



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL SUIT NO. 73 OF 2001

SAMWEL KERICHPLAINTIFF

VERSUS

JAMES MARITIM MUTAI.....DEFENDANT

RULING

Samwel Kerich, the Applicant, was the Plaintiff in the suit herein. On 16th June, 2006, the Hon. Mr. Justice D. Musinga determined the suit between the Applicant as Plaintiff and **James Maritim Mutai**, the Respondent as defendant. The Judge stated:

“I find that the Plaintiff has on a balance of probabilities proved his case and with a heavy heart I have to order the Defendant to vacate the suit premises forthwith. The Plaintiff will however refund to the Defendant a sum of Kshs. 165,000/= which he paid as consideration for the suit premises. He will also pay interest thereon at the rate of 20% per annum with effect from the date of payment of the said sum until payment in full. The Defendant had prayed for refund of the money together with interest at commercial rates and although commercial rates of interest have varied over the years that is from 1992 to date, I believe 20% per annum is a reasonable average. As was held in KARIUKI V. KARIUKI [1983] KLR 225 no compensation is payable for any improvements which may have been done in respect of a transaction which becomes null and void.”

The Deputy Registrar computed the refund of Kshs. 165,000 due to the Plaintiff and came up with a figure of Kshs. 2,611,066. This prompted the applicant to come to Court to seek variation of the decision of the Deputy Registrar by reducing the interest applied on the ground that it was excessive, unreasonable and punitive.

Mr. J. K. Rono, learned Counsel for the Plaintiff applicant told the Court that compound interest had been applied instead of simple interest. He contended that the correct amount was Kshs. 407,500 and not Kshs. 2,611,066.

On his part, Mr. J. K. Kirui, the learned Counsel for the Defendant/Respondent maintained that the Deputy Registrar’s computation was right.

I have looked at the judgment of the Court. The interest granted was 20% p.a. This is simple interest. It is not compound interest. The computation seems to have been erroneously done on the basis of compound interest. I so find. The application has merit. I allow it.

I hereby set aside the Ruling of the Deputy Registrar and the latter's decision dated 20/9/2007. I order that the computation be made by a different Taxing Master on the basis of simple interest at the rate of 20% p.a. as ordered by the Court. The matter is referred back to the Taxing Master. Parties shall appear before the Deputy Registrar on 8th March 2011.

I make no order as to costs.

DATED at **KERICHO** this 7th day of March 2011

G.B.M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. J.K. Rono, Advocate, for the Applicant

Mr. J.K. Kirui, Advocate, for the Defendant

Mr. N. Bett, Court clerk