 and 4 where the Applicants seek interest at prevailing court rates upon the sum of KShs 7,158,119/20 (already paid) from 1<sup>st</sup> March 2004 to 4<sup>th</sup> April 2011, and also costs of the “entire suit” together with interest thereon from the date when the aforesaid sum was paid. It is the Applicants’ case as stated in the supporting affidavit that they are entitled to interest.

6. The Respondent has opposed the application by grounds of opposition dated and filed on 30<sup>th</sup> August 2011. These grounds include: -

(i) That the application is misconceived.

(ii) That the court is *fanctus officio* and lacks jurisdiction to award interest.

(iii) That in any event all issues between the parties were compromised by the written consent dated 15<sup>th</sup> March 2011 upon which an order was entered on 16<sup>th</sup> March 2011, the terms of which have been fully performed by the Respondent.

(iv) That again in any event, the Industrial Court award did not provide for payment of interest or costs.

7. I have considered the submissions of the learned counsel herein.

8. As already stated all issues between the parties were canvassed, or ought to have been canvassed, before the Industrial Court. The Industrial Court did not award any interest or costs.

9. This court certainly lacks jurisdiction to award any interest on the principal sum awarded by the Industrial Court or costs of the proceedings before the Industrial Court in a matter in which it did not itself adjudicate. The function of this court did not extend beyond adopting the award of the Industrial Court (exactly as it was) as judgment of the court.

**10.** The consent letter of 15<sup>th</sup> March 2011 did not allude to any outstanding issues of interest and costs. The Applicants cannot seek from this court something that they ought to have sought before the Industrial Court, or which ought to have been addressed in their aforesaid compromise dated 15<sup>th</sup> March 2011.

**11.** The notice of motion dated 16<sup>th</sup> June 2011 is entirely misconceived and in any event without merit. It is hereby dismissed with costs. It is so ordered.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH 2012**