

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 337 of 1995

MEA LIMITED.....PLAINTIFF

VERSUS

B.A.T KENYA LIMITED.....DEFENDANT

RULING

This is an application by the plaintiff made under the Provisions of Section 3A of the Civil Procedure Act and Order XX rule 2 of the Civil Procedure Rules seeking an order of this court to review the order of the Deputy Registrar issued on the 26th March, 2007. The suit had been listed before him on a Notice to Show Cause and said by Deputy Registrar of this court allowed the defendant to execute against the plaintiff on the costs that were awarded to it. The plaintiff has sought to have the said Order allowing execution to be set aside on the grounds that the costs awarded to the defendant had not been ascertained. The application was supported by the annexed affidavit of Njuguna Paul Chuchu, an advocate in the firm of Kangethe & Company Advocates, the advocates for the plaintiff. The application is opposed. The defendant filed grounds in opposition to the application. The defendant stated, *inter alia*, that the plaintiff had not established any grounds to warrant the grant of the orders sought. It further stated that the application filed was an abuse of the due process of the court because the plaintiff had not taken the opportunity to oppose the decree when the suit was listed for notice to show cause before the Deputy Registrar.

At the hearing of the application, I heard the submissions made by Mr. Munene on behalf of the plaintiff and by Mr. Okeyo on behalf of the defendant. It appeared to this court that so much heat was generated when the plaintiff failed to obtain interim orders of stay of execution of the decree during the High Court vacation in the month of April, 2007. However, upon evaluating the facts in dispute in this application, it is clear to this court that whatever transpired during the material period was a side issue to the main issue in contention. Having heard the submissions made on behalf of the plaintiff and the defendant, the only issue for determination by this court is whether the defendant was entitled to charge interest on the costs that were awarded to it when the suit filed by the plaintiff was ultimately dismissed with costs by the Court of Appeal.

Section 26 of the Civil Procedure Act provides that interest shall be charged on the principal sum from the date of filing suit to the date of the adjudication of the suit. A court may for sufficient reasons allow interest on the principal amount for the period before the institution of the suit. It is however clear that **Section 26 of the Civil Procedure Act** does not provide for the charging of interest on costs. However, **Section 27 (2) of the civil Procedure Act** provides that a court may allow interest on costs at any rate not exceeding 14% p.a and such interest shall be added to the costs and shall be recoverable as such. In the present suit it is evident that the defendant did not any time seek an order from the court that it should be allowed to charge interest on costs. It was therefore wrong for the defendant, in its application for execution of the decree, to include interest on costs. The plaintiff has a legitimate complaint when it argued that the defendant ought not to have charged interest on costs without seeking an order of the court to that effect.

Having carefully perused the file herein, I do hold that the costs which were awarded to the defendant and which ought to have been executed for by the defendant are as follows; in the High Court, the defendant was awarded costs of Ksh.566,469/=. In Civil Appeal No.288 of 2000 (138/2000 UR), the defendant was awarded Ksh.39,978/75. In Civil Appeal No.290 of 2000, the defendant was awarded costs of

Ksh.284,733/75. The total costs that ought to have been executed in the decree by the defendant is the sum of Ksh.891,181/50. In its application for execution of the decree, the defendant sought to be awarded interest of Ksh.516,619/=. That sum was wrongly and erroneously included in the decree when the defendant was allowed to execute for its costs against the plaintiff. It is therefore clear that the said amount should not have been included in the decree when the defendant executed for its costs.

I therefore hold that the said sum of Ksh.516,619/= ought not to have been included in the decree. The plaintiff submitted that it had already paid the entire costs that were stated in the decree to the defendant. The said amount included interest on costs which ought not to have been charged. I do exercise my inherent jurisdiction to review the said decree and order that the defendant do refund the plaintiff the sum of Ksh.516,619/= which was unlawfully paid to it by the plaintiff. The said amount shall be paid by the defendant to the plaintiff within fourteen (14) days of today's date or in default thereof the plaintiff shall be at liberty to execute against the defendant. The plaintiff shall have the costs of this application.

I shall not address the other issues raised in this application because in my opinion they are side issues which do not go to the root of the dispute between the plaintiff and the defendant.

It is so ordered.

DATED at NAKURU this 15th day of June, 2007

L. KIMARU

JUDGE