



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CIVIL CASE 45 OF 2002

JASPER JUMA NZUKI PLAINTIFF

VERSUS

JAMES WANYAMU MATHUKU 1ST DEFENDANT

MUTUKU WANYAMU 2ND DEFENDANT

RULING

1. On 17/9/2008, I delivered judgment in this matter and awarded Kshs.1,390,662/= plus costs. The Judgment was silent on interest although at prayer (iv) in the Plaint there was a specific prayer for **“interest ...at court rates”**.

2. By its Notice of Motion dated 17/11/2008 the Plaintiff sought a review of the judgment to include the element of interest. That Application is unopposed as no Replying Affidavit nor grounds of opposition were filed in response to it. I note however that the advocate for the Defendant in his submissions invoked Section 26 (2) of the Civil Procedure Act in arguing that interest should be at 6% p.a. as was stated by Kasango J in **Sanam Investments Ltd vs Pointex (K) Ltd & 2 Others (2004) e KLR** at Page 3.

3. On the same point the advocate for the Plaintiff relying on the decision of Maraga Ag. J (as he then was) in **Ali Abdalla Mbarak and Jagdish Udani H.C.C.C 3/2002 (Msa)** argues that interest should be at court rates from the date of filing suit till payment in full.

4. I agree with both advocates and would state that failure to award interest was an omission on my part because once I entered judgment in favour of the Plaintiff including on the issue of costs, then interest was awardable as a matter of right. I therefore accept the argument that the judgment dated 17/9/2008 should be reviewed to include the following order:

“Interest is awarded to the Plaintiff on the judgment sum and costs at court rates from the date of judgment until payment in full.”

5. Costs of the Application shall be in the cause as no party is to blame for the omission.

6. Orders accordingly.

Dated and delivered at Machakos this **12th** day of **May** 2009.

ISAAC LENAOLA

JUDGE

In the Presence of: Mr Mutia h/b for Mr Tindika for Plaintiff

N/A for Defendant

ISAAC LENAOLA

JUDGE