



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Appeal 232 of 2004**

**JOSEPH WAGEMA.....APPELLANT**

**VERSUS**

**NAKURU INDUSTRIES LTD.....RESPONDENT**

**RULING**

In Nakuru CMCC No. 333 of 2003 the trial court awarded the appellant Kshs.291,500/- less 30% contribution. It then proceeded to order that a sum of Kshs.133,000/- which had been paid by the respondent's insurers to

Pine Breeze Hospital where the appellant had been hospitalized following his injury at the respondent's premises be deducted from the net sum.

The appellant's appeal to this court against that order was allowed by Lady Justice Koome. The respondent has since paid to the appellant the sum of Kshs.133,000/- it had deducted but refused to pay interest on it arguing that in her judgment Lady Justice Koome did not order the payment of that sum with interest.

The appellant has come back to court with an application under **Section 26** of the **Civil Procedure Rules** and sought an order to compel the respondent to pay interest on that sum from the date of judgment.

The respondent sees this as a misconceived and frivolous application which should be dismissed without much ado. Giving its reasons for that view, its counsel Mr. Mahida submitted that the appellant should have appealed against Lady Justice Koome's omission to order interest on that sum. He concluded that if the application is allowed then interest should run from the date of the High Court judgment.

I have considered the matter. The respondent had not sought a set off of that amount from the award. The appellant himself having not paid it to the hospital had not claimed it. Like Lady Justice Koome I find that the learned trial magistrate had no basis for ordering the deduction of the hospital expenses the respondent's insurers had paid on behalf of the appellant from the award.

As the trial court had ordered that interest be paid on the award, Lady Justice Koome did not need to reiterate that order in her judgment.

The insinuation that interest on that sum is not payable because she did not specifically order it is therefore totally unjustified.

In the circumstances I allow this application and order that the respondent do forthwith pay interest on the sum of Kshs.133,000/- from the date of the lower court judgment until the date it was paid.

The appellant shall have the costs of this application.

**DATED and DELIVERED this 27<sup>th</sup> day of April, 2010.**

**D. K. MARAGA**

**JUDGE.**