REPUBLIC OF KENYA
IN THE COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Suit 500 of 2000

ANAB HUSSEIN ARAB …….PLAINTIFF

VERSUS

SMALL ENTERPRISES FINANCE CO. LTD…DEFENDANT

R U L I N G

The plaintiff has moved this court, by way of a mention, and under Order XX Rule 7 (4) of the Civil Procedure Rules; that rule provides: -

"On any disagreement with the draft decree any party may file the draft decree marked as for settlement and the registrar shall thereupon list the same in chamber before the judge who heard the case or, if he is not available, before any other judge, and shall give notice thereof to the parties."

This rule requires that the draft decree be filed when parties come before court for settlement of that decree. This was not done here but from the arguments before me it was possible to follow what issue was being placed before court.

Plaintiff's counsel began by submitting that the defendant had failed to approve the draft decree. Counsel read out prayer 'C' of the plaint as follows: -

"Alternatively, restitution of Kshs 4, 500, 000/- plus interest charged daily and compounded on daily basis thereon at 30% from 30th May 1997 until the date of payment in full."

Counsel submitted that, that prayer sought restitution of kshs 4.5 million plus interest. He said that the word restitution is a technical and legal term, and that it is awarded when a wrong is committed. That the wrong here was the unlawful detention of the plaintiff's money. That the ingredient of restitution was unjust enrichment. He said that it was on those basis that the plaintiff sought relief of compound interest. Counsel said, in the court finding for the plaintiff for interest at 27% as at 30.9.1997 to 21.3.2000, the court had sustained the plaintiff's claim as prayed in prayer 'C', that the court did not, counsel argued, interfere with the rate of interest being compounded as prayed in the plaint. On that basis, plaintiffs counsel said that, they drew the decree in terms of prayer 'C', with only the variation of the rate of interest. Plaintiff's counsel said that the defendant however was reading the judgment award as simple interest as opposed to compound interest and that was where the disagreement was.

Defence counsel in his submission said that the court, by its judgment, varied prayer 'C', not only the rate but that the court did not find that the rate should be compounded on daily basis. In so doing, counsel said, that the court followed the defence rate of interest, given in his evidence, where it was said that the highest rate ever charged, by the defendant in their institution was 27%, simple interest. He submitted that for the decree to be drafted correctly it had to follow the words of the judgment.

I have considered the submissions of counsels and my ruling is simply this, that the words of the judgment are very clear. There was no compound interest awarded, to say so would be to impose words that were not in the judgment. The rate of interest awarded in that judgment was 27% per annum. Had the court intended to award compound interest it would have stated so. The plaintiff's submission that the court ordered restitution to the plaintiff and therefore it was indictive that the court accepted the plaintiffs claim for unjust enrichment; I think at this stage in time has no bearing. A final judgment having been

passed, short of an appeal being filed, it remains as delivered.

Therefore for the avoidance of doubt I confirm the following: -

(1) That there was no judgment for compound interest in the judgment dated 20th April 2005.

Dated and delivered this 19th August 2005.

MARY KASANGO
JUDGE