



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

Civil Suit 798 of 2003

THARA TRADING LIMITED.....PLAINTIFF

VERSUS

N. K. BROTHERS LIMITED.....DEFENDANT

R U L I N G

On 25th May, 2006 when the suit came up for mention with a view to recording a settlement, the parties, through their learned counsels, informed the court that the Defendant had fully paid to the Plaintiff the principal sum claimed, and that the only outstanding issues were interest on the principal sum and costs. The court was further informed that the said partial settlement was reached by the parties themselves without involving the counsels. Learned counsel for the Plaintiff submitted that in these circumstances the Plaintiff was entitled to interest on the principal and costs of the suit. Learned counsel for the Defendant left the matter to court.

Section 26 (1) of the Civil Procedure Act (the Act) donates to the court, where and in so far as the decree is for the payment of money, the discretion to order interest, at such rates as the court deems reasonable from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

The Plaintiff's claim was for the sum of Kshs.5,484,585/00 in respect of goods sold and delivered to the Defendant between 1996 and 2005 at the Defendant's own request and instance. Defence was filed denying the claim. In these circumstances I see absolutely no reason why the Plaintiff should be denied interest, at least from the date of filing of suit.

Regarding costs of the suit, section 27(1) of the Act provides:-

“27. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the

court or judge shall for good reason otherwise order.”

Again here, the statute has granted to the court discretion in regard to costs as limited by the proviso.

What is the “event” here? With payment of the principal sum by the defendant to the Plaintiff, the Plaintiff has obviously succeeded in his suit. That is the “event”. I see no good reason why the Plaintiff should be denied its costs of the suit. The fact that payment of the principal has been made out of court is not such good reason.

The order that commends itself to me is therefore as follows. The Defendant having paid the principal sum claimed, it shall further pay to the Plaintiff interest on the principal at court rates from the date of filing suit to the date of payment of the principal. The Plaintiff shall have costs of the suit. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF DECEMBER, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 8TH DAY OF DECEMBER, 2006.