



Hammond Holdings Limited & another v Coast Computer Bureau Limited & another (Environment & Land Case 209 of 2008 & 174 of 2019 (Consolidated)) [2024] KEELC 4060 (KLR) (8 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4060 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 209 OF 2008 & 174 OF 2019 (CONSOLIDATED)

SM KIBUNJA, J

MAY 8, 2024

BETWEEN

HAMMOND HOLDINGS LIMITED PLAINTIFF

AND

COAST COMPUTER BUREAU LIMITED DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE 174 OF 2019

BETWEEN

THE REGISTERED TRUSTEES BHAGWANJI RAJA CHARITABLE FOUNDATION 1ST PLAINTIFF

HAMMOND HOLDINGS LIMITED 2ND PLAINTIFF

AND

COAST COMPUTER LIMITED DEFENDANT

RULING

1. The plaintiff moved the court through the notice of motion dated the 11th August 2023 seeking for rectification of the “judgement delivered on the 12th July 2023 to reflect the award of interest at court rates as prayed in the amended plaint dated the 27th June 2029 on unpaid service charge.” The application is premised on the eight (8) grounds on its face and supported by the affidavit of Ketan Vrajlal Gandhi, the plaintiff’s finance manager, sworn on the 11th August 2023, deposing inter alia that though the plaintiff had sought for interest on the unpaid service charge from the date of default until



payment in full, the judgement delivered on the 12th July 2023 was silent on the item and hence this application; that section 26 of the *Civil Procedure Act* of Laws of Kenya provides that where a decree is silent in respect to payment of interest, the order shall be presumed to have been made and this court should correct the error as empowered by section 99 of the said Act; that unless the prayer is allowed the plaintiff will suffer irreparable harm and loss to the tune of millions of shillings.

2. The application is opposed by the defendant through the grounds of opposition dated the 17th October 2023 raising nine (9) grounds summarized as follows:
 - a. That under section 26 of the *Civil Procedure Act*, the award of interest is at the discretion of the court, and none was awarded in this case.
 - b. That section 26(2) of the *Civil Procedure Act* applies where interest is awarded from the date of filing suit, but the decree herein is silent on further interest after judgement. That in the instant case, no interest was awarded and it does not matter that the decree is silent on payment of further interest.
 - c. That sections 1A, 1B, 3A and 99 of the *Civil Procedure Act* does not grant the court jurisdiction to grant a remedy that was not expressly granted.
 - d. That under Order 21 Rule 3(3) of *Civil Procedure Rules*, a judgement that has been signed and delivered cannot be altered or added to save as provided for under section 99 of the Act, or on review.
 - e. That jurisdiction or power under section 99 of the *Civil Procedure Act* is limited to correction of clerical or arithmetical mistakes in the judgements, decrees or orders or errors arising therein from accidental slip or omission. That denial of interest is not a clerical or arithmetical mistake or accidental slip or omission.
 - f. That under explanatory note 5 to section 7 of the *Civil Procedure Act*, any relief claimed in a suit which is not expressly granted shall be deemed to have been refused.
3. The learned counsel for the plaintiff and defendant filed their submissions dated the 24th November 2023 and 11th December 2023 respectively, which the court has considered.
4. The following are the issues for determination by the court:
 - a. Whether plaintiff has established the existence of an error or mistake in the judgement delivered on the 12th July 2023 in failing to expressly award the interest prayed.
 - b. Who pays the costs in the application?
5. The court has carefully considered the grounds on the application and of opposition, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon and come to the following findings:
 - a. That the suits herein were determined through the judgement delivered on the 12th July 2023, by Munyao J, which I have carefully read and understood. In the instant application, the plaintiff contends that there is an error or mistake in the judgement by failing to grant interests at court rates that it had sought. Further, that the court is clothed with the jurisdiction or power to correct the error and provide the relief that was left out or omitted under section 99 of the *Civil Procedure Act*. That is countered by the defendant, who has cautioned that the court is



without jurisdiction to do what the plaintiff seeks as the judgement as delivered is without an error or mistake.

- b. The judgement delivered on the 12th July 2023 is well detailed and specific on what had been granted and or rejected. It details what was granted out of the prayers in the plaintiffs' plaints and defendant's counterclaim and what was rejected. The learned counsel for the defendant has relied on note 5 to section 7 of the Civil Procedure Act. That section makes provision for the principle of res judicata and note 5 thereof must be read with that in mind. No wonder the note states "Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused." [emphasise added].
- c. The both counsel referred the court to section 26 of the Civil Procedure Act that is headed 'interests'. Subsection (1) details the extents of the relief of interest that the court may award. Subsection (2) thereof provides that:

“(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

In the judgement delivered on the 12th July 2023, no interest was awarded at all. I am in agreement with the defendant's position that the failure to award interest does not amount to an error or mistake of the nature contemplated, to be corrected in the exercise of the power under section 99 of the Civil Procedure Act in this suit. That indeed, the plaintiff's remedy, if aggrieved by the failure to be granted interests, should have been pursued through an appeal.

- d. That as costs follow the events under section 27 of the Civil Procedure Act unless otherwise ordered, I award the defendant the costs in the application.
1. That upon coming to the foregoing determinations, the court finds and orders as follows:
 - a. That the plaintiff's notice of motion dated the 11th August 2023 is without merit.
 - b. That the said application is dismissed with costs.

Orders accordingly.

DATED AND VIRTUALLY DELIVERED ON THIS 8TH DAY OF MAY 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiffs : M/s Njuguna for Kibaara

Defendant: M/s Muyaa

Wilson – Court assistant.

