



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

MISC. CIVIL APPLICATION NO. 448 OF 2017

MEGA PACK(K) LIMITED.....APPLICANT

-VERSUS-

UNITED ARYAN (EPZ).....RESPONDENT

RULING

1. Judgment in **Nakuru CMCC No.16 of 2012** was delivered on the 14th July 2017 in favour of the Applicant.

In the hand written judgment that I have seen, interest was awarded at court rates from the date of the judgment.

The claim was a liquidated claim and upon demand for the decretal sum, the Respondent duly paid the same Kshs.536, 217/= being the decretal sum, costs and interest by cheque forwarded by the letter dated 31st August 2017 which payment apparently would have concluded the case.

2. By the **application dated 1st November 2017** the decreeholder approached the court under provisions of **Section 75G and 95 of the Civil Procedure Act**. Seeking orders for

- a) Leave to file and serve the Memorandum of Appeal out of time.**
- b) Costs of the application.**

3. Grounds advanced for the application are stated that the court failed to award interest on the judgment sum from time of filing suit as it was a liquidated claim, and that at the time the above discovery was known time for filing an appeal had lapsed.

4. The Respondent opposes the application by grounds of opposition dated 20th December 2017 that an award of interest on the suit as pleaded is alien to the law since no interest is awarded on suits and that an award of interest is at the discretion of the court. Further it is stated that the decretal sum as per the trial court's judgment has been paid and no plausible grounds for the delay of seven months were given.

5. **Section 95 of the Civil Procedure Act** empowers a court, upon its discretion to enlarge time for filing appeals out of time. **Section 79G** proviso is clear that such leave may be granted if the applicant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

6. Factors that the court ought to consider before allowing extension of time are:

- 1. Reasons for the delay**
- 2. Length of the delay**
- 3. The chances of the appeal succeeding if the application is granted.**
- 4. Degree of prejudice to the Respondent if application is granted.**

The above principles and guidelines were stated and reiterated in numerous decisions among them **Leo Sila Mutiso (Supra), Mwangi –vs-**

Kenya Airways Ltd (2003) KLR 486,

Stanley Kahoro Mwangi & 2 Others –vs- Kanyamwi Trading Co. Ltd (2015) e KLR,

Monica Malel & Another –vs- R. Eldoret Civil Application No. NAI 246 of 2008 among others.

7. **Reasons for delay** are stated on the face of the application that the applicant realized the omission to award interest on the decretal sum after the time lapsed.

Is the reason stated a plausible and satisfactory reason?

8. The respondent does not think so and citing the case **Leo Sila Mutiso (Supra), Mwangi –vs- Kenya Airways Ltd (2003)e KLR** urged that there has to be valid and clear reasons upon which the court’s discretion can be favourably exercised and that such reason must be specific.

9. Reasons for delay must be satisfactory. I have considered the explanation and I am afraid what comes out evidently is that the applicant’s advocates failed in their duty to carefully read and understand the trial court’s judgment but moved to demand payment of the decretal sum as per the judgment. They failed to exercise due diligence and only realised what the applicant calls a failure by the magistrate to appreciate that the applicants claim was a liquidated claim.

10. Had they been keen and diligent they would have discovered that error long before the seven months delay. Looking at the events from the date of the judgment to the date of this application, I think with good reason that the application is but an afterthought. The applicant threatened execution, tabulated costs and exchanged letters with the respondent. Such conduct cannot explain or satisfy the court that the applicant did not know the contents of the Judgment **Monica Malel and Another –vs- R (Supra)**.

12. Likewise the length of the delay of seven months has not been adequately explained.

As stated in **Stanley Kahoro Mwangi Case (Supra)**

“...a plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons.”

13. By its letter dated 31st August 2017 forwarding the payment cheque to the applicant, it requested to close its file. In my opinion it would be extremely prejudicial to the Respondent to have to re-open its files if the orders sought are granted.

14. The court is obligated to balance the competing interests of both parties – **Monica Malel Case (Supra)** I associate myself with the observations by Aganyanya J that

“...The applicants are not quite sure of why the delay in filing the notice of Appeal within the prescribed period occurred which amounts to saying that no valid reason has been offered for such delay.”

15. For the foregoing, I find the application dated 1st November 2017 devoid of merit. It is dismissed with costs to the Respondent.

Dated, signed and delivered this 14th Day of February 2019.

J.N. MULWA

JUDGE