



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CIVIL APPEAL NO. 26 OF 2014**

**BONIFACE NDWIGA MBOGO.....APPELLANT/APPLICANT**

**V E R S U S**

**JAMLECK MWANIKI.....RESPONDENT**

**R U L I N G**

1. In his application dated 23/09/2016 the applicant seeks for the following prayers:-

- i. That a prohibitory order do issue against the respondent/judgment debtor's parcel of land No. Ngandori/Kiriari/2014 pending the hearing and determination of this application.*
- ii. That the honourable court be pleased to order sale by public auction the whole 1.46 hectares of the said parcel of land and the proceeds thereof be applied to settle the decretal amount herein of Kshs.200,000/=, interest on the same at Kshs.158,667/= costs of Kshs.105,715/= and costs of the execution thereof to be paid on account of the applicant's advocate.*
- iii. That the said auction be carried out by Quickline Auctioneers of P.O. Box 1826 Embu.*
- iv. That public notice of the auction of the said parcel of land be done through advertisement in a local daily newspaper.*
- v. That the Executive Officer of the court be ordered to execute all necessary documents to effect the sale transaction on behalf of the judgment debtor.*
- vi. That the Land Registrar Embu be ordered to dispense with the old title deed in effecting these orders sought.*

2. The applicant's affidavit supports the application. He deposes that judgment was entered in his favour for Kshs.200,000/= damages. It has now increased due to interests and it was over Kshs.358,000/=. The costs alone stand at Kshs.105,715/=. The respondent has failed to satisfy the decree since judgment was entered. The respondent failed/neglected to settle the decree. He further states that the respondent has no other income and this is the reason for this application to sell his land L.R. Ngandori/Kiriari/2014 measuring 1.46 hectares by public auction to recover the decretal amount.

3. The respondent opposes the application on grounds that the judgment was delivered on 22/03/2016 and that he has not been served with any decree. He deposes that the judgment was for Kshs.200,000/= with costs but the applicant is claiming costs of Kshs.158,667/= as interest. The respondent states that the court did not award any interests in its judgment and there is no basis for the interest amount of Kshs. 158,667 demanded.

4. The respondent states that his parcel of land is the only livelihood for his family and it is now valued around Kshs. 4,000,000/=. it is the plea of the respondent that he has approached his bank to obtain funds to clear the decretal amount and he is ready and willing to clear the decretal amount. He says the application to sell the land to recover the decretal amount is unwarranted and should not be allowed.

5. Both parties filed submissions to support their arguments through their counsels. Messrs Joe Kathungu & Co. represents the applicant, while Momanyi Gichuki & Co. is for the respondent.

6. I have perused the judgment delivered on 22/03/2016 in favour of the applicant in this appeal. The court awarded costs of the appeal to the applicant.

7. It is trite law that interests on general damages run from the date of judgment. Whether the court indicates or not that interests be paid, the party who is awarded the damages is entitled to interests at court rates so long as the decretal amount remains outstanding.

8. It was held in the case of *NATIONAL BANK OF KENYA LTD VS DEVJI BHIMJI SHANGANI Civil Appeal No. 13 of 1994* that:-

*Interests on general damages are payable from the date of judgment whereas interests on special damages is payable from the date of filing the suit...*

9. A similar case of *CHEGE VS VESTERS Volume 1 KAR 1192* that interest for general damages run from the date of judgment.

10. The applicant herein is entitled to damages on the unpaid amount of the decretal sum at court rates until the whole amount is paid in full. The applicant is therefore in order to claim interest over th unpaid sum until payment in full.

11. The respondent has not paid part of the decretal amount which together with costs amounted to Kshs.358,667/= at the time of filing the application.

12. I believe the amount could even be higher by this time. After the judgment is passed the judgment debtor has an obligation to pay up the decretal amount plus costs and interest. If this obligation is not met, the judgment creditor has a right to use any lawful means to recover the debt.

13. The respondent has not given any good reason why he has not cleared the decretal amount for over two years now. He says he is approaching his bank for funds to clear the decretal amount.

14. The security is said to be valued at Kshs.4,000,000/= while the decretal amount is a negligible amount. It must be appreciated that the applicant is entitled to the fruits of his judgment despite the value of the security.

15. However, in the interests of justice I will give the respondent sixty (60) days to clear the amount owing.

16. In default, this application will stand granted as prayed.

17. Costs of this application to the applicant.

18. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF JULY, 2018.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Mr. Kathungu for Appellant**

**Mr. Maina for Momanyi for Respondent**