



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 129 OF 2017

MATHIAS NASUBO OGAMA PLAINTIFF

VERSUS

REBMAN AMBALO MALALA DEFENDANT

RULING

1. The unresolved portion of the Notice of Motion dated 9th July 2019 is for the following orders:-

1. This Honourable Court be pleased to enter final orders in terms of paragraph 44, 45 and 46 of this Honourable Court's Judgment dated 5th October 2018 as follows:-

(ii) That interest on the unpaid principal sum owing sum of Kshs.5,831,690.90 be paid in accordance with paragraphs 2(a)(ii), 2(b) and 3 of the Retirement Agreement of 19th May 2005 such interest being at the rate of 15% per annum with effect from the 1st May 2005 until payment in full.

2. It is now common cause that the amount due and outstanding to the Plaintiff from the Defendant is Kshs. 5,831,690.90. The only outstanding issue is on interest. On this, the Court had in its decision of 5th October 2018 held;

44. The decision I reach is that Malala is in breach of the Terms of the Retirement Agreement and is liable to make some payment to Ogama. As to the exact amount due, this is a mathematical issue which this Court urges the parties to work and agree on. In the event of disagreement then the same shall be submitted to an Accountant to be appointed and paid jointly by the parties or in the absence of consensus to be appointed by the Chairperson of the Institute of Chartered Public Accountants (k) (ICPAK). Fees of the Accountant to be shared equally by the parties.

45. The Accounts will be done on the basis that a sum of Kshs.12,402,390/= was due to Ogama from Malala and will establish:-

(i) Whether the amount paid so far is Kshs.5,070,199/= by Ogamas' version or Kshs.6,570,699.10 as asserted by Malala.

(ii) The interest that the unpaid sum has attracted by giving effect to clauses 2(a) (ii), 2(b) and 3 of the Retirement Agreement of 19th May 2005.

3. I do not perceive that the order brooks of any ambiguity and I therefore allow prayer (1) (ii) of the motion of 9th July, 2019 but with a rider that interest shall be charged with effect from 1st February 2007 until payment in full. The effective date is drawn from the Plaintiff's own pleadings, the Amended Plaint of 4th February 2010. The Plaintiff cannot have more than what he asked for.

4. Just as in the main cause, each side shall bear its own costs for the Motion.

Dated, Signed and Delivered in Court at Nairobi this 17th Day of January 2020

F. TUIYOTT

JUDGE

PRESENT;

Aloo for Plaintiff

Omolo for Lubulellah for Defendant

Court Assistant: Nixon