



**Havyarimana v Permanent Secretariat of the Transit and Transport  
Co-ordination Authority of the Northern Corridor & another (Cause  
922 of 2016) [2024] KEELRC 2327 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2327 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 922 OF 2016  
AK NZEI, J  
SEPTEMBER 24, 2024**

**BETWEEN**

**CYRIAQUE HAVYARIMANA ..... CLAIMANT**

**AND**

**PERMANENT SECRETARIAT OF THE TRANSIT AND  
TRANSPORT CO-ORDINATION AUTHORITY OF THE NORTHERN  
CORRIDOR ..... 1<sup>ST</sup> RESPONDENT**

**DONAT M. BAGULA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Court delivered its judgment herein on 26<sup>th</sup> October 2023 and stated, inter-alia:-
  - “37. Ultimately, and having considered written submissions filed by Counsel for parties herein, judgment is hereby entered for the Claimant against the Respondents, jointly and severally, for USD 47,448 being compensation for unfair termination of employment.
  38. The 1<sup>st</sup> Respondent shall issue the Claimant with a proper certificate of service pursuant to Section 51(1) of the *Employment Act*. This shall be done within thirty days of this judgment.
  39. The Claimant is awarded costs of the suit and interest at Court rates.”
2. On 25<sup>th</sup> March 2024, the Respondent filed an urgent Notice of Motion dated 22<sup>nd</sup> March 2024 seeking the following orders:-



- a. That pending the inter partes hearing and determination of the application, the Honourable Court be pleased to issue an order for stay of execution of the decree dated 26<sup>th</sup> October 2023, the warrants of attachment and sale issued on 20<sup>th</sup> March 2024 and the proclamation notice dated 21<sup>st</sup> March 2024.
  - b. That the execution process commenced be declared void ab initio, and the warrants of attachment and sale issued on 20<sup>th</sup> March 2024 and the proclamation notice dated 21<sup>st</sup> March 2024 be set aside, and an order be issued prohibiting any such subsequent mode of execution in enforcement of the decree herein.
  - c. That the Court do make a finding that the decretal sum has already been fully settled, and that the tabulation by the Claimant of interest accrued at kshs. 6,684,235 is exaggerated, excessive and unreasonable.
  - d. That in the alternative, this Honourable Court make an order that interest on the decretal sum, accrued at the rate of 6% from the date of judgment being 26<sup>th</sup> October 2023 until payment of the decretal sum in full, and this Court make a finding on the interest due.
3. The application is expressed to be brought under the provisions of Section 1A, 1B,3A, and 94 of the Civil Procedure Act, Order 21 Rule 8(1) and (3) of the Civil procedure Rules and Article 47 of the Constitution of Kenya; and is based on the supporting affidavit of Omae Nyarandi sworn on 22<sup>nd</sup> March 2024.
  4. It is deponed in the said supporting affidavit that despite the Respondent's settlement of USD 57,352 as principal sum and costs of the suit, the Claimant instructed auctioneers to execute against the Respondents for (recovery) of interest which the Claimant illegally and wrongfully calculated at kshs. 6,684,385. It was further deponed on behalf of the Respondent/Applicants that the judgment sum of kshs. 47,448 (the equivalent of kshs. 7,174,137.60) plus costs of the suit had been paid on 22<sup>nd</sup> December 2023. That interest on general damages ordinarily runs from the date of judgment till settlement.
  5. The application is opposed by Claimant vide grounds of opposition dated 17<sup>th</sup> April 2024.
  6. The Court's power to award interest on decreed sums is purely discretionary. Section 26 of the Civil procedure Act provides as follows:-
    - “(1) Where and in so far as a decree is for 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.
    - (2) Where such decree is silent with respect to the payment of the further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have ordered interest at 6 per cent per annum.”
  7. It is clear from the foregoing provisions of the statute that where a Court awards interest, at whatever rate, covering any period preceding the filing of a suit or any period subsequent to the filing of the suit and upto the date of the decree, the adjudging Court must specifically state that fact in its decree. If



the decree does not state such an award of interest, then the obvious and loud meaning is that no such interest was awarded.

8. Further, in my view, for a Court to exercise discretion in awarding interest covering periods either prior to institution of a suit or from the date of filing suit upto the date of the decree, the sum adjudged must be based on a quantified claim, a sum that was ascertainable as at the time of filing suit or even before.
9. In the present case, the sum adjudged, USD 47,448, was an award of compensation for unfair termination of employment. Such an award is in the nature of general damages, only ascertained by the Court upon hearing evidence and awarded in the decree. Interest on such an adjudged sum can only accrue from the date of its ascertainment and award, which is the date of the Court's decree ascertaining and awarding the same.
10. In the present case, interest on the adjudged sum shall be calculated at Court rates, from the date of the court's decree until payment of the said sum in full, if that has not yet been done. Any warrants of attachment and warrants of sale issued herein stating otherwise or containing different calculations are invalid. The Notice of Motion dated 22<sup>nd</sup> March 2024 is allowed in the foregoing terms.
11. Each party shall bear its own costs of the application.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> SEPTEMBER 2024.**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

**Appearance:**

.....Claimant

.....Respondent

