



REPUBLIC OF KENYA



**Nic Bank Limited v Masila (Civil Appeal E419 of 2021)
[2025] KEHC 12183 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12183 (KLR)

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

**CIVIL
CIVIL APPEAL E419 OF 2021**

TW CHERERE, J

MAY 15, 2025

BETWEEN

NIC BANK LIMITED APPELLANT

AND

PHILIP WAMBUA MASILA RESPONDENT

RULING

“The administration of justice rests not only on the making of orders, but on their faithful observance. Where one party is granted reprieve, it must be with a corresponding duty to ensure that fairness to the other is not lost in the process.”

1. By ruling dated 15th July 2021, the court granted the Appellant leave to appeal and stay of execution of the judgment in CMCC 1430 of 2014, on the condition that the decretal sum of KES. 229,000/- was deposited in an interest-earning account of both advocates within 30 days.
2. Subsequently, by ruling dated 06th July 2023, the court, noting that the Appellant did not file an appeal, directed that the decretal sum and interest be released to the Respondent’s advocates, Mbugua Nganga & Co. Advocates.
3. The Respondent complied with the order of release and the Appellant’s advocates by letter dated 14th July 2023, forwarded a cheque of KES. 229,000 to the firm of Mbugua Nganga & Co. Advocates.

Notice of motion

4. The Respondent has now moved the court by a notice of motion dated 24th January 2025 under Section 3A of the [Civil Procedure Act](#), seeking orders that:



1. The Appellant to forthwith pay the Respondent interest on the decretal sum of KES. 229,000 at the rate of 14% per annum from 15th July 2021 to 14th July 2023
2. Costs be borne by the Appellant
5. The application is supported by an affidavit sworn by the Respondent on 24th January 2025 and on the grounds that:
 1. Appellant received account opening documents duly filled out by the Respondent's advocate but failed to open the joint account
 2. Appellant is liable to pay interest on the sum of KES. 229,000
6. Appellant opposed the application by way of a replying affidavit sworn on 28th April 2025 by its Senior Legal Counsel Christine Wahome who avers as follows;
 1. The trial court did not award the Respondent interest and costs
 2. Due to the non-opening of the interest-bearing account as ordered by the court on 15th July 2021, the Appellant did not deposit the decretal sum of KES. 229,000
 3. No interest accrued on the decretal sum
 4. Appellant therefore released only KES. 229,000 to the Respondent on 14th July 2023

Issues for Determination

7. I have considered the notice of motion in light of the affidavits on record and annexures thereto and I have identified the following issues for determination.
 1. Whether the Appellant is liable to pay interest on the decretal sum.
 2. Whether the Appellant should bear costs.
 3. Whether the Appellant is liable to pay interest on the decretal sum
8. The Respondent seeks interest at the rate of 14% per annum on the decretal sum from 15th August 2021 to 14th July 2023, arguing that the Appellant's failure to open the interest-earning account prevented the accrual of interest.
9. The ruling of 15th July 2021 granted the Appellant a stay of execution on the express condition that the decretal sum of KES 229,000 be deposited in an interest-earning account in the joint names of counsel. The Appellant did not comply with this directive.
10. The court's decision to condition the stay on the deposit of the decretal sum in an interest-earning account was not incidental. It was informed by principles of fairness, balancing the Appellant's right to appeal with the Respondent's right to the value of the judgment sum. The intention was to preserve the economic value of the decretal sum during the pendency of the appeal, thereby protecting the interests of the Respondent due to delay.
11. The effect of non-compliance is that the decretal sum lay idle, contrary to the court's direction and to the economic prejudice of the Respondent, who was deprived of both the use and value of the funds.
12. In *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR, the Court of Appeal affirmed that the purpose of conditional stay orders is to protect the decree-holder against the risk of non-recovery or devaluation of the award during appeal.



13. The rationale for imposing liability for interest where a party fails to open an interest-earning account is firmly rooted in equity and the doctrine of unjust enrichment. The Appellant benefited from the stay without complying with the very condition meant to cushion the Respondent. As such, it would be inequitable to allow the Appellant to escape liability for interest.
14. This court cannot close its eyes to the fact that, by failing to open the interest-bearing account, the Appellant exposed the Respondent to loss. That loss, in monetary terms, is the interest that would reasonably have accrued.
15. In my view, the appropriate way to remedy this is to award compensatory interest to the Respondent for the period during which the decretal sum remained undeposited in the interest-earning account. The most reasonable benchmark is the prevailing court rate of interest.
16. Accordingly, I find that the Appellant is liable to pay interest on the decretal sum of KES 229,000 at the rate of 14% per annum, for the period from 15th August 2021, being the last day that the Appellant ought to have complied with the court order, to 14th July 2023, when the decretal sum was released to the Respondent.

2) Whether the Appellant should bear costs.

17. The Respondent seeks that costs of this application be borne by the Appellant.
18. On this issue of costs, the court finds that the Appellant's failure to comply with the court's order has resulted in unnecessary litigation. It is therefore just and equitable that the Appellant bears the costs of this application.

Disposition

1. The Appellant is hereby directed to pay the Respondent interest on the decretal sum of KES. 229,000 at the rate of 14% per annum from 15th August 2021 to 14th July 2023.
2. The Appellant shall bear the costs of this application.

DELIVERED AT NAIROBI THIS 15TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Mr. Abdirizack

For Appellant - Mr. Orenge for Mbugua Nganga & Co. Advocates

For Respondent - Ms. Mbiro for Kimondo Gachoka & Co. Advocates

