



**Gikunda & another v Muguna (Civil Appeal E091 of 2023)
[2025] KEHC 10399 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E091 OF 2023
HM NYAGA, J
JULY 18, 2025**

BETWEEN

KENNEDY BUNDI GIKUNDA 1ST APPELLANT

**MERU COUNTY GOVERNMENT OF MERU, MERU COUNTY GOVERNOR
OFFICE 2ND APPELLANT**

AND

SHADRACK MWITI MUGUNA RESPONDENT

RULING

1. The appellants had appealed against the Judgment of the lower court in Meru CMCC No. E006 of 2022.
2. On appeal, the award of damages was reduced by the court to a total of Ksh. 1,709,936.10. Each party was ordered to bear its own costs of the Appeal and respondent was awarded the costs in the lower court.
3. On 27/2/2025, a consent letter, signed by the advocates for the parties was uploaded on the CTS. The same read as follows: -

By consent of the parties and their advocates;

- a. The Ksh. 1,000,000/= (One million) deposited in Court as security for costs vide official Government receipt No. DAK -0002942 be released to the firm of Kiautha Ariithi & Company Advocates for the respondents through their Kenya Commercial Bank Limited Branch Account No. 1102XXX913.
- b. The balance of Ksh. 1,537,078.20 together with further accrued interest to be paid by the Appellant through the same account in the next FOURTEEN (14) DAYS from the date hereof.



- c. In default of No. 2 above, execution to issue.
4. When the matter came up for directions, advocate for the appellants noted that they had an issue with the clause No. 2 of the consent. The argument is that the costs computed were not taxed. That the advocate who signed the consent did not have full instructions.
 5. Counsel for the respondent pointed out that there were costs and interest of the lower court that are still outstanding. That costs in the lower court had already been assessed at Ksh. 100,000/=.
 6. Parties filed submissions on the issue which I will not rehash, but will refer to them, where necessary.
 7. For the respondent it was submitted that following the decision in *Flora Wasike – Versus – Destiny Wamboko (1988) KLR*, it is settled law that a consent Judgment or order can only be set aside on grounds that would justify the setting aside of a contract.
 8. Citing *Regina Mukiri Gichunge – Versus – KPLC & Others Meru HCCA No. 12A of 2019*, it was submitted that legal practice would be put in jeopardy if, advocates, whose word should be their command cannot be trusted in undertaking they make to follow advocates or court or parties.
 9. For the appellants, it was argued that since the High Court reduced the award, then the interest should align with the award made, as it replaced the lower court Judgment. That interest on general damages ought to run from the date of Judgment of this court. Cited were the following cases:-
 - a. *Mary Anyango – Vs- South Nyange Sugar Company Limited (2021) eKLR*
 - b. *Heinz Boel – versus - Buscar Limited & Others (2019)eKLR*
 - c. *Sharoff Salim & Another _ Versus – Malundu Kikava*
 10. On the issue of the consent, it was submitted, that the same had not been adopted as an order of the court, thus it had not become a binding order on the parties. Reliance was placed in *Getanda and Another – Versus – Maranya & Another (2023) KEHC 25637 KLR*.
 11. It is argued that the court cannot adopt an order that is contested by a party.
 12. The issues for determination are:-
 - a. Whether the consent has become binding among the parties?
 - b. When does interest commence on the award by this Court on Appeal.
 13. It is not in dispute that a consent letter was uploaded/filed, but the same was not adopted by the court. I agree with the appellants that a consent becomes binding on the parties once it has been adopted an order of the court [see *Getanda Versus Maranga (Supra)*].
 14. In *Geoffrey Asanyo and Others – Versus - The Attorney General [2020] KESC 62 (KLR)* the Supreme Court weighed on the question of a consent order. It held as follows:

“Adoption of a consent by a Court is a process, in the course of which a Court discharges the duty of evaluating the clarity of the consent placed before it by parties, and giving directions on the manner of adoption. This circumvents the risk of an unlawful Order, and validates the mode of adoption and compliance. Thus, a consent by parties becomes an Order of the Court only once it has been formally adopted by the Court.”
 15. Therefore, the consent herein having not been adopted by the court, cannot be termed as an order of the court. It thus cannot bind the parties, especially where it is contested.



16. Therefore, as regards Clause 2 and 3 of the consent, the same cannot be said to bind the parties. As regards clause 1, the parties duly agreed to it and the court issued an order adopting it. That is binding on the parties.
17. The other question is, when does the interest on the general damages and costs in lower court start to be calculated?
18. The appellants submit that the same starts to run from the date of the judgment of this court. That cannot be the case.
19. The effect of the Judgment herein was to reduce the award of general damages made by the lower court. It follows that the award of interest would be deemed to start from the date of delivery of the Judgment of the lower court, but taking account of the sum deposited in court, as a result of which that amount stopped earning interest once it was deposited.
20. Therefore, I find that the following orders do command: -
 - a. Clause 1, of the Consent in question having been adopted, became binding to the parties.
 - b. The balance of the decretal sum shall be the sum awarded by this court less the amount deposited in court (Ksh. 1,000,000/=)
 - c. Interest on the decretal sum and costs shall run from the date of the Judgment and certification of costs respectively.
 - d. The lower court file is remitted back to the trial court for calculation of the interest as ordered above
 - e. There shall be no orders as to costs on this application.

DATED, DELIVERED AND SIGNED AT MERU THIS 10TH DAY OF JULY, 2025

HON. H. M NYAGA

JUDGE

