

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 57 of 1999

JOSEPH KIARIE NJOROGE APPELLANT

VERSUS

NJUE KIARIE RESPONDENT

RULING

This is an application under Section 26 of the Civil Procedure Act for an Order that the “interest” awarded on general damages on Appeal be computed from the date of the Lower Court Judgment.

By a Judgment delivered on 21st January, 1999, the Lower Court awarded the Applicant general damages of Shs.100,000/= for injuries sustained in a motor vehicle accident, together with costs and interest at Court rates. On Appeal, this sum was enhanced to Shs.250,000 by the Honourable Justice Sheikh Amin, who has since retired from the Bench. He also ordered interest at Court rates. The issue is, from what date should interest be calculated? From the date of the Lower Court Judgment, or the date of High Court Judgment.

The Respondent’s Counsel Ms. Wang’ombe has argued that the interest on the enhanced sum should run from the date of the High Court Judgment because under Section 26 of the Civil Procedure Act interest is payable from the “date of the decree”, and the date of the High Court decree is 5th July, 2001. The Lower Court, according to Counsel, has its own decree dated 21st January, 1999 attracting interest on Shs.100,000 being the decretal amount in that Court.

The Respondent’s argument, in my view, is quite untenable in law. The High Court on Appeal enhanced the sum payable to the Appellant. It set aside or substituted the decree of the Lower Court, and effectively said that the Appellant was entitled to Shs.250,000 and not Shs.100,000 ordered by the Lower Court. It follows, therefore, that he was also entitled to interest on the enhanced amount from the same date, the date of the Lower Court Judgment, i.e. 21st January, 1999.

Accordingly, I allow this application and Order that interest on general damages be computed from 21st January, 1999 as prayed in the application dated 26th July, 2006. The Applicant shall also have the costs of this application.

Dated and delivered at Nairobi this 21st day of March, 2007.

ALNASHIR VISRAM

JUDGE