



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 80 OF 2017

THE KENYA POWER & LIGHTING CO.LTD.....APPELLANT

VERSUS

ANDY INTERNATIONAL..... RESPONDENT

RULING

1. This matter came up for mention on **11th May, 2021** for Counsel for the parties to address court on the issue of interest.
2. According to **Mr. Mugambi Counsel** for the Appellant, the parties had not agreed on the issue of interest and they wanted to confirm whether the Respondent is entitled to interest. He submitted that the decretal sum had long been paid to the Respondent and no interests could accrue in favour of the Respondent. He added that since the outcome of the case, was a win-win situation, then the Appellant should not pay any interest to the Respondent.
3. On the other hand, **Mr. Ananda**, Counsel for the Respondent submitted that the interest accrued from the funds that had been awarded to the Respondent in the lower court's Judgment delivered on **20th February, 2017**, being Kshs.2,885,646.00 as principal sum plus interest of Kshs.663,698.00 together with costs of Kshs.232,116.15. He submitted that the interest payable to the Respondent cannot then go back to the Appellant.
4. In considering the submissions by both Counsel, I have read through both Judgments from the trial court and this Court. I find that on **28th January 2021**, this Court delivered its Judgment in the instant appeal, and upheld the trial court's finding save for the finding on costs, where it was directed that each party bears their own costs with regard to both the primary suit and the appeal. This is what made the outcome of the appeal partly a success for the Appellant as it had only succeeded to the extent of who should bear the costs of the suit and not on how the decretal sum should be shared.
5. The main issue in contention by the parties is the interest that was awarded to the Respondent in the Judgment delivered on **20th February, 2017** by the trial court. In its Judgment, the trial court awarded the Respondent a sum of Kshs.2,885,646.00 and this finding was upheld on appeal. The trial court further awarded the Respondent interest on the decretal sum as well as costs of the suit. Later, the interest was calculated at Kshs.663,698.58 whilst the costs of the suit were put at Kshs.231,116.15. I wish to state that an award by the trial court remains valid unless otherwise set apart or appeal.
6. It is common ground that the principal sum was not paid immediately. It was paid on **13th April, 2017** and that is how the interest accrued on the said amount.
7. On **23rd February, 2018**, this court directed that the amount on interest and costs be deposited in a joint interest earning account in the names of Counsel for the parties. This was dutifully done.
8. Having made the above observation, I am of the general opinion that the interest was attached to the principal sum awarded by the trial court and was to follow the outcome of the appeal. Had the court found that the principal sum was to be paid back to the Appellant, then the interest which accrued from it would also follow the decretal sum.
9. However, from this Court's finding, there was no justification as to why the Respondent should not have been awarded the interest. Also, it will be noted that it was directed that the decretal sum would attract interest until payment in full. This reiterates the finding that the Respondent is entitled to the interest that accrued from the principal amount. It will further be noted that the interest accrued to the said sums by virtue of the late payment of the decretal sum.

10. In the upshot, the following orders do and hereby issue;

a) The interest which was calculated in the sum of Kshs.663,698.58 and deposited in a joint interest earning Account No.1005513298 in the names of Counsel for the parties at the NIC Bank, City Centre Branch – Nairobi to be released to the Respondent forthwith.

b) The sum of Kshs.231,116.15 held in the same joint interest account in the names of both Counsel for the parties being Account No.1005513298 at NIC Bank, City Centre Branch – Nairobi to be released to the Appellant forthwith.

c) Any other sums held in the said joint interest earning account to be shared in the ratio of the amounts in (a) and (b) above.

It is so ordered.

RULING SIGNED, DATED and DELIVERED VIRTUALLY at MOMBASA this 18TH DAY OF MAY, 2021.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Ananda Counsel for Respondent

No appearance by and for Appellant

Winnie – Court Assistant