



REPUBLIC OF KENYA



KENYA LAW
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**Serenge v Mandala (Civil Appeal E019 of 2022)
[2023] KEHC 801 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E019 OF 2022
PJO OTIENO, J
FEBRUARY 9, 2023**

BETWEEN

JOSEPHAT TIETIE SERENGE APPELLANT

AND

EMILY MANDALA RESPONDENT

*(Being an appeal from the judgment & Decree of Hon.
Eric Malesi PM in Kakamega CMCC NO. 128 OF 2017)*

JUDGMENT

1. By way of a plaint dated March 30, 2017, the appellant sued the respondent, at the Chief Magistrate Court in Kakamega, for general damages, special damages, cost of the suit and interest thereon for damages occasioned when the respondents motor vehicle Reg. No. KCJ 511H was allegedly driven so negligently that it knocked the appellants motor vehicle, KBV 902J, thereby occasioning to it extensive material damage. In the plaint were set out the particulars of damage and the costs of repair and related professional services in the sum of Kshs 1,161,000.
2. The respondent resisted the claim by a statement of defence in which every allegation was denied including the ownership of the two vehicle, the particulars of negligence by the respondent as well as the fact and quantum of loss with the appellant being invited to very strict proof.
3. The adversaries did file the witness statements and documents in support of their respective position as the rules command.
4. In the trial that followed, the appellant gave evidence by adopting his witness statement and producing the documents filed without any objection by the respondent, then called a police office to produce the police abstract on road accident. The defendant opted to close its case without adducing any evidence at all.



5. In a judgment delivered by the trial court on March 8, 2022, the appellant was awarded a total sum of Kshs. 1,161,000/- together with interest from the date of the judgment till payment in full as well as the costs of the suit.
6. Aggrieved with the decision of the trial court, the appellant lodged a memorandum of appeal dated March 10, 2022 and challenged the decision on the single question that it was erroneous to award interest from the date of the judgment rather than the date of the suit.
7. Parties agreed that the appeal be canvassed by way of written submissions and each party has filed their respective submissions. In those submissions, the appellant identifies the issue for determination by this court to be the date that would be reckoned with in calculating interest on the sum awarded. It is argued that where a claim is for a liquidated amount and/or special damages, interest ought to be calculated from the date of filing the suit and places reliance in a number of authorities namely; *Jane Wanjiku Wambu v Anthony Kigamba Hato & 3 others* [2018] eKLR, *Heinz Broer v Buscar (K) Lts & others* [2019] eKLR, *Martin Gicimu Kamangu v Board of Governors, St. Annes Junior School, Lubao* [2021] eKLR and *Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited v Janevams Limited* [2015] eKLR.
8. For the respondent it is submitted that out of the sum of Kshs. 1,161,000/- pleaded as special damages by the appellant, the only expense that had already been incurred was car hire costs, amounts paid for preparation of assessment report and demand letter. She argues that the amount of Kshs. 700,000/- being the difference of the pre-accident value and salvage value is an expense not yet incurred and thus is an unliquidated damage whose interest ought to be calculated from the date of judgment. She cites the case of *Patrick Mwaura Wagatira v Equity Bank Limited & another* [2021] eKLR for the proposition that interests on a liquidated claim ascertainable at the commencement of the suit is payable from that date while interests on damages assessed in the judgment are payable from the date the judgment ascertains the sum.

Analysis and Determination

9. As pleaded and prosecuted, the appeal presents the single question as to the date of commencement of application of interest of a sum claimed in the plaint and awarded by the court as prayed. There is no question that the appellant's suit was for a liquidated claim. The expression, liquidated claim was defined in *Mawji v Kaderdina Majee Essak Ltd* [1992] eKLR to include 'a genuine pre-estimate of the loss that will be caused to one party if a contract is broken by the other. In this case it is called liquidated damages, and it constitutes the amount no more and no less, that the plaintiff is entitled to recover in the event of breach without being required to prove actual damage'.
10. In the matter at trial, the sum was clearly ascertained and pleaded in terms of the report by Maka Automotive Works and Assessors, Loss Assessors And Valuers dated 28/10/2015 in which they indicate that the pre accident value of motor vehicle registration number KBV 902J was Kshs. 860,000/- and the salvage value was Kshs. 160,000/-. This is an amount that was ascertained at the time of filing the suit which amount was certain and for that reason I find it to be a liquidated claim.
11. Being a liquidated claim or damages, the authority of courts to award interest is legislated in section 26 of the *Civil Procedure Act* cap 21 Laws of Kenya to the effect that 'where and in so far as a decree is for the 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 the 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'.



12. The words of the statute are plain and clear to demand no other interpretation other than that for a decree in liquidated claim, interest is ordained to be due and payable from the date of the suit with liberty to court to award interest for a period prior to filing of the suit. There appears to be no window for the court to depart from the statutory dictate unless, in my view for very good reason to be recorded like in situations where a tender was made prior to the suit by the plaintiff became hell-bent on litigation. Therefore, in *Mukisa Biscuits Manufacturing Company Limited v West End Distributors Limited* [1970] EA 469, the then court of Appeal for East Africa, after reviewing the law in the area did declare: -

“The principle that emerges is that where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interests from the date of filing suit.”

13. That clear position of the law bound and will continue to bind and guide, by application of precedence, every court below the court of appeal and the trial court here is no exception. In failing to apply the law as it is, the court erred and that error must be corrected by this court in its appellate jurisdiction.

14. Accordingly and for the reasons foregoing, the appeal is merited and the same is allowed, with costs, to the extent that interests on the sum awarded be calculated from the date of the suit.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 9TH DAY OF FEBRUARY, 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Mr. Mulama for Abok for Appellant

No appearance for the Respondent

Court Assistant: Polycap

