



Ram International Limited v Maasai Mara University; National Bank of Kenya Limited Narok Branch & 2 others (Garnishee) (Civil Case 5 of 2019) [2023] KEHC 20317 (KLR) (12 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL CASE 5 OF 2019
REA OUGO, J
JULY 12, 2023**

BETWEEN

RAM INTERNATIONAL LIMITED PLAINTIFF

AND

MAASAI MARA UNIVERSITY DEFENDANT

AND

NATIONAL BANK OF KENYA LIMITED NAROK BRANCH GARNISHEE

KCB BANK LIMITED NAROK BRANCH GARNISHEE

EQUITY BANK KENYA LIMITED NAROK BRANCH GARNISHEE

RULING

1. This ruling relates to the notice of motion dated July 28, 2022. It is not in dispute that the court ordered the defendant to pay the plaintiff the sum of Kshs 24,163,726/-. The plaintiff was also awarded interest at court rates from the date of filing suit plus costs of the suit. According to the plaintiff in its application dated July 28, 2022 the amount at the foot of the judgment and decree rendered on July 16, 2021 inclusive of interests and costs was Kshs 36,203,394.
2. The defendant in its replying affidavit dated August 12, 2022 did not dispute the decretal sum of Kshs 24,163,726/- and costs taxed at Kshs 2,104,072/-. They only took issue with interest claimed by the plaintiff. The parties entered into a consent that has been adopted by this court and the only issue before the court concerns the interest applicable in respect of the judgment awarded in favour of the plaintiff decree holder. Following the consent by parties, this court made the following orders:



- a. The Garnishee Order Nisi, issued on the 29th day of July 2022 as pertains to the 1st Garnishee, namely, M/S National Bank of Kenya Limited, Narok Branch Account Number xxxxxx, be and is hereby discharged on the following terms:
 - i. The 1st Garnishee to forthwith pay out to and in favour of M/s Oguttu Mboya, Ochwal & Partners Advocates, through Account Number xxxx, Ecobank Kenya Limited, Kisii Branch, the sum of Kshs 2,104,072.85 only.
 - ii. The 1st Garnishee to forthwith pay out and in favour of the plaintiff/decre holder, through Account Number xxxx (INO Ashwin Ramji Gudka), Kenya Commercial Bank Limited, Kisii Branch, the principal sum of Kshs 24,163,726/- only.
 - b. The Garnishee Order Nisi, issued on the 29th day of July 2022 as pertains to the 2nd and 3rd Garnishees herein, namely, M/s KCB Bank Kenya Limited, Narok Branch, Account Number xxxx and Equity Bank Kenya Limited, Narok Branch, Account Number xxxx, be and is hereby discharged unconditionally.
 - c. The Honourable Court does proceed and determine the interest at Court rates applicable over and in respect of the Judgment sum awarded to and in favour of the Plaintiff/Decree Holder in line with the Judgment of this Honourable Court.
 - d. Upon the ascertainment of the applicable interests at Court rates, the Defendant/Judgment Debtor does forthwith pay the accrued interests over and in respect of the Principal sum to and in favour of the Plaintiff/Decree Holder.
 - e. In default of compliance with clause (a) (i) and (ii) hereinabove, the Order Nisi made on the 29th day of July 2022, be restored and reinstated accordingly.
3. The plaintiff submits that the decree awarded interests at court rates which have been prescribed as 14%. The principal sum is Kshs 24,163,726/-, interest at court rates from the date of filing the suit is Kshs 9,935,596/-. In the plaint filed before the court, the plaintiff had sought orders that interest of the principal sum be awarded at court rates, 14%. It was argued that section 26 (2) of the *Civil Procedure Act* applies to situations where the decree of the court is silent, that is, where the court does not order any interest rate. It cited the case of *BOG Tambach Training College v Mary Kipchumba* [2018] eKLR where the court stated:
- “The Judgment of the Court of April 1, 2009 for the respective consolidated suits merely gave judgment in the various amounts for the respective suits “plus costs and interest” without indicating any rate of interest from the date of the decree to the date of payment. Had the trial court made provision for rate of interest on the principal sum, it would have been required to be guided by the Chief Justice’s Practice Note on interest under section 26(1) of the Act then set at 14% as observed in the Highway Furniture Mart decision, supra. In the present circumstances, there being no order on rate of interest by the court, section 26 (2) of the Civil Procedure Act clearly stipulates the applicable rate of interest at 6% per annum. Interest on costs is, of course, separately provided for under section 27(2) of the Act at 14% per annum.”
4. The defendant on the other hand argue that while the plaintiff in its pleadings requested the court to award it interest at court rates of 14%, the court in its wisdom remained silent with respect to the exact percentage of the court rates to be applied as interest on the principal sum of Kshs 24,163,726/-. The interest to be applied automatically fall within the provisions of section 26 (2) of the *Civil Procedure Act*



Act which sets the rate at 6%. The suit having been filed on 7th August 2019 and the interest earned on the principal sum for a period of 3 years at the rate of 6% per annum translates to Kshs 4,349,470/-. The plaintiff cannot therefore grant itself the said interest rate and neither can it combine the principal sum and costs then proceed to put a blanket rate of 14% as the interest in both. The Court rate interest for principal sums awarded in decrees as set at 6% pursuant to provisions of section 26 (2) of the Civil Procedure Act. The defendant also placed reliance on the case of BOG Tambach Teachers Training College v Mary Kipchumba [2018] eKLR.

Analysis and Determination

5. The issue raised by the parties is pretty straight forward, namely, the determination of the applicable interest on the principal sum awarded by the court. Section 26 (1) of the Civil Procedure Act provides as follows:

"(1) 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."

6. According to the decree issued on July 30, 2021 the plaintiff was awarded interest at court rates from the date of filing suit. Under the Practice Note No 1 of 1982 where the then Chief Justice Simpson Ag CJ issued the following practice direction:

"The Civil Procedure Act Cap 21 Laws of Kenya Section 26 enables the court to order interest on the principal sum adjudged in a decree both before and after the date of the decree to be paid at such rate as the court deems reasonable. In the absence of any valid reason for ordering a higher or lower rate of interest, the rate of interest should now be 12%."

7. The submissions made by the defendant, claiming that the court remained silent on the interest rate, is far from accurate, as interest was indeed granted at the prevailing court rate, 12%.
8. The plaintiff on the other hand has made submissions that the applicable interest on the principal sum should be 14%. It relied on the provisions of section 27 which provides as follows:

"(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such."



9. However, I find that the plaintiff's submission for the adoption of 14% is also misconceived as the interest under section 27 of the *Civil Procedure Act* is on costs and cannot be applied on the aggregated principal sum. Majanja J in *Municipal Council of Kisumu v Kenya Power & Lighting Company Limited*, HCCS No 119 of 2007, holding that the normal court rate is 12% pa observed as follows:

"Counsel for the plaintiff correctly conceded that the trial magistrate erred by applying to the principal sum an interest rate of 14% pa. This interest rate only applies to the advocate/client bill of costs under Rule 7 of the Advocates Remuneration Order. In all other cases, the normal court rate is 12% pa in accordance with the practice direction issued by the Chief Justice on March 4, 1982 (see *Mariga v Musila* NKU CA Civil Appeals No 66 of 1982 and 88 of 1983 [1984]eKLR). I therefore hold that the interest due on the principal sum for purposes of calculating the value of the subject matter is 12% pa."

10. I am in agreement with the findings of Majanja J. I find that the interest payable on the decretal sum shall be 12%. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF JULY 2023.

R.E. OUGO

JUDGE

In the presence of:

Mr. Mulisa For the Plaintiff

Defendant Absent

1st, 2nd & 3rd Garnishee Absent

Aphline C/A

