

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E237 OF 2021**

**JONAH MAKAI KALOKI.**

.....**1<sup>ST</sup> CLAIMANT**

**IBRAHIM GATURU GATHIRUA.....2<sup>ND</sup>**

**CLAIMANT**

**JOSEH SHURU OGWAI.....3<sup>RD</sup>**

**CLAIMANT**

**VERSUS**

**KENYA AEROTECH LIMITED.....**

**RESPONDENT**

**RULING**

1. Before the court is the Claimant/Applicant's motion application dated 19<sup>th</sup> May, 2025, brought pursuant to Sections 1A, 1B, 3A, 34, 38, and 40 of the Civil Procedure Act, 2010, Order 22 Rule 18, and Order 51 Rule 1 of the Civil Procedure Rules 2010. The Applicant seeks that the Honourable Court do ascertain that the Judgment and Decree issued herein on 27<sup>th</sup> May 2022 awarded the Claimants' interest on the Principal sum and Pension from the date of retirement, 31st December 2020, until payment in full.

2. The application is supported by grounds on the face of the motion and the affidavit of **Jonah Makai Kaloki**, the 1<sup>st</sup> Claimant herein.
3. The Claimants/Applicants state that the court issued a judgment on 27<sup>th</sup> May 2022 ordering the Respondent to provide them with their pension statements and to pay their pension dues with interest from the date of retirement.
4. It avers further that although the Respondent later provided the pension statements, they did not include any calculation of the accrued interest and have refused to pay the interest owed. It states that despite multiple demands, the Respondent has continued to fail or refuse to pay the accrued pension interest.
5. The Respondent did not oppose the application despite service.

### **Determination**

6. The Claimants/Applicants' Motion dated 19<sup>th</sup> May 2025 seeks clarification and ascertainment that the Court's Judgment of 27<sup>th</sup> May 2022 awarded interest on the principal pension sums from the date of retirement until payment in full.
7. The orders granted by the court (Rika J) in the judgment of 27<sup>th</sup> May, 2022, are as follows: -

**a) The Respondent shall pay to the Claimants service, salary arrears, and Sacco shares as follows: -**

**1<sup>st</sup> Claimant ....Kshs.840,108.**

**2<sup>nd</sup> Claimant....Kshs.833,583.**

**3<sup>rd</sup> Claimant.....Kshs.564,053.**

**b) The Respondent shall avail to the Claimants their Pension statements of Account, and pay them pension in accordance with the trust Deed and the Rules.**

**c) Costs to the Claimants**

**d) Interest allowed at court rates from the date of retirement, 31<sup>st</sup> December 2020, until judgment is satisfied in full.**

8. The question for which the Claimants/Applicants seek clarification is whether the interest allowed applies to the pension sums. Where a judgment expressly awards interest, the court at the execution stage has jurisdiction under Section 34 of the Civil Procedure Act to interpret and give effect to that judgment.

9. The Applicants contend that the judgment expressly granted Pension dues, plus interest, to be computed from the date of retirement. At this stage, the court's role is limited to clarifying and enforcing what was already granted, and not to vary or enlarge the decree. This position is supported by the principle that execution proceedings cannot alter a judgment, but can interpret it for purposes of enforcement.

10. The Court of Appeal in ***Bwana vs Said & Others (1991) 2KAR 262*** held that execution proceedings are limited to enforcing a decree, not re-opening it. Similarly, in ***Nyamogo & Nyamogo Advocates v. Kogo [2001] EA 173***, the court emphasized that post judgment applications cannot overturn or vary the substance of the judgment, but may clarify ambiguity for purposes of enforcement.
11. Paragraph (d) of the judgment expressly states: -  
***“Interest allowed at court rates from the date of retirement, 31st December 2020, until judgment is satisfied in full.”***
12. This clause, in my view, appears as a stand alone order, not expressly limited to the service pay, salary arrears, or Sacco shares listed under paragraph (a). The order also appears after the pension related order in paragraph (b) of the subject judgment.
13. Courts have held that pension arrears or delayed pension payments attract interest once a court has determined that a party is entitled to them or once they become due, for the simple reason that a pension is both a contractual and a statutory debt.
14. It is my considered view, therefore, that where a court order includes interest “from the date of retirement until payment in full,” and the pension is part of the monetary

award, pension dues will then fall within the ambit of the interest award unless expressly exempted.

15. In the circumstances of this case, and based on the text of the judgment, decree, and the legal principles spelt out herein, I find and hold that the interest awarded by the judgment of 27<sup>th</sup> May, 2022, applies to the pension sums, as it did to the rest of the reliefs that were awarded in the same judgment.

16. Orders accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Macharia present for the Claimants

Mr. Njenga & Mr. Masangwa present for the Respondent

Ms. Esther S - C/A