

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 675 “A” OF 2012

ALEX GITONGA MWONGERA..... APPELLANT

- V E R S U S -

JOSEPH KAMAKIA..... RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 22nd June 2016 taken out by appellant in which he sought for the following orders *inter alia*:-

- 1. THAT this application be certified as urgent and be heard ex-parte in the first instance.**
- 2. THAT this honourable court be pleased to correct, vary, review and/or rectify its judgement delivered on 1st April 2016 to accord with the prayers sought in the memorandum of appeal filed in court on 10th December 2012 and make a finding on whether interest on special damages in the sum of kshs.98,167.50 and general damages in the sum of kshs.360,000.00 is payable to the appellant.**
- 3. THAT this honourable court be pleased to interpret and rule on the issues of interest payable to the appellant herein, on the decretal amount.**
- 4. THAT the honourable court, be pleased to rule on when time starts to run on the issue of interest payable to the appellant.**
- 5. THAT the cost of this application be provided for.**

2) The motion is supported by the affidavit of Patrick Kimathi Muchema. When served Joseph Kamakia, the respondent herein filed the replying affidavit of Sophie Chirchir to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have also considered the rival submissions. The appellant/applicant come before this court claiming that there is an error apparent on the face of record which this court should correct by way of review. It is said that this court delivered its judgment on 1st April 2016 and failed to specify whether interest on the decretal sum was awarded to the appellant. It is also argued that the date from which such interest was to accrue or the applicable interest rate.

4)The respondent strenuously opposed the motion arguing that the claim for interest was never canvassed before this court on appeal and in any case the same was not given by the trial court. I have carefully deliberated over the arguments and I am persuaded by the respondent’s arguments that the motion cannot stand because the issue touching on interest was never argued on appeal. It was never one of the grounds of appeal and that is why the judgement of this court is silent on interest. I therefore find no error nor omission on the face or record.

5) Consequently, the motion dated 22nd June 2016 is found to be without merit. It is dismissed in its entirety with costs to the respondent.

Dated, Signed and Delivered in open court this 10th day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent