

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO.1616 OF 1992

PIUS KINUTHIA NJUGUNA PLAINTIFF
VERSUS
JOHN MUSEMBI AND ANOTHER DEFENDANT

RULING

The application dated 20th June, 2002 before me is by way of Notice of Motion and is provided under Order XLIV Rule I and Order L of Civil Procedure Rules.

In short it seeks for review of my ruling dated 24th May, 2002 by making an order of interest on the sum of KShs.143,148/- which I awarded to the Defendant/Applicant in respect of counter-claim.

Mr. Nthiga the Learned Counsel for the Applicant put up valiant and very interesting grounds in support of this application.

He relied on Section 26 of the Civil Procedure Act and stressed that the order of interest follows the judgment. He further submitted that the sum of Shs.143,148 awarded to the applicant was in respect of special damages and in the Accident cases, the interest thereon runs from the date of filing the suit.

That could be true, but, in my opinion, looking at the provisions of Section 26 of the Civil Procedure Act, the award of interest is discretionary. It is also in practice usually awarded. However, failure thereof, in my humble view, cannot be regarded as an error apparent on the face of the record. **Halsbury Laws of England 4th Edition Volume 37 paragraph 549**, also supports my opinion.

I advisedly say so, as at the end of my ruling, which is sought to be reviewed, I specifically awarded interest on the judgment sum after deducting the sum awarded in counter-claim.

Failure to award interest under the circumstances cannot be termed as an error of fact. If it is an error of law, then it cannot be reviewed under Order XLIV of Civil Procedure Rules.

In my humble view, this court, so to speak is functus officio in the matter.

I also note that the application in fact was filed on 9th July, 2002 after almost one month and three weeks from the date of ruling and no explanation for this delay is forthcoming.

Consequent to the above observations, I dismiss the application dated 20th June, 2002 with no order as to costs.

K.H. RAWAL

JUDGE

29.4.2005