



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 1505 OF 1997

*MUNGAI MBUGUA* ..... *PLAINTIFF*

*VERSUS*

*DAVID MBUGUA KARIUKI* ..... *1ST DEFENDANT*

*CONCORD CONTAINER SERVICES LTD* ..... *2ND DEFENDANT*

**RULING**

The Plaintiff seeks for orders that I review my judgment dated the 27th of January, 2000. He filed a notice of motion to this effect on the 16.2.2000. The reason being that

“ . . . the plaintiff applicant was denied his claim of special damages amounting to ksh.73,635/-”

The original suit that was before me was a running down case. The plaintiff was a pedestrian near Kenyatta University College when the defendant knocked him. The defendant on being sued failed to enter appearance or file a defence. The plaintiff made request that an Interlocutory Judgement be entered. This was duly done on 4.6.98. Orders by the Deputy Registrar was signed on the 18.6.98.

The wording of the interlocutory judgement being as follows:-

“The defendant herein Concord Container Services Ltd. having been duly served with summons to enter appearance within the prescribed period and on the application by the plaintiffs advocate dated 18.5.98. I enter interlocutory judgement against the defendant as prayed in the Plaint.

The award of costs shall await judgement when the suit will be set down for formal proof.”

Signed

Deputy Registrar

(Emphasis my own)

When the case came up for formal proof the advocate for the plaintiff led evidence only on General Damages. She did not lead evidence on Special Damages because the interlocutory judgement stated that judgement [was entered] against the defendant as “ prayed in the plaint”. It is therefore automatic that once Special Damages has been pleaded that no more proof is required. The plaintiff is entitled to his Special Damages.

In my judgement of the 27th January, 2000, I had failed to award this Special Damages. The reason I gave was that it was not pleaded or proved.

The advocate claimed that Special Damages was pleaded. That it was not necessary to prove Special Damages as there is already judgement.

To support her arguments the advocate for the plaintiff relied on the case of Mwatsahu vs. Maro 1967 CA 42.

The Halsbury Laws of England 4th Ed. Vol 26 (pg 241 - 245). The civil procedure rules 1999 2nd ED. Steward Cattery Ltd. Vs C & O Mangeto SA & others 1998 1ALL ER 718 Lowland Ltd Vs Cook 1962 3 ALL ER 491 Civil Procedure order 9a rule3 (2) CPR.

The authorities dealt with liquidated amount. As such judgement in default having been entered in the cases it should stand.

In the case of Mwatsahu v Maro the court held that the registrar exceeded his powers in entering judgement for pecuniary damages for breach of warranty.

In the case of Statement Stewart Cattering Ltd. Vs. C & O Management SA & Others (1988)I ALL ER 718

Leave to enter judgement was granted in default of appearance.

Lombank Ltd. - vs Cook

A case dealing with the Hire purchase of goods. An application for leave to enter judgement in default of appearance was dismissed.

I have also been brought to the attention of Halsbury Laws of England. Para 506 page 240 an interlocutory judgements and orders.

**“An interlocutory order, even though not conclusive of the main dispute may be conclusive as to the subordinate matters with which it deals. The phrase “interlocutory judgement” is also used to decide a judgement for damages to be assessed.” (Emphasis my own)**

The normal procedure is that once an interlocutory judgement has been obtained and orders recorded by the Deputy Registrar of the High Court, the plaintiff would set down the case for formal proof.

In this particular case, the plaintiff was claiming General & Special Damages. Claims under these heads of damages must be assessed before the court and proved. It is incorrect for a party to claim Special damages and not prove the same whether there is a judgement entered or not.

The formal proof included the head of damages of Special Damages. See order 9a r 5 CPR. Special damages in a head of damages.

It is the same as money owned for goods sold and delivered.

No proof during the trial had been forwarded to this court on the Special damages. I nonetheless noted that in this application, the plaintiff now attached his receipts (copies) which had not previously been seen or been spoke off, or identified to court. I am seeing them now for the first time.

I decline to grant the review as it does not fall under Order XLIV CPR namely that a new matter and or mistake on the record has occurred.

The application is hereby dismissed.

Dated this 29th day of March, 2000 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**