



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW 669 OF 2004

**IN THE MATTER OF: AN APPLICATION BY ROSLINDA JUMA (ADMINISTRATRIX OF
THE ESTATE OF DR.**

**JUMA OBARA – DECEASED) FOR LEAVE TO
INSTITUTE JUDICIAL REVIEW ORDERS OF MANDAMUS**

BETWEEN

REPUBLIC.....APPLICANT

**-VERSUS-
THE PERMANENT SECRETARY**

MINISTRY OF HEALTH.....RESPONDENT

**EX-PARTE
ROSLINDA JUMA**

(Administratrix of the Estate of

Dr. James Obara (Deceased)

J U D G M E N T

The Exparte Applicant Roslinda Juma in her capacity as the Administratrix of the Estate of Dr. James Obara approached this court by way of Notice of Motion dated 3rd October 2005 seeking orders of Mandamus to compel the Permanent Secretary in the Ministry of Health to pay her the decretal amount awarded in **HCC 1963 of 1993** in the sum of Kshs.917,800 together with costs of the suit taxed at Kshs.91,299. The exparte applicant (**hereinafter referred to as the applicant**) also prayed for costs of the application. The Notice of Motion was opposed by the respondent through grounds of opposition filed on his behalf by a state counsel instructed by the Attorney General's Office.

A perusal of the court record shows that while the application was pending hearing, the respondent paid the applicant the decretal amount in full together with the taxed costs of the suit. This fact has been admitted by the applicant in the written submissions filed on her behalf by her advocates on record.

According to the applicant, the principal sum of Kshs.917,800 was paid on 21st September 2006 while the costs were paid on 26th February 2008.

Mr. Thiga learned counsel for the applicant submitted that besides payment of the principal amount and costs, the applicant was also entitled to interest accruing therefrom from date of judgment till date of payment. The applicant proceeded to compute the sums outstanding by way of interest on principal amount and costs to be Kshs.776,883.60. She now seeks orders of mandamus to compel the respondent to pay the said amount.

The respondent on his part disputes the applicant's claim that she is entitled to payment of interest on the decretal sums and costs awarded in HCC 1963 of 1993.

Going by the rival submissions made by the parties herein, I find that the only issue for determination by this court is whether the applicant is entitled to an order of mandamus to compel the respondent to pay interest on the decretal amount and costs awarded to the applicant as computed in the applicant's written submissions filed on 8th November 2010.

Mr. Thiga learned counsel for the applicant submitted that the applicant is entitled to payment of interest as claimed since it is not disputed that payment of principal amount and costs was effected long after judgment had been delivered and the applicant ought to be paid interest for the period payment was withheld. He further submitted that though the decree of the High Court in HCC 1963 of 1993 was silent on the issue of interest, Section 26(2) of the Civil Procedure Act supports the applicant's claim since it provides that where a court decree is silent on interest, the court shall be deemed to have ordered interest at court rates.

It was also argued on behalf of the applicant that the respondent is estopped by its own conduct from opposing the applicant's claim of interest having indicated to the court on several occasions that it was processing payment due to the applicant even on the issue of interest.

On his part Mr. Kuria learned counsel for the respondent submitted that the applicant was not entitled to payment of interest since the High Court decree had no provision for payment of interest and Section 26(2) of the Civil Procedure Act only applies to suits in which the plaintiff had prayed for a liquidated amount in the plaint and not general damages as was the case in the instant case.

Having considered the submissions made by the parties herein on the issue of interest, I find that it is not disputed that the decree whose terms the applicant sought to enforce by issuance of orders of mandamus was silent on the payment of interest. This in my view means that the High Court did not exercise its discretion to award interest on sums found due to the applicant in any of the instances provided for by Section 26(1) of the Civil Procedure Act.

Section 26(1) of the Civil Procedure Act states as follows:

“Where and in so far as a decree is for the payment of money, the court may, 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 the date of payment or to such earlier date as the court thinks fit

Section 26(2) of the Civil Procedure Act also provides that –

“Where such a decree is silent with respect to the payment of further interest on such aggregate

sum as 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 per cent per annum”.

A plain and literal interpretation of Section 26 reveals that Section 26(2) thereof only applies where the court had exercised its discretion to award interest on principal sums adjudged from the date of filing suit to the date of the decree in addition to any interest on the principal sums awarded for any period before the institution of the suit and it is only where the decree is silent on further interest on the aggregated sum adjudged from the date of the decree to the date of payment or such earlier date as the court thinks fit would the rate of interest be deemed to have been ordered at the rate of 6% per annum.

Since in this case the High Court did not exercise its discretion to order payment of interest in any of the instances provided for in Section 26(1) of the Civil Procedure Act, Section 26(2) is clearly inapplicable in this case and I so find.

From the foregoing, it is my finding that the applicant is not entitled to payment of any interest on the principal amount and costs adjudged in the suit before the High Court.

The fact that the respondent delayed for a long time in making the payments due to the applicant is not disputed and the said delay must have obviously adversely affected the financial interests of the applicant but however much the court may sympathize with the applicant, the fact is that delay in effecting payment by itself does not entitle the applicant to interest on sums due since the applicant was as a matter of law not entitled to interest in the first place. This may explain why the applicant did not seek in the substantive motion orders of mandamus to compel the respondent to pay her the principal amount and costs awarded by the High Court together with interest.

A reading of the Notice of Motion dated 3rd October 2005 and the statement of facts dated 16th May 2005 show clearly that payment of interest on sums awarded in the decree issued by the High Court was not one of the reliefs sought by the applicant in this case. The law is that parties are bound by their pleadings. The court cannot grant orders which have not been prayed for by a party in its pleadings.

In view of the foregoing and considering that it has been conceded that the respondent has now fulfilled his obligation and performed his public duty of satisfying the decree of the High Court, I find that there is no basis upon which this court can issue orders of mandamus as prayed.

I consequently find that the application has been overtaken by events and orders of mandamus cannot issue.

However, since it is clear that the respondent made payments due to the applicant long after the present proceedings had been instituted, the applicant is entitled to costs of the suit. I therefore award costs of the application to the applicant to be borne by the respondent.

Dated, Signed and Delivered by me at Nairobi this 30th day of May, 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk
N/A for Applicant
N/A for Respondent