



REPUBLIC OF KENYA



KENYA LAW
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**National Media Group Ltd v Muya (Civil Appeal E132 of 2021)
[2025] KEHC 170 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 170 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E132 OF 2021
HM NYAGA, J
JANUARY 14, 2025**

BETWEEN

NATIONAL MEDIA GROUP LTD APPLICANT

AND

JOSEPH MUYA NJURU ALIAS JOSEPH MUYA RESPONDENT

RULING

1. The application for determination is the Notice of Motion dated 2nd August 2024 which seeks the following orders
 - a. Spent
 - b. Spent
 - c. That this honourable court be pleased to direct the rate of interest applicable on the Principal sum awarded to the Respondent in the affected suit and the effective date.
 - d. That this honourable court be pleased to direct the rate of interest applicable on the costs awarded to the Respondent in the affected suit and the effective date.
 - e. That the costs of this application be provided for.
2. The application is propped by the grounds set out on its face and is supported by the affidavit of Geoffrey Mburu Kagucia.
3. In a nutshell, it is the Applicants case that the Judgement in the Lower court was set aside and the award of general damages reduced from Ksh 5 million to Ksh 3 million. That the award of Ksh 1 million as aggravated damages was upheld. That neither the lower court nor this court pronounces itself on the interest rate to be applied on the Principal sum and costs and the parties are unable to agree on the same and the effective date. That the Appellant has been willing to satisfy the decree but the issue of interest



- and the period applicable cannot be agreed upon. That the applicant had made an application in the lower court, but the lower court cited lack of jurisdiction in the matter. That the court had ordered the release of the principal sum to the respondent pending determination of the issue of interest and costs.
4. In response the Respondent swore a replying affidavit on 3rd September 2024. In a nutshell, it is the Respondent's case that after judgement herein was delivered, the Applicant filed a notice of appeal dated 13th December 2023.
 5. That considering that the entire decretal sum had been deposited in court, the Respondent opted to allow the Applicant prosecute the appeal but they were never served with the memorandum and Record of Appeal. That the Applicant then started making extraneous demand on the release of the decretal sum and payment of meagre interest. That the court has not been able to issue a decree due to the applications by the Applicant whose sole purpose is to clog the court system. That the issue raised on interest is neither here nor there as the court is obligated to make order on the Interest payable on the award and costs. That the rate of interest is clearly provided by law. That the court is being called to play the role of the taking offices/Deputy Registrar. That the Respondent is entitled to accrual of interest.
 6. Parties filed submissions which I will not rehash word for word. It suffices to state that I have perused the same and will refer to them where applicable.

Analysis and determination.

7. Although the Application is couched in ambiguous words and phrases, I think that the issues that stand out are:-
 - a. Whether this court has jurisdiction to hear the application.
 - b. What interest is applicable to the principal sum and costs?
 - c. When does the interest begin to accrue?
8. As regards jurisdiction, it has been submitted that these are issues meant to be determined by the taxing officer/deputy registrar.
9. The powers of the taxing officers are set out in the Advocates Remuneration order which are to tax the bill of costs. At this state, there is no bill of costs filed, an account of a lack of a decree.
10. The Applicant's real case in my view is a determination of what and when the interest herein would accrue. That cannot be determined by the Deputy Registrar. The lower court was also right to rule that it had no jurisdiction as the matter had been determined on appeal.
11. Thus, this court possesses the jurisdiction to determine the sole issue in dispute, the rates and dates applicable on the question of interest on the principal sum and costs.
12. The Respondent is entitled to interest unless the court rules otherwise. In the appeal, each party was to bear its own costs. The directions in this ruling are only applicable to the costs of the lower court.
13. The power of the court to award interest is derived from Section 26 of the *Civil Procedure Act* which provides that:
 - “(1). Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as



the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

- (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.”

14. In the *Practice Direction No. 1 of 1982* issued on March 16, 1982, Simpson AG CJ gave the following practice direction;

“The *Civil Procedure Act* (cap 21 Laws of Kenya) section 26 enables the court to order interest on the principal sum adjudged in a decree both before and after the date of the decree to be paid at such rate as the court deems reasonable. In the absence of any valid reason for ordering a higher or lower rate of interest, the rate of interest should now be 12%.”

15. The issue of the applicable interest rates was also determined by the Court of Appeal in *Kipchumba v BOG Tambach Teachers Training College* (Civil Appeal 100 of 2019) [2023] KECA 802 (KLR) (30 June 2023). The court held as follows;

“What then should the appropriate interest rate be? The appellant has suggested 12% as the current court rates while the respondent aligns with the judgment of the learned Judge that the applicable interest rate is 6%. In the circumstances of the present case, we rely on our rich jurisprudence and judicial practices to determine what the appropriate interest rate on liquidated damages is. The rate used by the courts, absent special or exceptional circumstances is 12% per annum from the date of filing suit until payment in full....From the foregoing, we find that the applicable interest rate in this case is 12% per annum.”

16. The applicable rate is thus 12% per annum. The interest is simple and not compound as was set out in the case of *Barclays Bank (K) Limited vs William Mwangi Nguruki* [2014] eKLR where the Court of Appeal held that;

“The respondent in his plaint prayed for interest at court rates. Interest at court rates is calculated on a simple interest and not on compounded basis. It is our finding that any interest due to the respondent must be calculated on a simple interest and not on compounded basis.”

17. The issue of costs is covered by Section 27 of the *Civil Procedure Act* which states:

- “1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.



2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”
18. It is clear from the wordings of Section 27(2) of the *Civil Procedure Act* that the interest applicable to costs had since been set at 14% per annum. This position was confirmed by the court in the case of BOG Tambach Teachers Training College vs Mary Kipchumba (2018) eKLR, where Muriithi J held that:-

‘Section 27(2) of the *Civil Procedure Act* on interest on costs was amended by the Statute Law (Miscellaneous Amendments) *Act No 19 of 1985* as follows:
‘Repeal the words ‘six per cent per annum’ and substitute the words ‘fourteen per cent per annum’.
Thus the interest on costs is calculated at the rate of 14% per annum.’
19. The last issue is the dates applicable.
20. Judgment of the lower court was delivered on 5th November 2021. The Applicant deposited security in court on 5.9.2022. It would thus be unfair to condemn the Applicant to pay interest on the said sum after it deposited the same.
21. Therefore, as regards interest on the decretal sum, the Respondent is entitled to the same with the effective dates being from the date of delivery of the Judgement on November 15, 2021, to the date the Applicant deposited the decretal sum in court on September 5, 2022.
22. As regards the interest on costs in the lower court, the same accrue from the date of judgment until the date of full payment.
23. I think that these directions dispose of the thorny issue raised in the application. Any other issues on calculation of actual interest is for the taxing officer to handle.
24. There shall be no orders as to costs on the application.

SIGNED AND DELIVERED (VIRTUALLY) AT MERU THIS 14TH DAY OF JANUARY, 2025.

H. M. NYAGA,

JUDGE.

In the presence of:-

Kinoti C/A

Mr Njoki for Applicant

Mr Mburu for Respondent.

