



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO 954 OF 2002

ATLAS COPCO KENYA LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

USAFI SERVICES LIMITED.....DEFENDANT/APPLICANT

RULING

By Notice of Motion brought under Sections, 3A, 99 and 100 of the Civil Procedure Act the Defendant seeks the following prayers: -

- (1) That the Honourable Court be pleased to give directions as to the mode of calculating the rate of interest payable herein and as to when the same is applicable.
- (2) That the defendant be at Liberty to apply for such further and other orders and/or directions as this Honourable Court may deem fit.

The defendant's counsel submitted that when judgment was entered for the Plaintiff on 30th July 2003, the court ordered the Plaintiff to give the defendant credit for the amounts paid since the filing of the suit. That at the time judgment was entered herein on 30th July 2003 the defendant had paid the Plaintiff Kshs 480,000 leaving a balance of kshs 240, 000 which was fully paid on 15th November 2003. He further argued that after the filing of the suit, the Plaintiff and defendant agreed that the defendant would pay monthly instalments of kshs 240, 000 with effect from 26th November 2002.

This the defendant paid per month until 15th May 2002 when it defaulted whereupon the Plaintiff applied for summary judgment. Judgment was entered on 30th July 2003 as prayed in the Plaintiff. The Defendant counsel said that the dispute revolved on whether the defendant should pay interest for the period before judgment was entered. He argued that interest should be for the amount outstanding as at the date of judgment. He then was heard to argue that interest should be calculated from the date of default. He said that it would be unfair for the Plaintiff to get interest for the amount claimed in the Plaintiff when in fact judgment was entered for the amount owing to the plaintiff was kshs 240, 000.

The defendant relied on the case of DEVSHI DHANJI AND OTHERS – V – KANJI NARAN PATEL AND OTHERS (NO 2) KLR pg 243 and the HALSBURY LAWS OF ENGLAND 3rd Ed. Vol. 22 .

I have considered both those two authorities and I am of the view that they do not support the defendant's application at all.

The Devshi case relates to a decision of a Taxing Master whereby the said master reduced the successful defendant's bill of costs in the High Court and on a reference to the High court it was found that taxation had proceeded on the wrong principle. On appeal to the Court of Appeal, the money, the

subject of the taxation was placed in a trust account. The Court of Appeal held that interest could not accrue on the sum held in the trust account.

Halsbury Law of England relate to interest payable on a judgment by consent for instalment, which it stated that interest does not run until the instalments fall due.

In this present case the Plaintiff filed suit in August 2002; without placing it on the record of the court file parties agreed to the defendant paying the Plaintiff by monthly instalments. On default of those instalments the Plaintiff applied for judgment and the same was entered on 30th July 2003. The defendant disputes the calculation of interest for the period before judgment.

The Plaintiff opposed the application by saying the agreement for payment by instalments was never filed in court as a consent and that the defendant never remitted the payments on their due date. He said that the judgment that was entered was with interest as prayed in the Plaintiff and that the only caveat was that the Plaintiff was to give credit for amounts paid by the defendants.

Having considered the counsel's submissions and the authorities they rely on I find that the defendant's application is not merited. The Plaintiff filed this case on 5th August 2002. The Plaintiff prayed for the sum of kshs 720, 000 together with interest at the rate of 2.5% per month. Justice Mwera by his judgment of 30th July 2003 entered judgment as prayed in the Plaintiff. It follows; therefore, that the Plaintiff was granted judgment for kshs 720, 000 with interest from the date of filing suit and the defendant was to get credit for amounts paid.

I therefore find that the Plaintiff is right to apply interest from the date of filing suit until payment in full. I have perused the decree drawn by the Plaintiff and I find that the plaintiff has not compounded interest contrary to the allegation of the defendant.

Accordingly the defendant's application dated 21st July 2004 is dismissed with costs to the Plaintiff.

Dated and delivered this 6th day of October 2004.

MARY KASANGO

AG JUDGE