

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 260 of 2008

DAVID CHEGE MWANGI PLAINTIFF

VERSUS

MUGAMBO WA GACHOCHO DEFENDANT

R U L I N G

This suit has been proceeding for sometime now. The plaintiff has closed the taking of his evidence.

In the middle of proceedings the defendants admitted not having paid the plaintiff his dividends for some time whereby the court ordered defendant to pay dividends. The plaintiff is not satisfied with amount paid. He then filed notice of motion on 31/12/08 seeking order that the plaintiff be allowed to submit an audited account of his accrued and outstanding dividends in the defendant company. The defendant calculated an amount of Kshs.59,830/= instead of Kshs.247,703/= as per auditors report. This issue arose during the proceedings.

The plaintiff is asking his dividends paid since he was removed and denied directorship. The defendant has admitted that the plaintiff has at all times been entitled to dividends as a shareholder just like other shareholders.

The auditors report shows that principal amounts to Kshs.120,280/= and interest amounting to Kshs.127,423/=. The schedule of calculations is exhibited and the total amounts to Kshs.247,703/=. The company states that the uncollected dividends do not attract interest. In this respect, the company refused to pay the plaintiff dividends. They should have forwarded the payment by cheque or postal orders or by hand delivery or by calling the shareholder to collect. Any person who would retain money belonging to another must pay interest. The company is a commercial institution and is not justified to retain funds which does not belong to it.

In this case the interest ought to be paid at commercial rates. During the period the money was retained the court rate was 14% which I find to be reasonable to be paid to the principal.

I therefore find that the plaintiff's claim is Kshs.247,703/= which I order to be paid to him forthwith. This is inclusive of the money already paid to court, which shall be released forthwith to applicant.

Order accordingly.

DATED and DELIVERED at Nairobi this 6th day of May 2009.

JOYCE N. KHAMINWA

JUDGE