



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO.28 OF 2015

I O O MINOR (SUING THROUGH

FATHER AND NEXT FRIEND M O R.....PLAINTIFF/APPELLANT

VERSUS

FRANCISCAN SISTERS OF THE IMMACULATE.....RESPONDENT/DEFENDANT

(Being an appeal from the Judgment of Hon. J. Ndururi (PM) in Kericho CM CC No.232 of 2014 dated 14th July 2014)

RULING

1. In my judgment in this matter dated 17th July 2017, I made an award to the appellant as follows:

- i. Special damages-kshs.7,700.*
- ii. General damages –kshs.700,000.*
- iii. Costs of the suit in the lower court and in this appeal.*
- iv. Interest on costs and damages.*

2. On 30th October 2017, the parties through their respective Counsel sought clarification on when the interest on the amounts awarded in the judgment should run.

3. I directed the parties to file their respective arguments on the issue of interest. Both parties have filed submissions dated 6th November 2017 and 4th November 2017 respectively.

4. The appellant contends that interest starts to run from the date of the judgment or decree from which this appeal arises, being the 14th July 2015. The respondent counters that interest runs from the date of this court's judgment, the 17th of July 2017.

5. The respondent relies on the decision in **Francis Joseph Kamau Chatha vs Housing Finance Company of Kenya Ltd, Civil Suit No. 414 of 2004** in which Odunga J cited **Lwanga vs Centenary Rural Development Bank (1999) 1 EA 175**.

6. The appellant cites **HCCA No. 59 of 2007 – Michael Murimi Kimanzi vs Jameson Industries Ltd & Another** in which Mboghli Msagha J cited **HCCA No. 40 of 2007** and **Nairobi HCCA No. 263 of 2006** to conclude that interest should be awarded from the date of the decree of the lower court. He stated in his judgment that general damages attract interest from the date the lower court ought to have pronounced itself, while interest on special damages is payable from the date of filing suit in the lower court.

7. The Court has discretion to determine when interest on damages should run. In its decision in **Shariff Salim & another vs Malundu Kikava [1989] eKLR**, the Court of Appeal stated as follows:-

“The power to award interest is given to the court under section 26(1) of the Civil Procedure Act (cap 21) which provides:

“26(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as 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.”

8. In **Civil Appeal No. 40 of 2007 – Lei Masaku vs Kalpama Builders Ltd**, Mabeya and Onyancha, JJ in their judgment dated 5th December 2014 entered judgment with interest at court rates from the date of judgment in the lower court until payment in full. Similarly, in **Oluoch Eric Gogo vs Universal Corporation Limited, Nairobi Civil Appeal No.263 of 2006**, Aburili J, in her judgment dated 7th May 2015, entered judgment with interest on general damages from the date of judgment in the lower court and interest on special damages from the date of filing suit.

9. The learned Alnashir Visram J. (as he then was) in the case of **Joseph Kiarie Njoroge vs Njue Kiarie [2007] eKLR** awarded interest on general damages from the date of the judgment in the lower court. He stated as follows:-

“The Respondent’s argument, in my view, is quite untenable in law. The High Court on Appeal enhanced the sum payable to the Appellant. It set aside or substituted the decree of the Lower Court, and effectively said that the Appellant was entitled to Shs.250,000 and not Shs.100,000 ordered by the Lower Court. It follows, therefore, that he was also entitled to interest on the enhanced amount from the same date, the date of the Lower Court Judgment, i.e. 21st January, 1999.

Accordingly, I allow this application and Order that interest on general damages be computed from 21st January, 1999 as prayed in the application dated 26th July, 2006. The Applicant shall also have the costs of this application.”

10. I have considered the decisions of the court in the above matter. It appears to me that damages ought to attract interest from the date the lower court pronounced itself in rendering the decision that was the subject of appeal before this court. The plaintiff would have been entitled to damages from that date had the lower court addressed itself properly to the matters of law and fact before it.

11. I accordingly find that the appellant in this matter is entitled to damages from the date of the decision of the lower court, being the 14th July 2014 interest on the special damages shall run from the date of filing suit.

Dated Delivered and Signed at Kericho this 3rd day of July 2018.

MUMBI NGUGI

JUDGE