



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CIVIL CASE 654 OF 1995**

**SILAS OBENGELE ..... PLAINTIFF**

**- V E R S U S -**

**KENYA PORTS AUTHORITY .....DEFENDANT**

**RULING**

The application before the court is made under order XX rule 7 (4) CPC , that is the parties has placed a draft decree before this court for settlement. The dispute lies in the last paragraph of the judgment.

**“Judgement is therefore entered for the plaintiff in that sum with costs and interest”**. The argument is that there is no periods set down for the award of interest and no rate is indicated. Under the provision of Section 26 Civil Procedure Act where decree is for payment of money the court may in the decree order interest at such a rate as the court deems reasonable on the principal sum from date of filing suit to date of decree in addition to any interest adjudged. On that principal sum for any period before the institution of the suit with further interest on the aggregate namely principal and interest from date of decree to the date of payment in full or to such earlier date as the court thinks fit.

Where such decree is silent with respect to the payment of further interest on such aggregate from date of decree, the court shall be deemed to have ordered interest at 12%per annum.

It will be noted that situation where interest is to be awarded prior to the filing of suit is not covered by this provision. It is argued for the decree holder that no interest should be awarded on damages in respect of future earnings see. *Jeffed –vs- Gee C.A. 2QB 1970* (English authority) but this was a case of damages for person injury and the case is inappropriate in the circumstances of this personal case. Miss. Osino also argued that in this case, there has been delay on the part of plaintiff/ decree-holder in prosecuting his case, to this the decree holder says that in this country matters take long time to finalize unlike England where the process is much faster. Also she pointed out that calculating interest from the date of filing suit brings the claim of interest to almost equal to the principal sum thereby causing a double award. Miss.Osino also relied on the case of *Banque Du Congo Civil Appeal no. 21/1934* where the Court of Appeal then held that

**“where judgment is silent as to interest being awarded from the date of filing of the suit it shall be deemed to have been refused”**

This decision is not in keeping with Section 26 CPC Act Cap. 21 as it now provides. It is quite clear that the court intended to award the successful party interest. The amount claimed on plaint should have been paid on demand. However, the defendant disputed the matter. This is the amount he defendant should have paid if he wished to terminate the employment as he did. In the judgment of Ringera J (as he then was) *High Court (Milimani Civil suit no. 83 of 1998 KP.A. –v-s- Kobil (Kenya) Ltd* at *page 17*, the

learned judgment said -

***“However it is within the discretion of the court to award interest on the decree for the payment of money from the date of the suit until payment in full. In the circumstance of this case where it is clear that the plaintiff has been kept out of funds it would otherwise have had use of, I think it would be right to exercise that discretion in favour of the plaintiff”.***

In present case the plaintiff was earning a salary on monthly basis. He was retired on 31/10.94 before reaching the age of 55 years. His retirement year should have been 1997 in the month of December according to his retirement agreement. Therefore, he should have continued to enjoy his benefits only up to December 1997. And that is the time total aggregate became due and payable. I, therefore, find that from the month of January 1998 the plaintiff was being kept out of his money and that is the proper time to start the calculations of interest. Therefore in exercise of my discretion I order that the interest shall be payable as from 1.1.1998 to the date of judgment at the rate of 12% p.a. and from date of judgment until payment interest on principal shall be paid at the rate of 14% per annum. The decree shall be adjusted accordingly.

**J. KHAMINWA**

**JUDGE**

**1.10.2004**

**Lady Justice Khaminwa**

**Chege – Omwega holding brief Obaua. Non appearance for KPA.**

**Ruling read in his presence.**

**J.KHAMINWA**

**JUDGE**