



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL CASE NO. 43 OF 2010

FRANCO ESPOSITO.....PLAINTIFF

VERSUS

ASSIA ANIMAL HEALTH LIMITED.....DEFENDANT

RULING

The application filed by the plaintiff on 1st March, 2019 against the defendant/respondent is to seek the legal position regarding award of interest applicable on the award of special damages. This application is based on the judgement delivered on 4th December, 2017 in favour of the plaintiff as against the defendant for an award of general and special damages, costs and interest of the suit.

The Law

The provision of interest in civil claims/judgements is provided for in Section 26(1) of the Civil Procedure Act which states as follows:

“Where most in so far as a decree is for payment of money, the court may in the decree order interest at such rates the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

The legislature therefore made it clear that the award of interest under Section 26 of the Act relate to prejudgment period and post judgement at the conclusion of the suit. The provision gives discretion to the court to subject the award to various levels of interest subject to the substantive claims in the judgement.

In the case of the so called contract interest to be awarded is normally set out in the agreement. The court in interpreting the contract will have to give effect to the clause on interest unless there are factors that are in conflict with the law or public policy on rate of interest being awarded by one party against another in the contract. The court in such circumstances has the discretion to interfere with the rate of interest so as to do justice to the parties.

In the case of ***Prem Lata v Peter Musa Mbiyu 1965 EA 592*** the court held on the issue of interest as follows:

“In both these cases, the successful party was deprived of the use of goods or money by reason of the wrongful act on the part of the defendant, and in such a case it is clearly right that the party who has been deprived of the use of goods or money to which he is entitled should be compensated for such deprivation by the award of interest.”

That being so the justification for an award of interest on the principal sum is generally speaking to compensate a plaintiff for the deprivation of any money or specific goods through the wrongful Act of the defendant. With regard to pre-judgement rate of interest contemplated by Section 26(1) of the Act it's observed those special damages commenced accruing interest on the day the plaintiff suffered actual loss occasioned by the tortfeasor or the defendant.

In the instant case I have in mind the medical expenses and related costs and loss of motor vehicle KBH 619X. The rationale is twofold, first in my view court's award pre-judgement interest to compensate the plaintiff fully for the loss of money from the time the cause of action arose until the time of judgement. Secondly, it's to encourage the tortfeasor to settle the claim for actual loss in advance without resorting to litigation. On my part I agree with the applicant on this issue of interest calculation to run from the date of filing suit.

In the circumstances the applicant motion succeeds for the relief of pre-judgement interest on the award of special damages to be calculated at rate of 14% P.A. as from the date the suit was filed until payment in full. The plaintiff will also have the costs of this application.

Dated, delivered in open court on 11th March, 2019.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Otara for the applicant

Mr. Shujaa for the respondent