



**Jalango v Ryan Properties Limited (Environment and Land Case
1252 of 2013) [2023] KEELC 16108 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16108 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1252 OF 2013**

**JO MBOYA, J
MARCH 2, 2023**

BETWEEN

PHILIP JALANGO PLAINTIFF

AND

RYAN PROPERTIES LIMITED DEFENDANT

RULING

1. The Plaintiff herein filed and lodged the instant suit vide Plaint dated the 16th of October 2013 and in respect of which, same sought various reliefs pertaining to and concerning a Contract that was entered into between himself and the Defendant herein; and which contract is said to have been breached and violated by the Defendant.
2. Subsequently, the suit filed by and on behalf of the Plaintiff was heard and determined vide Judgment rendered and/or delivered on the 29TH day of July 2021; and in respect of which, Judgment was entered in favor of the Plaintiff on the following terms;
 - i. That the Court enters Judgement in favour of the Plaintiff for Kshs. 1,088,037/= Only, being the balance of the purchase price which the Defendant withheld, plus interest at Court rates from the date of filling suit until payment in full.
 - ii. That the Defendant will pay the Plaintiff Interest on the sum of Kshs.16,161,969/= Only, at Court rates to be calculated from the date of filling suit until 7TH October 2016.
 - iii. That the Plaintiff is awarded Damages of Kshs. 12,000,000/= Only, being Loss of Investment bargain on the suit property, with interest at Court rates from the date of this Judgement until payment in full.



- iv. That the Plaintiff is awarded the costs of the suit.
3. Upon the delivery of the subject Judgment and consequential decree, the Plaintiff commenced the process of execution and in this regard, counsel for the Plaintiff generated an application for execution wherein same sought to recover the various sums which had been decreed and provided for by the Judgment of the court.
4. Arising from the application for execution which was filed by counsel for the Plaintiff/Decree Holder and in respect of which the Plaintiff sought for a Notice to Show Cause why Execution should not issue, the Honourable Deputy Registrar duly complied and issued a Notice to Show Cause dated the 6th December 2022. For clarity, the notice to show cause contained a return date of 25th January 2023, being the date on which the Defendant/Judgment Debtor was obliged to show cause.
5. Suffice it to point out that when the Notice to Show Cause came up for hearing before the Deputy Registrar, learned counsel for the Defendant/Judgment Debtor intimated to the Deputy Registrar that same was intent on taking out and/or raising a Preliminary Objection pertaining to certain aspects of the Notice to Show Cause.
6. For completeness, learned counsel for the Defendant/Judgment Debtor itemized a three- pronged objection to the Notice to Show Cause, namely;
 - i. The Notice to Show Cause contained an element of Interests on costs, which was contrary to and in contravention of the decree of the Honourable court.
 - ii. The Notice to Show Cause also contained an element of Interests reckoned at 14% per annum on the decretal sum and yet it was contended that the applicable Interests rate was 12% per annum.
 - iii. The Notice to Show cause also contained an element of Interests which had been reckoned and computed contrary to and in contravention of Section 4(4) of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya.
7. Arising from the itemized grounds of objection, it became evident and apparent that the learned Deputy Registrar could not entertain or adjudicate upon the named objections. In any event, the advocates for the respective Parties were in agreement that the itemized objections fell within the Jurisdiction of the Judge.
8. Pursuant to and in line with the concurrence of the advocate for the Parties, the learned Deputy Registrar referred the dispute unto this Honourable court for purposes of hearing and determining the preliminary objection that had been raised by the counsel for the Defendant/Judgment Debtor.
9. In the premises, the matter came up before me on the 15th of February 2023, whereupon the advocate for the concerned Parties agreed to canvass and ventilate the itemized preliminary objections vide oral submissions. For clarity, both Parties duly ventilated their respective positions on even date.

Submissions By The Parties

Judgment Debtor's Submissions

10. Learned counsel for the Defendant/Judgment Debtor raised, highlighted and amplified the three aspects of the preliminary objection and sought to have determinations in respect thereof.



11. Firstly, learned counsel for the Defendant/Judgment Debtor submitted that the decree of the Honourable court granted an order of costs to and in favor of the Plaintiff. However, learned counsel pointed out that the impugned decree did not award any interests on costs or at all.
12. In addition, learned counsel contended that despite the fact that no interests had been ordered or awarded on costs, the Plaintiff herein has since charged and levied interests at 14% per annum on costs.
13. In this regard, learned counsel submitted that the levying and charging of interests at 14% per annum on costs was contrary to and in contravention of the terms of the decree of the Honourable court. Consequently, counsel invited the court to find and hold that the levying of such interests was illegal and unlawful.
14. Secondly, learned counsel submitted that the Plaintiff has also applied and levied interests on the Judgment sums, which were awarded by the court at the rate of 14% per annum, even though the rate used and applied was not the applicable rate as at the time of the delivery of the Judgment herein.
15. Furthermore, learned counsel for the Defendant Judgment Debtor has submitted that at the time when the Judgment herein was delivered, the applicable and obtaining rate of interests was 12% per annum and not otherwise.
16. Based on the foregoing submissions, learned counsel has therefore implored the Honourable court to find and hold that even though the Plaintiff/Decree Holder is entitled on Interests on the Judgment sums, the application and levying of interests at 14% per annum, was irregular and unlawful.
17. For the avoidance of doubt, learned counsel for the Defendant/Judgment Debtor has submitted that the Plaintiff/Decree Holder ought to apply and levy Interest at 12% per annum. In this regard, counsel pointed out that the figures contained at the foot of the notice to show cause were therefore irregular and invalid.
18. Thirdly, learned counsel for the Defendant/Judgment Debtor submitted that interests can only be recovered for a maximum period of six (6) years and not otherwise. In this regard, counsel invited the court to take cognizance of and to apply the provisions of Section 4(4) of the [Limitation of Actions Act](#), Chapter 22 Laws of Kenya.
19. Additionally, learned counsel for the Defendant Judgment Debtor submitted that to the extent that interest was ordered and decreed to be reckoned from the date of filing of the suit, then such interest can only run for maxim of 6 years and not beyond..
20. Furthermore, learned counsel added that any computation and inclusion of Interests beyond a duration of six (6) years from the date of filing of the suit would be illegal and unlawful.
21. It was the further submissions of learned counsel for the Judgment Debtor, that the time frame for computation and reckoning of interests has been provided for in the Judgment, which alluded to the date of filing of the suit.
22. Arising from the foregoing submissions, learned counsel has therefore pointed out that the 6-year duration should run from 16th October 2013 and stop on the 6th year from the said date. In this regard, the position taken by learned counsel for the Judgment Debtor is that the computation and levying of interests should stop on or about the 15th October 2019 and not otherwise.
23. Based on the foregoing, Learned counsel for the Defendant/Judgment Debtor has submitted that the charging and levying interests up to and including the time of filing the application for execution, is



therefore contrary to and in violation of the provisions of Section 4(4) of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya.

24. On the other hand, learned counsel for the Judgment debtor has further submitted that cause of action for recovery of the interests runs from the date of the filing of the suit and not from the date of the rendition of the Judgment.
25. To this end, learned counsel for the Judgment Debtor has cited and quoted various decisions inter-alia, David Makau versus Mau Mutie Ndunda (2017)eKLR, Assia Pharmaceutical Ltd versus Kenya Alliance Insurance Company Ltd, Civil Case No. 1605 of 1999 (2021) KEHC 19 (KLR) (Commercial and Tax) (21st July 2021), National Bank of Kenya Limited versus Devji Bhimji Sanghani & another [2016]eKLR, Justus Ogada Agalo versus Managing Director Kenya Railways Corporation (2014)eKLR and Margaret Njeri Muiruri v Bank of Baroda (K) Ltd (2014)eKLR.
26. In view of the foregoing submissions, learned counsel for the Judgment Debtor has therefore invited the Honourable court to find and hold inter-alia, that the applicable rates of interests at the time of the delivery of the Judgment herein was 12% per annum; and that Interest can only be recovered for a maximum of 6 years from the filing of the suit and not otherwise.
27. In the premises, learned counsel has further contended that in view of the foregoing, the amounts contained and reflected at the foot of the Notice to Show Cause dated the 6th December 2022, are therefore unlawful, illegal and void.

Plaintiff's/decree Holder's Submissions

28. Learned counsel for the Plaintiff/Decree Holder submitted that though the Plaintiff/Decree Holder had charged and levied interests at 14% on the costs, however, the element of interests on costs was canceled and nullified by the Deputy Registrar prior to and before the issuance of the Notice to Show Cause.
29. To this end, counsel invited the court to take cognizance of the total amount which had been sought for at the foot of the Notice to Show Cause, which showed the total sum at Kes.23, 802, 197.16/= only, whereas the amount that was ultimately approved and which is contained at the foot of the Notice to Show Cause is kes.22, 808, 961.20/= only.
30. In the premises, learned counsel for the Decree Holder conceded that interests ought not to have been levied and charged on the costs. However, learned counsel clarified that the error was duly noted and dealt with by the Deputy Registrar beforehand.
31. Secondly, learned counsel for the Decree Holder submitted that the issue/dispute pertaining to the applicable and obtaining rate of interest, was raised before the Deputy Registrar and same was dealt with and disposed of. In this regard, counsel has pointed out that no reference was ever filed.
32. Furthermore, Learned counsel has further submitted that the applicable rate of Interests was dealt with and determined by the Honourable Court of Appeal in the case of Highway Furniture Matt Ltd versus The Permanent Secretary, Office of the President & Another (2006)eKLR. In this regard, learned counsel pointed out that the court underscored that the applicable and prevailing rate of interest was 14% per annum, and not otherwise.
33. In this regard, learned counsel has therefore submitted that the contention by and at the instance of the Defendant Judgment Debtor, wherein same adverts to Interests rate of 12% per annum is therefore erroneous and contrary to the established position, which was underscored by the Court of Appeal.



34. Thirdly, learned counsel for the Plaintiff/Decree Holder has submitted that to the extent that the Judgment in respect of the instant matter was delivered on the 29th July 2021, the cause of action for recovery of interests commences from the date of delivery of the Judgment and not otherwise.
35. Additionally, learned counsel further submitted that the interest element would be recoverable until payment in full subject however to the fact that the maximum duration for recovery of interest would be capped at 6 years in accordance with Section 4(4) of the *Limitation of Actions Act*.
36. Furthermore, learned counsel for the Plaintiff/Decree Holder has submitted that to find and hold that interests would only be recoverable from the date of the filing of the suit and running for a maximum of 6 years from the said date, would be tantamount to reviewing and /or varying the Judgment of the court.
37. In the premises, learned counsel has submitted that the three limbs/perspectives which have been raised and amplified by counsel for the Defendant/Judgment Debtor, are therefore misconceived and legally untenable.
38. To surmise, learned counsel for the Plaintiff/Decree Holder invited the Honourable court to take cognizance of various decisions of inter-alia David Makau versus Mau Mutie Ndunda (2017)eKLR and Assia Pharmaceutical Ltd versus Kenya Alliance Insurance Company Ltd, Civil Case No. 1605 of 1999 (2021) KEHC 19 (KLR) (Commercial and Tax) (21st July 2021), respectively.

Issues for Determination

39. Having reviewed and evaluated the itemized Preliminary Objection raised by the Defendant/Judgment Debtor and upon considering the rival submissions tendered by the advocates for respective Parties, the following issues do arise and are thus worth of determination;
 - i. Whether the Plaintiff/Decree Holder could charge and levy Interests at 14% per annum on costs, in the absence of an express order to that effect in the Judgment.
 - ii. Whether the applicable rate of Interests (court rate) was 14% or 12% per annum at the time of delivery of the subject Judgment.
 - iii. Whether the cause of action for recovery of Interests awarded vide Judgment of the court commences at the date of delivery of the Judgment or otherwise.

Analysis and Determination

Whether the Plaintiff/Decree Holder could charge and levy Interests at 14% per annum on costs, in the absence of an express order to that effect in the Judgment.

40. Following the delivery of the Judgment by the Honourable court, which Judgment was delivered on the 29th July 2021, the Plaintiff/Decree Holder commenced the process of levying execution with a view to realizing the decretal sum awarded unto him.
41. As required by the law, the counsel for the Plaintiff/Decree Holder was obliged to generate and file the requisite application for execution. For clarity, indeed an application for execution was duly filed and lodged with the Honourable court for purposes of issuance of the requisite warrants of attachment.



42. Be that as it may, it turned out that by the time the Plaintiff/Decree Holder applied for execution, a duration of more than 12 months had lapsed and extinguished from the date of delivery of the Judgment/decree, which was at the foot of the intended execution.
43. Notwithstanding the foregoing, what is of interests is that whilst preparing the application for execution, learned counsel for the Plaintiff/Decree Holder included an element of interests on costs. In this regard, counsel levied and charged interest at 14% per annum on costs.
44. Be that as it may, there is no gainsaying that Judgment and the consequential decree, which had awarded costs to and in favor of the Plaintiff/Decree Holder, did not allude to or better still, direct that the costs awarded shall attract interests.
45. In the absence of an express order or direction in the Judgment that costs shall attract or accrue interests, at court rates or otherwise, it was not open for learned counsel for the Plaintiff/Decree Holder to levy and charge interests on costs.
46. In addition, it was also not open to learned counsel for the Plaintiff/Decree Holder to load the element of Interest, levy and charge same on costs in the application for execution. In this regard, it is therefore evident and apparent that the levying and charging of interests on costs and the loading of same on the application for execution was therefore illegal and unlawful.
47. In this respect, I beg to point out that execution arising from and attendant to a Judgment of court must correspond with the terms of the Judgment and the resultant decree. No less, no more.
48. Nevertheless, it is also imperative to point out that even though learned counsel for the Plaintiff/Decree Holder had levied and charged interests on costs and thereafter loaded the resultant amount on the application for execution, the error and illegality attendant to the levying of such interests was duly noted by the Deputy Registrar, who timeously acted upon the illegal element of interest on costs.
49. To this end, even though the counsel for the Plaintiff/Decree Holder had sought for execution for the sum of Kes.23, 802, 197.16/= only, the learned Deputy Registrar revised the said figure, eliminated the illegal element of interest on costs and thereafter certified the correct figure to be Kes.22, 808, 961.26/= only.
50. In any event, when this particular issue was pointed out by the court to counsel for the Plaintiff/Decree Holder, learned counsel readily accepted the error and indeed acknowledged that the error was remedied by the Deputy Registrar.
51. Furthermore, I did not hear learned counsel for the Defendant/Judgment debtor to press the objection any further. Consequently and despite the observations alluded to in the preceding paragraphs, it thus becomes evident that this aspect of Preliminary objection was rendered moot as a result of the timely and effective action by the Honourable Deputy Registrar.

Whether the applicable rate of Interests (court rate) was 14% or 12% per annum at the time of delivery of the subject Judgment.

52. In the course of canvassing and arguing the preliminary objection, learned counsel for the Defendant/Judgment debtor submitted that the applicable law and obtaining interests rates at the time of rendition of the Judgment herein was 12% per annum and not otherwise.
53. Notwithstanding the foregoing, learned counsel for the Defendant/Judgment Debtor submitted that even though the interest rate was 12% per annum, the Plaintiff/Decree Holder has however levied and charged interests at 14% per annum, which is contended to be irregular, illegal and unlawful.



54. In view of the foregoing, learned counsel added that the levying and charging of interests at 14% per annum (which is beyond the court's rate) has therefore caused the decretal sum due and payable to become exorbitant.
55. On the other hand, learned counsel for the Plaintiff/Decree Holder has submitted that the applicable and obtaining rate of interest (court rates) has been and remains 14% per annum as at the time of the delivery of the Judgment herein.
56. In this respect, learned counsel for the Plaintiff/Decree Holder has invited the court to take cognizance of the decision and holding of the Court of Appeal in the case of Highway Furniture Matt Ltd versus The Permanent Secretary office of the President & Another (2006) eKLR.
57. Confronted with the holding in the decision cited in the preceding paragraph, learned counsel for the Defendant/Judgment Debtor thereafter contended that the decision of the Court of Appeal in the case of Highway Furniture Matt Ltd versus The Permanent Secretary office of the President & Another (2006) eKLR (supra), was arrived at per in curium, insofar as the Hon. Chief justice had not issued the requisite Legal notice to vary or alter the applicable rate of interest.
58. In view of the foregoing, learned counsel for the Defendant/Judgment Debtor therefore invited the Court to find and hold that the cited decision was made per in curium and is therefore (sic) erroneous.
59. Having listened to the foregoing submissions, I beg to point out that the question and issue of the applicable and obtaining rate of interests (court rate), was a subject that was deliberated upon and dealt with by the Honourable Court of Appeal in the case of Highway Furniture Matt Ltd versus The Permanent Secretary office of the President & Another (2006) eKLR, where the Honourable Court of Appeal stated and held as hereunder;

“As a matter of pleadings and evidence it is true as found by the learned Judge that while the appellant pleaded in paragraph 1 of the plaint for interest at the rate of 36% the appellant did not, however, pray for the rate of interest at 36% as a relief and did not give evidence at all concerning that rate of interest. By Order VII rule 6 of the Civil Procedure Rules (CP Rules) the plaint should state specifically the relief which the plaintiff claims. The relief claimed by the appellant was specifically pleaded in paragraph 3 (1) of the plaint “as the principal sum of Shs.11,257,118/= together with interest thereon at court rate from the date of the plaint until payment in full”. The Chief Justice from time to time fixes the ceiling of the court rate interest under section 26 of the Civil Procedure Act. The prevailing court rate is 14% p.a. which is the rate applied by Okwengu J.

60. My reading of the aspect of the Judgment of the Court of Appeal and particularly, the portion which I have highlighted, denotes that as at the time of delivery of the judgment herein the applicable and prevailing interest rate was 14% per annum.
61. Whereas learned counsel for the Defendant/Judgment Debtor has invited this Honourable court to find and hold that the pronouncement by the court of appeal, pertaining to the prevailing interest rate, was per in curium, I must point out that such an invitation, if accepted, would be tantamount to bringing the hierarchical structure/ system of the court to disrepute.
62. In addition, to find and hold that Honourable court of appeal acted per in curium (which translates to acting in ignorance and disregard of the law), would certainly be tantamount to inviting anarchy into the hallowed corridors of Justice.



63. Simply put, such an invitation is inimical to the Constitutional order and by extension to the Rule of law.
64. Nevertheless and to my mind, the applicable and obtaining Interest rate at the time the subject Judgment was rendered and delivered, was no doubt, 14% per annum.
65. In the premises, I come to the conclusion that the levying and charging of interests at 14% per annum on the Judgment sums, awarded to the Plaintiff/Decree Holder, was lawful and legitimate.

Whether the cause of action for recovery of Interests awarded vide Judgment of the court commences at the date of delivery of the Judgment or otherwise.

66. The third aspect of the preliminary objection, which was raised and ventilated by counsel for the Defendant/Judgment debtor relates to the time when the cause of action for recovery of interests arises/commences.
67. According to learned counsel for the Defendant/Judgment debtor, the cause of action for recovery of interests on the decretal sum, accrued from the date of the filing of the suit, being the date which has been assigned by the Honourable court in terms of the Judgment.
68. Based on the foregoing submissions, learned counsel for the Defendant/Judgment debtor has therefore contended that the Plaintiff/Decree Holder can only charge and levy interests from the 16th October 2013, being the date of the filing of the suit, but for a maximum of six (6) years and not otherwise.
69. Furthermore, learned counsel for the Defendant/Judgment Debtor has submitted that despite the express and explicit provisions of Section 4(4) of the Limitation of Action Act, which cap the charging and recovering of interests for a maximum duration of 6 years from date of accrual, the Plaintiff herein has purported to charge and levy interest for more than the statutory 6 years.
70. In the premises, learned counsel for the Defendant has invited the court to find and declare that the Plaintiff/Decree Holder can only charge and levy interest on the decretal sum from 16th October 2013 (being date of filing suit) to the 15th October 2019, the latter being the 6th year from the date of occurrence of the cause of action, pertaining to recovery of Interests.
71. Arising from the foregoing, two things/issues do arise and are worthy of determination herein. The first limb which merits determination is; the date of accrual of the cause of action for recovery of interest in respect of the decretal sum.
72. Before making a pronouncement as pertains to the accrual of the cause of action for recovery of interest, it is appropriate to take cognizance of the provisions of Section 4(4) of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya.
73. For coherence, the provisions of Section 4(4) of the *Limitation of Actions Act* (supra) provides as hereunder;

4. Actions of contract and tort and certain other actions

- (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

- (a) actions founded on contract;



- (b) actions to enforce a recognizance;
- (c) actions to enforce an award;
- (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

- (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: Provided that an action for libel or slander may not be brought after the end of twelve months from such date.
- (3) An action for an account may not be brought in respect of any matter which arose more than six years before the commencement of the action.
- (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a Judgment debt may be recovered

- 74. Having reproduced the foregoing provisions, the next obligation that falls on the shoulders of this court is to determine when the cause of action for recovery of interest on a Judgment accrues or does arise.
- 75. In my humble view, the question of interest, alongside other aspects of claims that are placed before a court of law for determination or adjudication are determined upon the delivery of the Judgment and not otherwise. In this regard, by delivering the Judgment the court makes specific awards to and in favor of the various disputants.
- 76. In addition, the moment the court makes a pronouncement, inter-alia, on award of damages, interests and costs, the timeline for recovery of such awards or specific segments of such awards, accrues and arises from the date of that Judgment unless, the Honourable states otherwise.



77. In any event, even the provisions of Section 4(4) of the Act (supra) is clearly and explicitly worded to the effect that recovery of interest or arrears of Interests on a court Judgment cannot be done after 6 years.
78. Clearly, the computation of the 6-year period/duration for recovery of interests or arrears of Interests is reckoned from the date of Judgment. For coherence, the said provision alludes to recovery of arrears of Interests on a Judgment.
79. In respect of the subject matter, the Judgment that ultimately decreed interest in favor of the Plaintiff/ Decree Holder was rendered on the 29th July 2021. Consequently, the recovery of interest or arrears of such Interests goes on and accrues on the decretal sum, (subject to full payment), for a maximum of 6 years.
80. In my humble view, to contend that the cause of action for recovery of interest accrued at the time of the filing of the suit, namely 16th October 2013, would be tantamount to imagine that there was a Judgment that was entered and upon which (sic) interests could be levied from the date of filing the suit.
81. Consequently and based on the foregoing observation, I am unable to accede to and find in favor of the submissions by and invitation of counsel for the Defendant/Judgment Debtor.
82. The second limb that does arise and which also merits deliberations relates to; whether this court can now seek to decree that the recovery of interest can only run for a period of 6 years from the date of filing the suit and exclude the time frame spoken to and decreed by the court at the time of delivery of the Judgment.
83. It is not lost on this court that the Judgment of the court was rendered on the 29th July 2021 and interests on various sums, were well spoken to and underlined. For the avoidance of doubt, the court was clear that such interest shall be due, payable and recoverable up to and including payment in full.
84. Despite the terms of the Judgment of the court, which decreed that interest shall be payable until the payment of the decretal sum in full, there is no gainsaying that the words of the court, are no doubt subject to and qualified by the provisions of Section 4(4) of the Limitation of Actions Act.
85. In the premises, even though interests shall continue to be levied on the decretal sum until payment in full, it is common ground that if the payment in full is not recovered and liquidated within 6 years from the date of Judgment, then no interest can be levied and charged beyond the named/stipulated duration of 6 years.
86. In view of the foregoing consideration, I beg to state and reiterate that the terms of the Judgment of the court were so explicit and crystal clear. Consequently, the counsel for the Defendant/Decree Holder cannot now be heard to invite the Honourable court to make (sic) further orders, whose effect would be tantamount to sitting on appeal on the decision of a Court of coordinate Jurisdiction.
87. For the umpteenth time, I repeat that the Judgment of the Court decreed payment of interests on the various segments of the said Judgment and hence such interest(s) shall remain recoverable for a maximum of six years from the date of delivery of the Judgment of the court.
88. In arriving at the foregoing conclusion, I have found inspiration and concurrence in the holding of the Court in the case of David Makau versus Maua Mutie Ndunda (2017)eKLR, where the court stated and held as hereunder;

24. With respect, the decisions of the Court in *Konahauthi Ltd. v. Wanyiri Kihoro* (2015) eKLR and *Damaris Wakinyi Gikaara v. Attorney General* (2002)



eKLR cited by the Respondent do not hold that interest is recoverable after 6 years of the Judgment which awards it. They are only examples if cases where interest is awarded “until payment in full”, without any decision that such interest would remain recoverable after 6 years of the Judgment. In the hierarchy of laws, under section 3 (1) of the Judicature Act, such statement in a judgment remains subject to the provisions of Statute.

89. Furthermore, my observations as pertains to the date of accrual of a cause of action pertaining to recovery of Interests or arrears of Interests, also finds support in the ratio decidendi in the case of Justus Ogada Agalo versus Managing Director Kenya Railways Corporation [2016] eKLR, where the court stated as hereunder;

He is also entitled to interest on that decretal sum (judgment sum and costs) together with interest at 14% per annum up to a period of six (6) years as Section 4(4) of the Limitation of Actions Act makes it clear that no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due. Accordingly I direct that an order of mandamus do issue compelling the respondent to pay the decretal sum together with interest at 14% per annum from the date of the judgment up to a period of six years but no more. The respondent shall also bear the costs of these proceedings. It is so ordered.

90. Additionally, my conclusion also finds favor with a previous holding of the court in the case of National Bank of Kenya Limited versus Devji Bhimji Sanghani & another trading under the style of Sanghani Builders [2016] eKLR, where the court stated as hereunder;

11. In the present application, what the applicant seeks is to recover interest on the principal sum upon which judgment had been entered. In the persuasive case of Rachel Mwikali Mwandia –vs- Ken Wameu Kasinga (2013) eKLR Ogola, J. while considering a claim for recovery of interest arrears in relation to the relevant part of Section 4(4) of the Limitation of Actions Act, the High Court correctly held that action to recover interest is time barred after six years from the date on which interest became due.

12. This Court in Willis Onditi Odhiambo -vs- Gateway Insurance Co. Ltd (Supra) clearly expressed that execution of judgments and/or decrees is governed by Section 4(4) of the Limitation of Actions Act and an action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered.

91. In a nutshell, I decline the invitation by counsel for the Defendant/Judgment Debtor that the cause of action for recovery of interests or arrears of Interests, accrues form the date of filing of the suit.
92. Conversely, I find and hold that the cause of action for recovery of interests on Judgment attaches to and accrues upon the delivery of the Judgment in question. In this regard, the cause of action for recovery of interest, in the manner alluded to in the Judgment, shall run for a maximum of 6 years from the date of delivery of the Judgment.
93. Finally, I find and hold that the central feature and indeed, the guiding light, that governs the computation and reckoning of the duration for recovery of interests on Judgment, is the date when the Judgment was rendered/delivered.



Final Disposition

94. Having duly evaluated and analyzed the itemized perspectives of the Preliminary objection that was ventilated by learned counsel for the Defendant/Judgment Debtor, it is now evident and apparent that two limbs thereof were devoid and bereft of merits.
95. On the other hand, the limb pertaining to levying and charging of interest at 14% per annum, on costs (which was contrary to the decree) was timeously and promptly dealt with the Deputy Registrar prior to and before the issuance of the Notice to Show cause. In this regard, the said limb was rendered moot and academic.
96. Consequently and in the premises, the Preliminary objections which were canvassed and ventilated on behalf of the Defendant/Judgment Debtor, are clearly misconceived and not meritorious.
97. In this regard, same be and are hereby Dismissed with costs.
98. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MARCH 2023.

OGUTTU MBOYA

JUDGE

