



REPUBLIC OF KENYA



**Shah v Haria & another (Civil Case 488 of 2007)
[2024] KEHC 13043 (KLR) (Civ) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13043 (KLR)

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

**CIVIL
CIVIL CASE 488 OF 2007**

TW OUYA, J

OCTOBER 24, 2024

BETWEEN

JAYESH HASMUKH SHAH PLAINTIFF

AND

NAVIN HARIA 1ST DEFENDANT

MANU SHAH 2ND DEFENDANT

RULING

Background

1. The matter before this court relates to the contents of a decree pursuant to a judgement by judge A. Mbogoli Msagha dated 31st July 2018. Where the court held in determination that:

“Taking into consideration the totality of the evidence adduced by the plaintiff against the defendants, I am persuaded that the plaintiff has established his case against the defendants jointly and severally and therefore enter Judgement in his favour as prayed in the plaint with costs and interest pleaded.”

2. Upon perusal of the plaint dated June 4, 2007, the prayers sought for were as follows:

- a. Kenya shillings Thirty-Six Million One Hundred and Ninety-One Thousand Six Hundred and Four (Kshs 36,191,604/=)
- b. Interest on (a) above at the rate of 18% per annum from 1st June 2007 until payment in full;
- c. The costs of this suit;
- d. Interest on (c) above at court rates from the date of filing suit until payment in full.



- e. Any other or further reliefs which this Honourable Court may deem fit and just to grant.
3. The matter proceeded to the Court of Appeal by the Defendant/Appellants vide memorandum of appeal dated 28th September 2018. The matter was canvassed by way of written submissions. The Court of Appeal found in favor of the Respondent and dismissed the appeal. On the issue of interest, court held as from paragraph 56 that:

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- “ 56. It is trite then that a court under our jurisdiction has discretion to order that interest be paid on the amount adjudged from the date of the suit, before the institution of the suit, from the date of the Court’s decree and where the decree is silent with respect to payment of further interest, the same is payable from the date of decree to the date of payment or earlier date.
57. We have stated herein above that parties are not relitigating the dispute as the same was settled with finality by Ethiopian courts. Further, alive that we cannot purport to sit as an appellate court to the decision of the Ethiopia Federal Supreme Court, it is our view that the interest rate at which the decretal sum should be paid should remain at 12% as adjudged by that Court, and we so hold.
58. As regards to when the interest rate should start accruing, we are of the view that this being a contractual liquidated sum, the interest should run from the date of filing the suit as this was money due to the respondent but he was kept out of it. This is a scenario unlike in general damages where the sum due must be assessed first by the court and the interest thereof starts running from the date of Judgment.
59. In so holding, we are fortified by the decision of this court in *South Nyanza Sugar Company Limited v Oreko* (Civil Appeal No 138 of 2017) (2022) KECA 570 (KLR) (24th June 2022) where it was held that:
- “The objective for awarding interest is to ameliorate the loss suffered by a party who has been kept out of use of money that would otherwise be due to him...the indubitable outcome is that interest on special damages will be from the date of filing of suit as the money would have been due to the claimant at the very least on that date.”
60. We find and hold that the interest on Kshs 36,191,604/= shall run from the date of filing suit, that is 19th July 2007 and at the rate of 12% until payment in full.
61. The net effect of our findings is that the appeal is devoid of merit and it is hereby dismissed. The Judgment of the High Court is set aside only to the extent of varying the date that the interest should start running and the rate of interest payable, which have adjudged to be at 12%.

The respondent shall have the costs of this appeal and of the suit in the High Court.



4. The upshot of the Court of Appeal finding as captured at paragraphs 60 and 61 do not mention or touch on interest on costs. Whereas the judgement of the High Court awarded orders as prayed, the Court of Appeal addressed itself on the decretal sum, the date of effect and rate at which it should apply. This matter is before this court because of interest on costs which was not addressed in the Court of Appeal Judgement CA No 362 of 2018.
5. Following the court of appeal determination in favor of the Respondent, the Respondent/Plaintiff prepared a draft decree for approval in line with the High Court judgement. This was declined by the Deputy Registrar on the basis that the aspect of effective date of interest on costs was not addressed.
6. From the foregoing the Court of Appeal clarified that:
 - a. Interest on the decretal amount of Kshs 36,191,604 shall run from the date of filing suit that is 19th July 2007.
 - b. Interest rate is adjudged at 12% per annum.
7. The issue of interest on costs was not mentioned in the Court of Appeal Judgement but paragraph 61 thereof states inter-alia that:

“The Judgment of the High Court is set aside only to the extent of varying the date that the interest should start running and the rate of interest payable, which have adjudged to be at 12%.”
8. The effect of the above is that the judgement of the High court remains intact in so far as interest on costs is concerned. Since the High court awarded Judgement in favour of the plaintiff ‘as prayed in the plaint with costs and interest pleaded’, this court finds no reason to interfere with it concerning the costs and interest thereof because the court of appeal did not tamper with the same.

Determination

9. That being said, this court therefore determines that the decree to be extracted should read that:

Judgement is hereby entered in favor of the plaintiff against the defendants jointly and severally as follows:

1. Kenya shillings Thirty-Six Million one Hundred and Ninety-One Thousand and Six Hundred and Four (Kshs 36,191,604.00)
2. Interest on (1) above at the rate of 12% per annum from July 19, 2007 until payment in full;
3. The costs of the suit
4. Interest on (3) above at 12% per annum from July 19, 2007 until payment in full.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF OCTOBER, 2024

HON. T. W. OUYA

JUDGE

For Appellant..... Sarvya

For Respondent.....Ochwo



Court AssistantMartin

