



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 1060 of 1999

**LEE ENTERPRISES
LIMITED.....PLAINTIFF**

VERSUS

**KENYA INDUSTRIAL ESTATES
LIMITED.....DEFENDANT**

R U L I N G

The dispute between the parties – decree debtor and decree holder is the computation of interest in a decree already signed and sealed under the terms of Order 20 Civil Procedure Rules. The decree awarded special damages amounting to Kshs.2,024,420/= in respect of damage to the plaintiff’s property:-

“with interest on (a) and (b) from the “usual” appropriate dates”.

The decree as drawn specifies interest at the rate of 12% p.a. on both general and special damages from 28/1/2003 until payment in full. The issue of award of interest is provided in Section 26 of Civil Procedure Act. Section 26 (1) 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 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 decree to the date of payment or to such earlier date as the court thinks fit.

It is agreed that although the decree fixes the rate of interest at 12% p.a. on both general and special damages from 28/1/2003 (date of judgment) until payment in full, the Hon. (now retired) judge did not fix the rates and the period of payment. He simply said “with interest on (a) and (b) from the usual appropriate dates. Prayer (a) of the plaint was “a declaration that placing of the plaintiff under receivership by the defendant was unlawful and illegal and prayer (b) was “General damages for the said illegal receivership and closure of the bakery.”

The judgment awarded Kshs.1,000,000/= general damages, special damages Kshs.2,024,420/=. I do not think there is dispute as to the payment of interest in personal injury cases. The authorities cited do support the present practice that for general damages in personal injury cases, interest is paid for damages awarded from the date of judgment and for special damages (out of pocket expenses) from the date of filing suit.

It was so held in the case of Fernandes vs. People Newspapers Ltd. [1972] EA 63. (2) Mukisa Biscuits Manufacturing Ltd. vs. Westend Distributors [1970] EA 469. (3) Prem Lata vs. Mbiyu [1965] EA 592 where the court said:-

“In such a case it is clearly right that the party who has been deprived of the use of goods or money to which he is entitled should be compensated by such deprivation by an award of interest.”

In that case the claim was of personal injuries and the Court of Appeal held:-

“In personal injury cases, interest on general damages should not be awarded for the period between the date of filing suit and judgment but interest should normally be awarded. On special damages if the amount claimed has been expended or incurred at the date of filing suit.”

The present case is not for personal injuries’ claim. Therefore that proposition does not apply. In the case of Mukhisa Biscuits Manufacturers Co. Ltd. the claim was not in personal injury but arose from contract. The court held:-

“While judge had power to award interest from a date prior to judgment where damages are to be assessed by the court, interest should only be given from the date of judgment.”

The clear principles which are to be seen after perusing the authorities is that in cases where damages are to be assessed by court, general damages – the liability to pay is determined in the judgment and that is the date from when interest is payable. However, in cases of personal injuries, interest is payable at the time of filing suit so long as the special damages is proved and pleaded.

In the present case the claim arose out of a contract. The claim was for general damages, the interest of which should be paid from the date of determination of liability. On the date of judgment 28/1/2003, on the issue of special damages, the court valued the items lost as Kshs.2,024,420/=. The judge said:-

“On the basis of what I have stated above, I find that the plaintiff has proved entitlement to Kshs.2,024,420/= in respect of loss and damages and its equipment as listed in the judgment at page 23 were items taken away from the plaintiff and listed by the time the plaint was filed.”

Therefore as Court of Appeal said in Mukisa vs. Westend Case said:-

“The principle that envisages is that where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing suit.”

It is my view then that the Honourable Judge (now retired) meant:-

“With interest on (a) and (b) at court rates of 14% p.a. from the date of filing suit until payment in full.”

Section 26 Civil Procedure Act empowers a judge to award interest but gives discretion on the matter. For the above reasons I find the decree now in the file to be incorrect. The same shall be amended to conform to the above stated.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 22nd day of October 2009.

JOYCE N. KHAMINWA

JUDGE