



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL
COURTS)
Civil Case 916 of 1997 (O.S)**

- 1. PIONEER GENERAL ASSURANCE SOCIETY LIMITED**
- 2. PIONEER INVESTMENT TRUST LIMITED**
- 3. SHAMSUDEEN NIMJI JAVER**
- 4. ABDULMAJID NIMJI JAVER**
- 5. ALI AHAMED HADI NIMJI PLAINTIFFS**

AND

ZULFIKARALI NIMJI JAVER (Known as “Zool”)

- 1. RAHMATALLI ABDULLA**
- 2. RENNIE RICHARDSON**
- 3. INTERNATIONAL HOLDINGS (U) LIMITED.....DEFENDANTS**

R U L I N G

The Plaintiffs sought the following reliefs in the originating summons dated 14th April 1996:-

1. An order that the judgement entered for the Plaintiffs in the Ugandan case appearing in the title above in the sum of US\$35,687,500/00 (equivalent to KSh1,903,556/60) be registered in the High Court of Kenya at Nairobi in accordance with the provisions of the Foreign Judgements (Reciprocal Enforcement) Act, Cap. 43, Laws of Kenya.
2. An order that the Plaintiffs be granted interest on the said judgement sum from the date of registration thereof until payment in full.
3. An order that the Plaintiffs be granted the costs of this application.

On the 17th April 1997 this Court (Aluoch, J.) granted the first prayer of the originating summons. On 23rd November 2005 the Plaintiffs urged the second and third prayers before me. It is apparent that it has taken them over 8 years to do so. Now they want this Court to award them interest on the judgement sum from 17th April 1997 until payment in full.

I have perused the record of this old matter. I do not find any sufficient reason why the Plaintiffs could not have urged prayer No. 2 of the originating summons earlier. It is true that an application had been filed seeking to set aside the order of Aluoch, J. of 17th April, 1997. That application was by chamber summons dated 2nd May 1997. The same was not heard until 17th October 2000. Ruling thereon was delivered on 8th November 2000. The application was dismissed. In my view the Plaintiffs could have pressed for the earlier hearing and disposal of that application. Worse still, after the said application was dismissed, the Plaintiffs waited some five years to prosecute the rest of the originating summons. One of them, the 3rd Plaintiff, died in the meantime in the year 2003. I find no sufficient reason at all in the Court record for this long delay in prosecuting the rest of the originating summons.

In these circumstances I think it would be patently unjust to award interest against the Defendants from the date of registration of the judgement over 8 years ago. Under Section 8 (2) (e) of Cap. 43 aforesaid the Court has the discretion to award interest from the date of registration of the judgement calculated at the rate applicable to a judgement of the High Court of Kenya. For the reasons given above I will not exercise this discretion in favour of the Plaintiffs. However I shall award them interest upon the judgement sum at court rates from the date of delivery of this ruling. It is so ordered. The Plaintiffs shall also have the costs of the originating summons. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 10TH DAY OF FEBRUARY, 2006.