



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Dinga v Kimani (Civil Appeal 153 of 2020)
[2025] KEHC 12173 (KLR) (Civ) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 153 OF 2020

TW CHERERE, J

MAY 8, 2025

BETWEEN

WASHINGTON OKUMU DINGA APPELLANT

AND

JOHN KIBUNGA KIMANI RESPONDENT

RULING

“Finality in litigation is a virtue, but clarity in judgment is justice fulfilled. Where ambiguity clouds the execution of a decree, the court must step back—not to change its mind, but to make its meaning unmistakably clear.”

1. This ruling relates to an application arising from a dispute concerning the proper computation of interest following an appellate judgment. As Roscoe Pound aptly observed, “The law must be stable, but it must not stand still”—a principle that underpins the Court’s residual jurisdiction to clarify its decisions to ensure justice is not defeated by ambiguity.
2. The trial court by a judgment dated 06th March 2020 awarded the Respondent general damages, special damages, costs, and interest.
3. Dissatisfied with the decision, the Appellant preferred this appeal. Upon hearing the appeal, this Court, by a judgment dated 17th May 2024, varied the trial court’s judgment on quantum only and directed that interest at court rates would be paid from the date of the judgment.
4. Following the appellate judgment, the Respondent filed a Notice of Motion dated 25th November 2024, brought under Sections 1A, 1B, 3A, 26, 80, and 99 of the *Civil Procedure Act*, and Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, seeking review and clarification on the accrual of interest on both special and general damages. The application is supported by the affidavit



of James Ndung'u, Advocate sworn on 25th November 2024 on grounds that the Court's appellate judgment dated 17th May 2024 did not expressly distinguish the dates from which interest should accrue separately on special and general damages and further that in accordance with settled law, special damages ought to accrue interest from the date of filing suit, while general damages attract interest from the date of judgment.

5. The Respondent opposed the application through a Replying Affidavit sworn by Newton Mwangi, Advocate on 17th April 2025, contending that the application was brought with undue delay and that this Court had become functus officio, having already rendered its judgment on the issue of interest.

Issues for Determination

6. Having considered the affidavit evidence on record alongside the judgment of the trial court and the appellate judgment of this Court, the issues arising for determination are as follows:
 1. Whether the Appellant's application for review and clarification is merited;
 2. Whether the Respondent's objections based on undue delay and the principle of functus officio are sustainable;
 3. What is the semantic distinction between the terms "this judgment" and "the judgment";
 4. Whether interest on special damages should accrue from the date of filing suit;
 5. Whether interest on general damages should accrue from the date of the trial court's judgment.

Analysis and Determination

1. Whether the application is properly before the court

7. The Appellant seeks clarification on the appropriate dates from which interest on special and general damages should accrue. This application falls within the ambit of Order 45 Rule 1 of the Civil Procedure Rules, which grants the Court jurisdiction to review its judgment or order where there is an error apparent on the face of the record, the discovery of new and important matter, or for any other sufficient reason. The clarification sought by the Applicant falls squarely within the ambit of this provision. It does not seek to reopen the merits of the appeal or alter the substance of the judgment, but rather to ensure clarity and accuracy in the execution of the decree. It is well established that a court has the residual power to correct or clarify its own decision in order to give proper effect to its intention. Accordingly, I am satisfied that this application is properly before the Court.

(2) Respondent's Objections

(a) On Delay

8. This court's judgment was delivered on 17th May 2024, while the present application was filed on 25th November 2024, a delay of approximately six months. While there has been some delay, it is not so inordinate as to be prejudicial or fatal, particularly considering that the issue at hand relates to clarification essential for the enforcement of the judgment. In the circumstances, I find that the delay is not unreasonable or fatal to the application.

(b) On Functus Officio

9. Although it is a well-established principle that a court becomes functus officio after delivering its final judgment, there are exceptions under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1. A



court retains limited jurisdiction to correct errors, clarify ambiguities, or review its judgment where sufficient cause is shown.

10. In this case, the Applicant seeks a clarification rather than a re-opening of the judgment on its merits. Accordingly, the doctrine of *functus officio* does not bar this Court from granting the clarification sought.

(3) Semantic Difference between "This Judgment" and "The Judgment"

11. The expressions "this judgment" and "the judgment" bear distinct meanings within the context of judicial proceedings. The term "the judgment" points backward to an earlier decision, while "this judgment" signifies the decision currently before the court.
12. Consequently, I do not find any ambiguity in this court judgment rendered on 17th May 2024 for the reason that the term "the judgment" refers to the judgment delivered by the trial court on 06th March 2020, which was the subject of the appeal to this Court.

4. Interest on special damages and general damages

13. The power of the court to award interest is governed by Section 26(1) of the *Civil Procedure Act*. In *Shariff Salim & Another v Malundu Kikava* [1989] KECA 42 (KLR), citing *Prem Lata v Peter Musa Mbiyu* [1965] EA 592, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1970] EA 469, and *Dipak Emporium v Bond's Clothing* [1973] EA 553, the Court of Appeal affirmed that interest on special damages should accrue from the date of filing suit, provided that the sums claimed were already expended or incurred at that time. The court additionally stated that interest on general damages should accrue from the date of judgment, which is the date when the assessment of general damages is made by the court.
14. Applying these principles to the present matter, I find that interest on the special damages awarded to the Appellant should accrue from the date of filing suit and interest on the general damages from the date of the trial court's judgment, being 06th March 2020.

Disposition

15. Given the foregoing findings, it is hereby ordered:
 1. The Respondent's application dated 25th November 2024 is allowed.
 2. Interest on special damages shall accrue from the date of filing of the primary suit.
 3. Interest on general damages shall accrue from 06th March 2020 being the date of the trial court's judgment
 4. Each party shall bear its own costs of the application.
 5. File closed

DELIVERED AT NAIROBI THIS 08TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Nyambala



For Appellant - Mr. Mwangi for Anne W.Kimani & Co. Advocates

For Respondent - Mr. Ndungu for S.N.Ngare & Co. Advocates

