



**Kisya Investments Limited v Attorney General & another (Civil Suit  
2832 of 1990) [2023] KEHC 3741 (KLR) (Civ) (24 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3741 (KLR)

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

**CIVIL**

**CIVIL SUIT 2832 OF 1990**

**JK SERGON, J**

**APRIL 24, 2023**

**BETWEEN**

**KISYA INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**RL ODUPOY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The subject matter of this Ruling is the Motion dated September 27, 2022 taken out by the Hon Attorney General in which the applicant sought for the following Orders:-
  - i. That this Application be certified urgent and its service upon the Plaintiff/Respondent be dispensed with in the first instance.
  - ii. That this Honourable Court be pleased to grant a Temporary stay of execution of the further amended certificate of order against the Government issued on the November 27, 2020, pending the hearing and determination of this Application interparties.
  - iii. That this Honourable Court be pleased to grant a stay of execution of the further amended certificate of order against the Government issued on the November 27, 2020, pending the hearing and determination of this application.
  - iv. That the Honourable court be pleased to strike out th proceedings, pleadings and the resultant further amended certificate of order against the Government conducted and undertaken by the Firm of MMA Advocates for want of compliance with order 9 Rules 9 of the *Civil Procedure Rules*.



- v. That this Honourable Court be pleased to grant an Order directing that the matter is fully settled and that no amount remains outstanding by dint of the Judgment of the Court delivered on September 29, 2005.
- vi. That costs of this Application be in the cause.
2. The Applicant filed the Affidavit sworn by Martin Munene in Support of the Motion. Kisya Investments Ltd, the Plaintiff herein filed the Replying Affidavit sworn by David Karanja, the Plaintiff's director to oppose the Motion.
3. I have considered the grounds stated on the face of the motion plus the facts deponed in the rival affidavits and the rival submissions. It is the Applicant's Submission that the rate of interest the Judgment sum should attract is not clear as to whether it is 12% or 18% p.a. Mr. Munene pointed out that the issue is still in dispute hence an order for stay of Execution of the decree should be granted.
4. The applicant also pointed out that on May 12, 1992, the case came up for hearing as a formal proof before Justice Tank. Judgment in favour of the Plaintiff was delivered on September 10, 1992 in the sum of Kshs 31,222,071/35.
5. The Applicant further stated that the Plaintiff was paid Kshs 57,040,293/95 being the final and full settlement of the decree. The Hon Attorney General further lamented that on June 25, 1998, he was served with an Order seeking to amend the decretal sum from Kshs 57,040,293/95 to Kshs 82,227,112/90 and that on July 13, 1998 an amended certificate of order against the government was issued.
6. The applicant further stated that on September 30, 1999, the Plaintiff/Respondent made an Application seeking to compel the Government to settle the amended decree and certificate of order against the government.
7. It is the applicant's submissions that the Application was heard and dismissed with costs on September 29, 2005.
8. The Hon Attorney General also stated that this Court had on January 24, 2005 observed that after the Plaintiff was paid Kshs 57,040,293/95 that ought to have marked the end of the matter save for payment of any balance arising from the accumulation of interest due to lapse of time.
9. It is further the submission of the applicant that the further grant of the orders for amended certificate of the order against the Government for Kshs 7,328,757,673/= contravened Section 4 (4) of the [Limitation of Actions Act](#) which provides that no arrears of interest in respect of a Judgment debt may be recovered after the expiry of six years from the date on which interest became due.
10. The Applicant also stated that unless the order is set aside, the Applicant will suffer irreparable loss or damage as the Plaintiff's claim is colossal.
11. The Plaintiff/Respondent strenuously oppose the Application arguing that the same lacks merit. The Respondent pointed out that the Deponent of supporting affidavit swore a false affidavit to mislead this court.
12. On the question of the Applicable rate of interest, the Respondent pointed out that the applicant had filed an appeal over the issue in the Court of appeal whereof the Court of Appeal stated that the Applicable rate of interest is 18% p.a.



13. The Respondent further argued that the applicant cannot seek refuge under Section 4 (4) of the Limitation of Actions Act when by its conduct it has systematically frustrated all efforts by the Plaintiff to have the decree settled.
14. Having considered the material placed before this Court in respect of the motion dated September 27, 2022 plus the rival arguments, I have come to the following conclusions: First, that there is no doubt on the applicable rate of interest as alluded by the applicant. It is apparent that the Court of appeal settled the dispute on the applicable rate of interest and ruled that Applicable rate of interest is 18% p.a.
15. It is also apparent that the Plaintiff was awarded interest at the rate of 18 % p.a. as prayed in the Plaint. The applicant in its various correspondences also acknowledged that the applicable rate of interest to be 18 % p.a. With respect, the Applicant has through the instant application has attempted to mislead the Court by stating that the rate of interest is in doubt.
16. The second issue is whether the Applicant is barred under Section 4(4) of the Limitation of Actions Act from further charging interest. The Applicant pointed out that the Respondent is not permitted to charge interest after the lapse of six years from the date it is due.
17. There is no dispute that the Plaintiff was awarded Judgment in the sum of Kshs 31,222,071/35 plus interest on September 10, 1997. The Principal sum was to attract interest from the date of Judgment until full payment.
18. Its trite law that the outstanding amount would continue to attract interest so long as the Judgment sum remains unsettled. There is evidence indicating that the Plaintiff has failed to settle the Judgment sum. The law did not intend to stop the charging of interest on the outstanding amount even after the lapse of six years. The record shows that the Plaintiff has made part payment of the Judgment sum.
19. The period to levy interest did not stop. It is a continuing period so long as the Judgment remains unsettled.

In the end, I find no merit in the Applicant's motion dated September 27, 2022. The same is hereby ordered dismissed with costs to the Plaintiff/Respondent.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF APRIL, 2023.**

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**J. K. SERGON**

**JUDGE**

**In the presence of:**

**C/Assistant - Rutoh**

**No Appearance for the Plaintiff/Applicant**

**No Appearance for the Defendants/Respondents**

