

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Case 748 of 1996

EAST AFRICAN ENGINEERING CONSULTANTSDECREE-HOLDER

V E R S U S

MUNICIPAL COUNCIL OF KISUMUJUDGMENT-DEBTOR

R U L I N G

Mr. Ogembo, learned counsel for the Judgment-Debtor herein, has now become aware of the fact that the judgment delivered in favour of Decree-Holder in the primary suit (Nairobi HCCC No. 1676 of 1987) was on 5th October, 1995 varied by consent. The original judgment awarded the Decree-Holder the sum of KShs. 1,126,000/00 plus costs and interest at court rates. The variation was to the effect that the Decree-Holder was awarded KShs. 8,112,673/00 plus costs and interest at the rate of 2% **above** the prevailing commercial rates. Mr. Ogembo therefore, quite properly in my view, conceded the Decree-Holder's application by notice of motion dated 11th July, 2008.

In that application the Decree-Holder sought an appropriate review of the orders of the court (Waweru,J) of 21st May 2008. The court had ordered, *inter alia*, that the Deputy Registrar do forthwith take accounts in order to determine the outstanding decretal sum. The court had further ordered that in so doing

2 "...the interest upon the decretal sum shall be simple and not compound. In other words, the interest shall be calculated at court rates from the date of the suit without rests except those necessitated by any payments made by the Judgment-Debtor towards the decretal sum"

When I made this order, I, just as Mr. Ogembo, was not aware of the varied decree. The directions relating to interest were therefore given in error. I will therefore vary that part of the order to the effect that in taking accounts in order to determine the outstanding decretal sum the interest shall be calculated at the rate that was awarded in the variation of 5th October, 1995. All the other aspects of the orders of 21st May, 2008 shall remain the same. For the avoidance of doubt, the interest shall be simple and **not** compound. That is, the interest shall be calculated without rests except those necessitated by any payments made by the Judgment-Debtor towards the decretal sum.

The notice of motion dated 11th July, 2008 is therefore allowed only to the above extent. There will be no order as to costs of this application. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF NOVEMBER, 2008