



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO.292 OF 2005

JULIUS K CHEMJOR.....PLAINTIFF/ RESPONDENT

VERSUS

POSTAL CORPORATION OF KENYA.....APPLICANT

F. O. OKELLO.....2ND DEFENDANT

RULING.

1. In the **Notice of Motion** dated **31st January 2020** the applicant prays for the orders that this court does review its ruling dated **25th July 2019** directing the Deputy Registrar to apply interest on taxed costs of Kshs. 853,881 at 14% from **1st March 2018** to **25th July 2019**.
2. The application is grounded on the reasons on the face of the application as well as the affidavit of **SAMUEL. M. MBURU** the manager legal services of the applicant dated even date.
3. The uncontested facts are that judgement was given in favour of the respondent on **25th June 2009** in which he was awarded a sum of Kshs. 5,042,400 and the Court of Appeal reduced the same to Kshs. 3,529,680 and costs of Kshs. 853,881.
4. The applicant after a long and protracted applications both in this court and the Court of Appeal paid to the applicant the total decretal amount on **17th August 2018** vide cheque number **062515**. The applicant thereafter sought interest on the amount awarded as costs. The court on **25th July 2019** ordered that interest be calculated by the Deputy registrar on the said costs based on the interest of 14% per annum against the awarded costs of Kshs. 853,881.
5. The applicant is therefore aggrieved by the said decision and is of the view that interest ceased to accrue from **17th August 2018** when the principal amount was paid.
6. The respondent on his part has argued vide his grounds of opposition that whereas the principal amount has been settled the interest on costs was not paid as directed by both the high court and the Court of Appeal. In essence the said amount ought to be computed from the time judgement was paid till **17th August 2018** when costs were awarded. He prayed for the application to be dismissed.
7. The court ordered for the matter to be settled by way of written submissions which they have duly complied. In their lengthy submissions both have argued extensively on the issue of stay pending appeal and the circumstances when the same ought to be granted.
8. They have also submitted on the question of when to grant orders of review as per the **Provisions of Order 45 rule 1 of the Civil Procedure rules** as anchored under **Section 80 of the Civil Procedure Act**.
9. This court would like to confine itself to the substantive issue, namely, whether in light of the ruling by my sister Hon. Lady Justice Mulwa this court can allow the application. No doubt this court can review the orders as the honourable judge has since been transferred from the station.
10. There has been plethora of authorities which have grounded the reasons for court to review its rulings. In **FRANCIS NJOROGE V. STEPHEN MAINA KAMORE CIVIL APPEAL NO. 181 OF 2017** the Court of Appeal stated as hereunder;

“It should be noted that the grounds for review are very specific as discussed herein above. The Appellant herein has not demonstrated that he discovered new evidence which was not within his knowledge, neither that there was an error apparent on the record. He just feels that depositing the ordered sum is too much for him and he wants the orders reviewed so that he can deposit the amount of money which he can conveniently raise. This is a court of justice but not court of convenience such that it has to consider the conflicting interest of the parties. And in so considering, courts have to be guided by the laid down principles

of law”.

11. The issue which was before the court revolved around costs. The same was not what one can call new as it had been litigated all through. The court in its impugned ruling gave a road map to the Deputy Registrar on how to compute the interest on costs. At that time the court and the parties were aware that the decretal sum had already been paid and all that was remaining was interest on costs.

12. If that is the case, this court does not find any new and important matter whose diligence could not have been ascertained. If the applicant has an issue with the commencement of the computation as directed by this court, then asking me to review the same is tantamount to sitting as an appellate court for that matter.

13. In **NATIONAL BANK OF KENYA V. NDUNGU NJAU CIVIL APPEAL NO. 211 OF 1996** the Court of Appeal put it succinctly that;

“A review may be granted wherever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review”.

14. This court agrees entirely with the above authority. The applicant in essence is telling this court to take a tangent which my sister ought to have taken. This in a nutshell is a subject of appeal. The issues raised by the applicant needs elaborate argument to be established. The commencement date and the date of completion of payment of interest is an issue litigated all the way to the Court of Appeal as exemplified by the decision of Hon. Lady Justice Nambuye.

15. For the foregoing reasons this court does not find merit in the application. The other issues of res judicata and the discretion of the court to award costs are periphery for now.

16. The application is dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 17TH DAY OF JUNE 2021.

H. K. CHEMITEI.

JUDGE.