



REPUBLIC OF KENYA



**Akshar Auto Spares General & Hardware Limited v Roy Parcel Services Limited  
(Civil Appeal 17 of 2020) [2024] KEHC 4771 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4771 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL 17 OF 2020  
HI ONG'UDI, J  
MAY 9, 2024**

**BETWEEN**

**AKSHAR AUTO SPARES GENERAL & HARDWARE LIMITED .... APPELLANT**

**AND**

**ROY PARCEL SERVICES LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment and decree of Hon. V. Wakumile Senior Resident Magistrate, delivered on 13th December, 2018 in Nakuru CMCC No. 346 of 2013)*

**JUDGMENT**

1. The appellant was the plaintiff in the lower court. The claim is founded on breach of contract. The appellant had contracted the respondent to transport ten (10) power saws valued at Ksh 595,000/= from Nakuru to Eldoret and deliver them at Ravisa Stores on the 29<sup>th</sup> November, 2012.
2. The items were allegedly never delivered to the supposed to be recipients and they were never returned to them. The appellant therefore prayed for the following orders against the respondent:
  - a. Kshs 595,000/=
  - b. Costs of the suit
  - c. Interest on (a) and (b) above at court rates.
3. The respondent filed a statement of defence denying the claim including the value of the ten (10) power saws. It denied receiving any demand Notice from the appellant.
4. After hearing both parties and their witnesses the trial court found in favour of the appellant and entered Judgment in terms of prayers (a) and (b) as prayed. For prayer (c) it was ordered that interest would be at court rates from date of Judgement which was 13<sup>th</sup> December, 2019.



5. Being dissatisfied with the Judgment the appellant filed this appeal on the following grounds:
  - i. That the learned trial magistrate erred in law and in fact in failing to find that this having been a liquidated claim the interests in the principal sum ought to accrue from the date of filing the primary suit.
  - ii. That the Appellant's claim having been a liquidated claim, the interest automatically started to accrue from the date of the filing of the suit.
6. A summary of the case before the lower court is as follows:

The appellant called two witnesses namely:- Samuel K. Nduati (PW1) Francis Njenga (PW2). PW1 was the appellants accountant. He testified that the appellant's managing director Arvind Patel ordered for some ten (10) power saws for their client Ravisa Stores Ltd in Eldoret. The respondent was contracted to deliver the same from their offices in Nakuru to Ravisa Stores Ltd Eldoret. The parcel was received by the respondent vide a Way bill No. 54584 PEXB1. The delivery was to be on 29<sup>th</sup> November, 2012.
7. The appellant issued a cash sale for Ksh 595,000/= in favour of Ravisa Stores (PEXB2) who issued the appellant with a post-dated cheque for an equal amount being cheque No. 001093 from Prime Bank Eldoret (PEXB 3). Unfortunately, these items were never delivered to Ravisa Stores Eldoret. Two letters were written by the appellant to the respondent (PEXB 4 & 5) but there was no response. This was followed with a demand letter dated 22<sup>nd</sup> January, 2013 (PEXB 6).
8. In cross examination PW1 said the appellant had dealt with Ravisa Stores before. He denied knowing any one by the name of Abdullah. The respondent was to be paid on delivery of the items. The respondent had confirmed receipt of the goods.
9. PW2 is an employee serving as Stores Manager of Ravisa Stores Ltd. He confirmed that the cheque (PEXB 3) was stopped by his employee for non-delivery of the goods. He was not in a position to comment on matters which occurred before his employment in the year 2016.
10. The respondent called two witnesses. DW1 Alex Matheka is an employee of the respondent since 2010. He confirmed receipt of a parcel from the appellant on 28<sup>th</sup> November, 2012. The parcel was received by a colleague called Moses. It was to be received by Mr. Simon Tinga of their Eldoret office, before being taken to the offices of the client. To him the parcel was picked by Abdullah in Eldoret and he appended his signature. He used a motor vehicle registration No. KBR 346R. Abdullah used to receive parcels on behalf of Ravisa Stores.
11. In cross examination he said he was based in Nakuru and not Eldoret. He was not present when the parcel was received and he never met Abdullah. He only received briefs from the receiving clerk in Eldoret. He said he had not produced other Waybills to show that Abdallah used to receive parcels on behalf of Ravisa Stores. He did not know the vehicle he had referred to. There were no stamps by Ravisa on the document he identified.
12. DW2 Simon Mwachiro testified that in 2012 he was an employee (clerk) of the respondent in Eldoret while the appellant was their client. On 28<sup>th</sup> November, 2012 the appellant sent a parcel to their client through the respondent. The parcel was well received after a delay. Ravisa had called him and promised to send someone to pick the parcel. One by the name Abdullah Abuka was sent by Ravisa. He was a frequent client and he even had his original identity card, and came with the company vehicle. He paid and signed the Way bill (DEXB 1)
13. After 30 minutes Ravisa called inquiring about the parcel yet he had released it. The matter was reported to the police vide OB 19/01/02/2013. None of their employees was charged.



14. In cross examination he said Abdullah did not stamp the delivery as required. He admitted having been a suspect in this matter. The delay in delivering the parcel was because the vehicle had broken down. He denied colliding with anyone over this matter.

## **SUBMISSIONS**

### **The appellant's submissions**

15. These were filed by Gekong'a & Company advocates and are dated 6<sup>th</sup> December, 2023. Counsel reiterated that interest ought to have been awarded from the date of filing suit. He referred to section 26 (1) of the *Civil Procedure Act* and the following cases:
- i. Franco Esposito V Assia Animal Health Ltd [2019] eKLR
  - ii. Jane Wanjiku Wambui V Anthony Kigamba Hato & 3 others [2018] eKLR
  - iii. Gilbert Kamburi Ongeni V Kenyatta National Hospital Board [2018] eKLR.

### **The respondent's submissions**

16. These were filed by G & G. Advocates and are dated 12<sup>th</sup> March 2024. Counsel referred to section 26(1) and (2) of the *Civil Procedure Act*. It's his submission that from the said provision the court has all the discretion in indicating from when the interest should run. Reference was made to the case of New Tyres Enterprises Ltd V Kenya Alliance Insurance Company Ltd [1988] KLR 380
17. Counsel further argued that the date from which interest should run was not pleaded by the appellant, so it can not blame the court for issuing the orders it did. He relied on the case of Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd (1970) E. A 469 in support.
18. Finally, counsel urged the court not to allow the appellant to extract from the respondent an amount that is almost equivalent to the principal sum. Referring to the Duplum Rule and the case of *Mugure & 2 others V Higher Education Loans Board (Petition E002 of 2021)* [2022] KEHC 11951 (KLR) (Civ) (19 August, 2022) (Judgment), counsel submitted that the sum being claimed is equal to 84% of the principle sum which is unfair to the respondent.

### **Analysis and determination**

19. I have carefully considered the grounds of appeal, record of appeal, both parties submissions, cited cases and the law. See *Selle & Another V Associated Motor Boat Company Ltd & others* [1968] EA 123. The appellant has no issue with the award of the principal sum and the costs. The only issue here is from when the interest awarded at court rates should run. The learned trial Magistrate held that the interest should run from the date of Judgment which is 13<sup>th</sup> December, 2018.
20. What does the law say about payment of interest?

Section 26 of the *Civil Procedure Act* provides as follows:

Section 26(1) Where and in so far as a decree is for 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 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.



26(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.

21. A perusal of the pleadings reveals that in the amended plaint the appellant pleaded for a specific special damage of Ksh 595,000/= This was an amount that was already owing hence a special damage. It was owing prior to the filing of the suit
22. This can be seen from the demand letter dated 29<sup>th</sup> January, 2013 (PEXB 6). It was not an amount that the court was going to calculate and assess as is done for general damages
23. Section 26 (1) *Civil Procedure Act* is very explicit on this. See: Premrata Vs Peer Musa Mbiyu [1965] E.A 592, Emmanuel Kuria Wa Gathoni Vs the Commissioner of police & Another [2018] eKLR, and Shariff Salim & another Vs Mulundu Kikava [1989] e KLR.
24. The above being the position in law I would only have considered otherwise if the learned trial Magistrate had expressed himself on this issue. All he did was to order interest to run from the date of Judgment as is done for general damages, with no explanation AT ALL.
25. Upon considering the law and the authorities cited I am of the humble view that special damages/ liquidated sums attract interest from the date of filing suit. The sum herein which falls in that category ought to attract interest from the date of filing suit.
26. The upshot is that the appeal has merit. I hereby set aside the lower court order for interest to run from the date of Judgment.
27. I substitute it with an order awarding interest at court rates from the date of filing suit.
28. Costs of the appeal to the appellant.
29. Orders accordingly

**Delivered, virtually dated and signed this 9<sup>th</sup> day of May, 2024 at Nakuru.**

**H. I. ONG'UDI**

**JUDGE**

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