

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

Civil Suit 315 of 1996

MAJESTIC WORKS LIMITED. PLAINTIFF

VERSUS

KILIMANJARO COMPANY LIMITED..... DEFENDANT

RULING

On 05.04.06 I delivered judgment in this case and gave judgment for the plaintiff, with costs to the plaintiff. I also awarded to the plaintiff, interest on the principal sum of Kshs.1,257,761/15 at court rate from the date of judgment until payment in full.

Subsequently counsel for the plaintiff arranged to have the case fixed for mention before me on 18.09.06. Mr. A. Tanui appeared for the plaintiff at the mention and told the court as follows:

‘Purpose of mention is to clarify date when interest on the principal would start running. We submit it should start from date of filing suit, not from date of judgment as ordered by court.’

Learned plaintiff’s counsel relied on Yousuf Abdulla Gulamhusein –vs- The French Somaliland and Shipping Co. Ltd [1959] E.A. 25 in seeking ‘clarification’ on the date when the principal would start running. Yousuf’s case was decided by the then Court of Appeal for Eastern Africa, arising out of an appeal from the Supreme Court of Aden.

As far as the date from which the interest awarded by this court was to start running is concerned, there is no ambiguity on the matter – it is from the date of judgment until payment in full. That is clear enough and no case arises for any clarification. If the plaintiff was dissatisfied with the questioned order relating to the effective date from which interest was to start running, he should have appealed against it, or at least sought its review. Section 26 of the Civil Procedure Act, Cap. 21 provides, *inter alia*, as follows:

‘26 (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree’

As I see it, the court has discretion regarding the matter in question and if the plaintiff was dissatisfied with the way the court exercised its discretion in the matter, the plaintiff should have invoked appropriate formal procedure in challenging the exercise of such discretion.

The court declines to interfere with its order made on 05.04.06 with regard to the date from which the interest awarded would start running. It is so ordered.

Delivered at Nairobi this 29th day of September, 2006.

B.P. KUBO

JUDGE