



REPUBLIC OF KENYA

High Court at Eldoret

Civil Appeal 134 of 2010

DAVID CHEROTICH LOTT:.....1ST APPELLANT

MATUNDA (FRUITS) BUS SERVICES LIMITED:.....2ND APPELLANT

VERSUS

JANE CHEROTICH LOTT:.....RESPONDENT

RULING

This application by way of Notice of Motion has been brought by the respondent under sections 1A, 1B, 3A and 26 of the Civil Procedure Act and Order 50 Rule 1 of the Civil Procedure Rules. It seeks one main order namely, that the court clarifies that the respondent is entitled to interest on the damages awarded to her with effect from the date of the trial court's judgment. The main reason for the application is that the appellants have declined to pay interest on the said damages yet the same was never an issue at any stage.

The application is opposed on the basis of grounds of opposition filed by the advocates for the appellants. They contend that the application is incompetent and fatally defective; that it is scandalous, vexatious and an abuse of the court process and that the respondent is undeserving of the order prayed for.

The application was canvassed before me on 31st July, 2012 when counsel reiterated the stand-points taken in their clients' respective pleadings. I have considered the application, the supporting affidavit and the grounds of opposition and have also considered the submissions of counsel. Having done so, I take the following view of the matter.

By a judgment delivered on 16th June, 2010 the lower court awarded the respondent Kshs. 500,000/- as general damages and Kshs. 7,000/- as special damages for injuries sustained in a road traffic accident together with costs and interest. The appellant appealed to this court against the said judgment. I heard the appeal and substituted the said sum of Kshs. 500,000/- with the sum of Kshs. 350,000/- but said nothing about interest. The issue of interest was never in contention and my omission to award the same was an oversight. Under section 26 of the Civil Procedure Act interest is payable from the date of the decree of the lower court which is 16th June, 2010.

There is absolutely no basis upon which the respondent can be denied interest on the substituted sum. I would indeed, on my own, have corrected the error without this application as the omission, in my view, was an accidental slip. Being of that view, I do not find the respondent's application incompetent, bad in law or defective in any way. I also detect nothing scandalous vexatious or an abuse of the process of the court.

In the premises, I allow the application dated 19th July, 2012 and order that interest, at court rates

on the reduced sum of Kshs. 350,000/- as general damages accrues from 16th June, 2010 until payment in full. Interest at the same rate on special damages of Kshs. 7000/- accrues from the date of filing suit until payment in full.

Each party shall bear their own costs of this application. It is so ordered.

**DATED AND DELIVERED AT ELDORET
THIS 6TH DAY OF NOVEMBER, 2012.**

**F. AZANGALALA
JUDGE**

Read in the presence of:-

Mr. Nyolei for the applicant and

Ms. Busienei for the Respondent.

**F. AZANGALALA
JUDGE**

6TH NOVEMBER, 2012