



REPUBLIC OF KENYA

**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**

**Civil Appeal 192 of 1994**

**MOUNT KENYA SAFARI CLUB LIMITED.....**  
**.....APPELLANT**

**AND**

**DONALD JENKINS.....**  
**.....RESPONDENT**

**(Appeal from a Decree of the High Court of Kenya at Nairobi (The Hon. The Chief Justice Mr. A.R.W. Hancox) dated 14<sup>th</sup> December 1992**

**IN**

**H.C.C.C. NO. 4989 OF 1987)**

**\*\*\*\*\***

**RULING**

This appeal has been mentioned before me to settle the form of the order in pursuance of the decision of this court delivered on 21<sup>st</sup> March, 1997.

Mr. Hawkes, counsel for the respondent who has been substantially successful in this appeal prepared a draft of the order and submitted it for the approval of counsel for the appellant. However the parties could not agree on the form of the order and under r.34(1) (c) as a Judge who sat at the hearing of the appeal, I have been directed by the presiding Judge to settle the form of the order.

This court awarded the respondent general damages in the Kenya Shillings equivalent of the U.S. Dollars 60000. We also awarded to the respondent special damages (inter alia) in the Kenya shillings equivalent of U.S. Dollars 64,190.87. The date of conversion in each case is in dispute. Also the date from which interest on special damages is to start accruing is in dispute.

The date of conversion is significantly important because of the depreciating strength of the Kenya Shilling against the U.S. Dollar. Mr. Hawkes claims that the date of conversion should be 21.3.1997 which is the date of judgment of this court. He has submitted that in the last two paragraphs of his judgment, Chief Justice Hancox had said:

“In my view it would be unjust that a U.S. tourist should be compensated in a depreciating economy when he was injured for no fault of his own.....

None of the delays in bringing this matter to conclusion was his fault.....I hold that the date of conversion shall be at the date of delivery of this judgment.”

He has argued that as the Court of Appeal has not expressed its disagreement with the said view of the Chief Justice and the Kenyan currency has further depreciated against the U.S. Dollar between 14<sup>th</sup> December, 1992 that is the date of the judgment of the superior court and 21<sup>st</sup> March, 1997 that is the judgment of this court, the date of conversion should be as 21<sup>st</sup> March, 1997. To argue it otherwise, he said, would be tantamount to finding fault with the said view of the Chief Justice.

At page 15 of his judgment Chief Justice Hancox specifically said:

“I hold that the date of conversion shall be as at the date of delivery of this judgment.”

There was no appeal or cross appeal against the said holding of the superior court. In the concluding paragraph of our judgment we said:

“Consequently save for the variation in the award of special damages, as set out above, the decision of the superior court cannot otherwise be criticised and to that limited extent only we allow the appeal.....and dismiss the respondent’s cross appeal with costs to the appellant.”

So, the judgment of the superior court was varied only to a limited extent. It was not urged before us that the date of conversion should have been varied to the date of our judgment. It is a far fetched argument that as we did not criticise the view of the superior court that the respondent should not be compensated in a depreciating economy, the date of conversion should be the date of our judgment. The issue of alteration of the date of conversion was never argued before us. I agree with Mr. Billing that the decision of the superior court in this respect has not been varied by this court. I therefore direct that the date of conversion both in the case of special damages as well as general damages shall be as specifically appointed by the superior court namely 14<sup>th</sup> December, 1992.

So far as the issue of the date from which interest should start accruing, there is no dispute that in the case of general damages it shall commence from 14<sup>th</sup> December, 1992. However in the case of interest on special damages Mr. Billing argues that it should also start accruing from the said 14<sup>th</sup> December, 1992. He disputes that it should start accruing from the date of the suit namely 10<sup>th</sup> March, 1987. He has submitted that the issue of interest is a discretionary matter. He has submitted that through no fault of the appellant, this litigation had taken long. It would be harsh on the appellant, he said, if it is made to pay interest backdated to 10<sup>th</sup> March, 1987. However by the same token, the respondent can argue that through no fault of his own, the litigation took long and in the meantime he has sustained loss of the use of that money. Moreover as was argued by Mr. Hawkes the rate of interest 12% per annum is much lower than the market rate.

Hancox C. J. said in his judgment:

"The plaintiff is also entitled to costs and interest which I hereby allow."

Mr. Hawkes has submitted that what that sentence means is that interest on special damages shall be allowed from the date of filing the suit that is 10<sup>th</sup> March, 1987.

Section 26(1) of the Civil Procedure Act reads:

“where and in so far as the decree is for the payment of money, the court may in the decree order interest at such rate as the court deems reasonable to be paid on principal sum adjudged from the date of the suit to the date of the decree.....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 such earlier date as the court thinks fit.”

A claim for special damages is of course for payment of money. It is the loss which the plaintiff claims he has already incurred at the date of the suit. So under S. 26(1) above interest is allowed where the decree is for payment of money from the date of the suit. Thus when the superior court said "the plaintiff was entitled to interest it meant that interest on special damages shall be from the date of the suit. It appears Mr Billing realised that he could not interpret the said section 26(1) in any other way and that is why he has urged me that interest should be allowed at half the normal rate allowed by the court that is 6% per annum. I do not see any reason why the successful respondent should be punished for no fault of his own. Moreover I cannot review or alter judgment of court. I therefore direct that interest on special damages shall be from 10<sup>th</sup> March, 1987 at the normal rate of 12% per annum. I also direct that interest on general damages shall be from 14<sup>th</sup> December, 1992 at the said rate of 12% per annum. As I have already said, the date of conversion for both special as well as general damages shall be 14<sup>th</sup> December, 1992.

Each party shall bear its own costs of this mention.

Dated and delivered at Nairobi this 21<sup>st</sup> day of March 1997

G. S. PALL

.....

JUDGE OF APPEAL