



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 4187 OF 1990**

**JACKSON MATHI KAITHULA.....PLAINTIFF**  
**VERSUS**  
**THE KENYA NATIONAL EXAMINATION**  
**COUNCIL.....DEFENDANT**

**R U L I N G**

On 4th February, 1997 this court gave judgment in favour of the plaintiff in the sum of Kshs. 750,650.60. The court made a further order that the plaintiff shall have the costs of the suit and interest at court rates. It has transpired that the plaintiff never pleaded any prayer for interest and therefore the defendant says he is not entitled to any. On the other hand, the plaintiff is entitled to interest from the year 1988 when the defendant withheld his money.

Section 26 sub(1) provides that the court may order interest at such rates as it deems reasonable to be paid on the principal sum from the date of the suit to the date of the decree e.t.c.

It is clear that the order for interest is at the discretion of the court. What the plaintiff claimed were special damages and special damages attract interest from the date of filing suit to the date of paying it in full.

To resolve this matter I order that the defendant shall pay interest to the plaintiff notwithstanding that it was not pleaded at the rate of 14% from the date of filing the suit up to payment in full, of the decretal sum. Each party shall bear own costs of this application.

Orders accordingly.

**Dated and delivered at Nairobi this 31st day of July, 1998**

**A. MBOGHOLI MSAGHA**

**JUDGE**