



Gachanja & another (Suing as the Administrators of the Estate of Wilson Gachanja Njenga) v M.O.M Al Amin Transporters Ltd & another (Civil Appeal E057 of 2022) [2024] KEHC 6785 (KLR) (9 April 2024) (Judgment)

Neutral citation: [2024] KEHC 6785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E057 OF 2022
GMA DULU, J
APRIL 9, 2024**

BETWEEN

NJENGA GACHANJA 1ST APPELLANT

HANNAH RINDI THUMBI 2ND APPELLANT

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF WILSON
GACHANJA NJENGA**

AND

M.O.M AL AMIN TRANSPORTERS LTD 1ST RESPONDENT

MIRIAM A AMIN BAHU 2ND RESPONDENT

(From the Ruling of the Chief Magistrate's Court Voi Civil Case No. 183 of 2014 delivered on 18th November 2022 by Hon. A. M. Obura (Mrs.) – Chief Magistrate)

JUDGMENT

1. This matter arises from a ruling delivered on 18th November 2022 by the Magistrates Court following a decision of the Court of Appeal in Mombasa Civil Appeal No. 9 of 2020 in which on 8th July 2020, The Court of Appeal set aside the decision of the High Court and reinstated the decision in the Senior Principal Magistrates Civil Cases No 182 and 183 of 2014 with costs to the respondent of the Appeal and also costs of the Appeal in the High Court.
2. Subsequently to that, the Chief Magistrate delivered a ruling on interest payable on 18th November 2022, from which the present appeal was filed by the appellants herein through counsel Macharia, Burugu & Company advocates on the following grounds-



1. The learned Magistrate erred in law and in fact by holding that the Judgement of Hon. E. G. Nderitu (Then Principal Magistrate) of 23rd January 2017 was silent on the rate of interest on the Judgement sum when in actual fact the said Judgement awarded interest at Court rate which is conventionally known to be 14%.
 2. That the learned Magistrate erred in law and in fact by holding that interest rate applicable on the aggregated sum is 6% and not 14% which was the prevailing Court rate at the time of the Judgement.
 3. That the learned Magistrate erred in law and in fact by interfering and reversing the Judgement of Hon. E. G. Nderitu (then Principal Magistrate) by reducing the rate of interest payable on the Judgement sum without jurisdiction to do so.
 4. That the learned Magistrate erred in law and in fact by failing to abide by the principle of stare decisis and disregarding Court of Appeal decisions cited before her on the prevailing Court rate of interest being 14%.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Macharia Burugu & company Advocated for the appellants and Cootow & Associates advocates for the respondents.
 4. Having perused the Judgement delivered by Hon. E. G. Nderitu SPM on 23rd January 2017, I find that the trial magistrate decided as follows with regard to payment of interest:-

“All in all Judgement is entered for the plaintiff against the defendants for Ksh. 1,834,688 this amount is less the award under Law Reform Act to avoid double compensation. The plaintiff is also to have cost of the suit plus interest a Court rates from the date of Judgement till payment is full”
 5. It is obvious that the trial court was not specific on the actual rate of interest payable, but generally ordered that the rate of interest will be at court rates from date of judgment until payment in full. The question is what are the court rates of interest applicable. Both counsel for the parties have held strong positions on the rate of interest payable herein and relied upon decided court cases.
 6. I note that the issue of the court rates of interest applicable herein was later considered by the Magistrate’s court and a ruling (which is now contested on appeal) delivered on 17th November 2022 in which the Chief Magistrate concluded as follows-

31. Having myself considered the authorities cited by the parties and their respective submissions, I find and hold that in the absence of any interest rate by the court section 26(2) of the Act is applicable. The interest rate on the aggregate sum from the date of the judgment shall be 6% per annum while interest on costs shall be 14% per annum under Section 27(2).”
 7. Having perused and considered the various decisions of the Court of Appeal, I note that in the case of Nairobi Civil Appeal No 43 Of 2015 *Alba Petroleum Ltd v Total (K) Ltd* (2019) eKLR 14% rate of interest for the period up to date of Judgement was upheld, and the rate of 12% for the same period was applied by the Court of Appeal in Civil Appeal No. 2 of 2018(2018) eKLR BOG *Tambach Teachers Training College v Mary Kipchumba*. In my view applying any of the two court rates for the period up to Judgement is acceptable and legally valid. The discretion is however on the trial court to decide payment of costs and the appropriate rate in each case.



8. With regard to the period from the date of Judgement to the date of payment in full which is in contest herein, the statute provides under section 26(2) of the *Civil Procedure Act* that where the Court does not specifically state the rate of interest applicable, it is 6% per annum. On this point, the Court of Appeal can be consistent. The Chief Magistrate was thus correct in the contested ruling on this point. The interest applicable is 6% as determined. Interest on costs is a totally different matter.
9. I thus uphold the ruling of the Chief Magistrate herein contested dated 18th November 2022. I dismiss this appeal with costs to the Respondents.
10. I am told that this judgment applies to another case E056 of 2022, so be it as requested. Thus this decision applied in Voi High Court Civil Appeal No. E056 of 2022 *Alexander Ndungu Mbugua & Another v MOM Al Amin Transporters & Another*. Copy of this judgment will be filed in that file.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF APRIL 2024 AT VOI IN OPEN COURT VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Ms. Kagoli for appellants

Mr. Wafula for the respondents

