

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 1064 of 2000

DEVJI MEGHJI & BROTHERS LIMITED.....PLAINTIFFS/RESPONDENTS

VERSUS

NATIONAL IRRIGATION BOARD.....DEFENDANT/APPLICANT

R U L I N G

The defendant/applicant seeks to have the decree issued on the 8th March 2001, set aside, and the terms of the decree that agrees with the judgment settled by the court. It is the defendant's contention that the decree drawn and issued on the 8th March 2001, does not agree with the terms of the consent judgment entered into by the parties.

The bone of contention is paragraph 2 of the decree which indicates that it is ordered by consent that ***“the defendant do pay to the plaintiff the sum of Kshs.6,300,706/95, together with interest thereon at the rate of 2% per month form 1st January 1998.”*** It is contended that the parties did not agree on the specific interest rate to be applied, and that the same could not be ***“as prayed in the plaint”*** as there were three alternative prayers in the plaint.

The plaintiff/respondent objects to the application. Grounds of opposition were filed on 29th August 2007. It is contended that the application is misconceived and bad in law. It is maintained that the defendant cannot complain about the decree, having neglected to approve the draft sent to it. The defendant was also accused of being guilty of inordinate delay in bringing the application 6 years after the decree was signed by the Deputy Registrar and after making substantial payments.

At the hearing of this application, Mr. Kinyanjui who appeared for the defendant conceded that the decree signed by the Deputy Registrar, did not accord with the draft decree submitted by the plaintiff and the consent judgment signed by the parties with respect to the date from which interest is to be calculated. Mr. Kinyanjui however maintained that the rate of interest was agreed.

It is evident from the consent judgment which was entered into as per letter dated 1st November 2000, that the parties agreed on ***“judgment for the plaintiff as prayed in the plaint”***. This takes us to the plaint wherein the plaintiff prayed for judgment against the defendant for: -

“(a) The said sum of Kshs.6,300,706.95 being the principal sum claimed herein.

(b) Interest on (a) above at the agreed interest rate of 2% from 30 days of deliveries as per paragraph 3 above and as per the agreement between the plaintiff and the defendant and or reasonable interest and/or as loss of usage of the monies.

(c) Costs of this suit and interest thereon.

(d) Any other relief this honourable court may deem fit.”

From the above it is clear that the sum of Kshs.6,300,706/95, was agreed upon. What is not so clear is the interest rate and the date from which interest was to accrue. It is true that prayer (b) of the plaint prayed for 3 alternatives, i.e. either interest at 2%, or reasonable interest, or loss of usage of the money. Nonetheless, the main prayer in the plaint was for interest at the agreed rate of 2%. This then must be the rate the parties are taken to have agreed on when they agreed on judgment as prayed. For the alternative

prayers could only come into play when the main prayer fails or is rejected which was not the case herein. As regards the effective date, paragraph 3 of the plaint shows that the goods were ordered and delivered in the month of August 1998 and September 1998 as per the dates of the L.P.Os and the invoices. Since it is not clear from that paragraph which particular goods were delivered when, it is fair that the effective date of interest should be 30 days from the date of last delivery which is 14th September 1998. That is to say that the effective date of interest should be from 14th October 1998.

I therefore, grant the plaintiff's application, to the extent of setting aside the decree issued on 8th March 2001, and directing that a new decree be drawn showing the effective date of interest as 14th October 1998. To this extent only does the application succeed.

Order accordingly.

Dated, signed and delivered this 27th day of November 2007.

H. M. OKWENGU

JUDGE