Ochanda v Attorney General & another (Judicial Review Application 148 of 2013) [2025] KEHC 18275 (KLR) (Judicial Review) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18275 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION 148 OF 2013

RE ABURILI, J

DECEMBER 3, 2025

BETWEEN

ISAIAH OCHANDA ..... APPLICANT

AND

THE HON ATTORNEY GENERAL ..... 1ST RESPONDENT

PRINCIPAL SECRETARY MINISTRY OF DEFENCE ..... 2ND RESPONDENT

RULING

1. This ruling is pursuant to this Court's directions issued on 28th April 2025 where the court directed as follows:

> " This Mattercoming up on 28/04/2025 for directions before Honourable Lady Justice R.E. Aburili.
>
> Upon Hearingthe Counsel for the Plaintiff/Applicant and the Counsel for the Defendant/ Respondent;
>
> It Is Hereby Ordered:
>
> 1. That the exparte applicant to forthwith file a statement of payment received from D.O.D of the decretal sum plus interest.
> 2. That Upon which, the Deputy Registrar shall work out the interest payable as at the time of payment of the decretal sum, for the purposes of reconciling of the accounts.
> 3. That Once the DR completes the exercise, she will file the calculations before the court for further directions.

4. That mention on 10/06/2025 before this court to confirm compliance. GIVEN under my hand and seal of the Honourable court this 28/04/2025.

2. Following these directions, the Deputy Registrar, Hon Emmie Chelule filed a report dated 22nd July 2025 with calculations showing pending payments arising from the decree dated 29th June 2011.The report read thus:

> "Pursuant to the Court Order dated 28th April 2025 by Hon Lady Justice R.E. Aburili directing that the Deputy Registrar works out the interest payable as at the time of payment of the decretal sums for the purposes of reconciling of the accounts.
>
> The Ex parte Applicant in compliance with the Court's directions filed their statement of payments made dated the 5th May 2025.
> Initial decretal amount from the decree dated 29/06/2011 19,078,191.78Interest from 3rd March 2011 to 24th March 2022: the 1st payment was made vide voucher dated 24/03/2022 and reference No.AG/ JRDOD/239/12 Number of days from 03.03.2011-24.03.2011=4039 days Interest 19,078,191.78 x12/100 x 4039/365=25,412,151.45 Decretal=19,078,191.78+25,412,151.45=44,490,343.2344,490,343.23-12,852,000.00(less paid)=31,638,343.23Interest on balance: 31,638,343.23 from 25th March 2022 to 23/4/20242nd payment made on the 23/4/2024 as per the Discharge voucher voucher31,638,343.23x12/100x761/365=7,972,862.49 Decretal 31,638,343.23 + 7,972,862.49 = 39,611,205.7239,611,205.72-399,518.00(less paid)=39,211,687.72Interest on above 39,211,687.72 from 24/04/2024 to 26/06/2024(63 days)39,211,687.72x12/100x63/365=799,918.42 Decretal39,211,687.72+799,918.42=40,011,606.15
> 40,011,606.15-11,588,876.70(lesspaid)=28,422,729.45Balance owed as at21/07/2025 Number of days as from 27/06/2024-21/07/2025(389days) Interest on balance 28,422,729.45x 12/100x 389/365 =3,649,478.46 Decretal = 28,422,729.45+ 3,649,478.46 = 32,072,207.91

3. The Respondent filed a response dated 21st October 2025, contesting the report and calculations by the deputy Registrar, contending that there was no legal basis upon which the Report stands. The respondent argues that the claim for the majority of the interest is statute-barred; the calculation is founded on an erroneous premise and the enforcement thereof would be against public justice and equity.

4. The Respondent further contends that the claim for the principal decretal sum is time-barred pursuant to section 4(4) of the *Limitation of Actions Act*. That according to the limitation period under Section 4(4) above, an action to recover any sum of money payable under a judgment or decree must be commenced within six (6) years from the date on which the cause of action accrued. It is argued that in the present matter, the decree was issued on 29th June 2011 and the applicable limitation period expired by 29th June 2017.

5. The Respondents also argue that the Deputy Registrar's report calculates interest accruing from 3rd March 2011 continuously until 21st July 2025 with serial payments reducing balances over time. However, that this calculation overlooks the statutory limitation period, beyond which the claim especially for interest is statute-barred and unenforceable.

6. The Respondent further contends that while the principal sum confirmed by the decree is immediately enforceable, the statutory limitation applies to the entire claim including interest beyond the limitation period and that any interest claimed beyond six years from the date of the decree is barred under Kenyan law.

7. Additionally, that the claim for outstanding balances inclusive of interest amounting to over Kshs. 32 million as at July 2025 exceeds the limitation period and should be struck out or limited to the principal decretal amount plus interest accrued within the statutory period. It is argued that enforcement of such extended interest claims is contrary to Section 4(4) of the *Limitation of Actions Act* and established case law.

8. The Respondent contends that the proper calculation in view of section 4(4) of the *Limitation of Actions Act* is as follows:

   General damages Kes 1,000,000

   Interest @12% w.e.f. 02.03.2011

   1,000,000 x 12/100 x 6 Kes 720,000

   Special damages Kes 6,500,000

   Interest @12% w.e.f. 28.04.1996 to 01.03.2011

   6,500,000 x 12/100 x 7,613/365 Kes 16,268,876.71

   Costs Kes 351,518

   Total Decretal Amount Kes 24,840,394.71

   Amount Paid Kes 24,840,394.70

   Balance Kes 0.01

9. The Respondent further argues that the original decretal sum was Kshs. 7,500,000.00, however that according to the Registrar's calculations, the total sum sought to be recovered, being the principal plus interest amounts to nearly Kshs. 57,000,000. According to the respondent judgment debtor, this is an astronomical figure representing more than eight times the original judgment debt.

10. The Respondents maintains that from the court records, it has already paid Kshs. 24,840,394.70, and that this amount exceeds the original principal decretal sum threefold. That to demand a further Kenya Shillings 32,072,207.91 is unconscionable and amounts to unjust enrichment.

11. The Respondent urges this Court to consider the public interest in this matter as it is not a dispute between two private entities since the 2nd Respondent represents a public body, from which any decretal sum is deferred against tax payer money.

12. The judgment debtor respondent cites Article 201 of *the Constitution* and asserts that it would be an affront to the constitutional principles laid down in the said Article for this Court to sanction a payment that is so grotesquely disproportionate to the original liability.

13. The Respondent further argues that it would be manifestly inequitable and contrary to justice to compel Kenyan taxpayers to bear the burden of an extrapolated judgment, which risks unjust enrichment and excessive litigation. Further contention is that the interest claimed has shifted from compensatory to punitive and unfairly penalizing the public. It urges this Court, guided by Section 4(4) of the *Limitation of Actions Act*, to set aside the Deputy Registrar's report, recognize that the

Claimant has already been adequately compensated and bring finality to this matter to protect the public purse and preserve the integrity of the judicial process.

14. In response to the respondent's contestation of the Deputy Registrar's report, the Applicant filed a response dated 21st October 2025.The Applicant argues that the recovery of the decretal amount and interest is not barred under section 4(4) of the *Limitation of Actions Act* (Cap 22, Laws of Kenya). that Judgement was delivered in favour of the applicant on the 2nd May 2011 and the attendant decree issued on the 29th June 2011, for Ksh. 19,078,191.78/=, plus costs and interest until payment in full.

15. He argues that the certificate of taxation was issued on 10th October 2011, for Kshs. 351,518.90 and a certificate of order against the government issued on 14th November 2011, for Ksh. 22,916,828.34/=. It is also the Applicant's case that Interest on the decretal sum at 12% per annum was Ksh. 2,750,019.40/=.

16. Further, that interest (simple) up for 14th November 2021, when the first payment was to be paid was Ksh. 27,500,194/= and that therefore the decretal sum plus interest as at 2021 was Ksh. 50,417,022.34/=. That less the first payment of Ksh. 12,852,000/= made in March 2022, the balance is Ksh. 37,565,022.34/=.

17. The Applicant further states that interest on balance after the first payment and between 2022-2024 is Ksh. 5,500,038.80/= and that as such, the Total outstanding as at 2024 was Ksh 43,065,061.14/=, less the second payment of Ksh. 399,518/=, paid in April 2024, the balance remained Ksh 42,665,543.44/=. That less the last payment of Kshs.11,588,876.70 paid on August 2024, the balance outstanding as at 5th May 2025 was Kshs.31,076,666.44

18. According to the Applicant, the Respondent made a first payment of Kshs. 12,852,000/- in March 2022 and the last payment of Kshs. 11,588,876/- in August 2024, both of which constitute clear and unequivocal acknowledgment of the decretal debt within the meaning of section 23 of the *Limitation of Actions Act*. It is argued that less the last payment of Ksh. 11,588,876.70/= paid in August 2024, the balance outstanding as at 5th May 2025 is Ksh.31,076,666.44/=.

19. The applicant further argues that by reason of these acknowledgments, any limitation period under section 4(4) was revived and extended and the decree remains alive and enforceable until the decretal sum is fully satisfied. It is argued that since the delivery of judgment, the applicant has diligently and continuously pursued execution including filing multiple applications for payment and enforcement and has never slept on the decree to warrant an allegation of inaction or inertia.

20. The Applicant states that the Respondent's reliance on section 4(4) of the Act, suggesting that no interest may be recovered after six years is misconceived, as interest awarded in a judgment forms an integral part of the decretal sum and is not a separate cause of action.

21. It is further argued that the Court of Appeal has indeed held that a decree continues to accrue interest until the decretal amount is fully satisfied, provided the decree-holder remains active in enforcement. Further, that the Respondent's partial payments in 2022 and in 2024 reaffirmed liability and revived the limitation period afresh, making their present plea of statutory bar legally untenable, and that as such, interest herein continues to accrue day to day until payment in full, as was held in Kenya Bus Services Ltd v Ben Simiyu [2007] eKLR. He also relied on the cases of Kiprotich v Gachihi [2016] eKLR and Kenya Commercial Bank v Osebe [1982KLR 296 on recovery of interest.

22. In his written submissions dated 4th November 2025, the applicant contends that he has not slept on the decree but has diligently pursued recovery through several execution applications over 13 years,

and that the law does not extinguish a decree merely because of delay where the decree-holder remains active in execution.

23. The Respondent filed written submissions dated 6th November 2025 arguing that the Deputy Registrar's report failed to heed the express provisions of the *Limitation of Actions Act* (Cap 22) and settled jurisprudence thereby arriving at a figure that is not only statute-barred but also contrary to equity, public policy and constitutional dictates. It is also submitted that it is trite law that interest on a judgment debt is recoverable only for six years from the date it became due, and that beyond this, such interest becomes unenforceable by operation of statute.

24. The Respondents further submit that the decree in this matter was issued on 29th June 2011 and that consequently, the last recoverable interest would have accrued by 29th June 2017, beyond which the claim is statute-barred.

25. The Respondents rely on the case of Makwata Construction and Engineering Company Ltd v Limuru Girls School [2024] KEHC, where the court is said to have cited section 4(4) of the Limitations of Actions Act and held that interest on a judgment debt cannot be recovered after six years from the date it became due.

26. They also submit that numerous other judgments have reiterated the application of Section 4(4) of the *Limitation of Actions Act* on the capping of interest at 6 years. That these cases include the Court of Appeal in Lachhman v. Trikam [1987] eKLR and Kenya Hotel Properties Ltd v. Willesden Investments Ltd [2009] eKLR, where the courts are said to have held that interest on a judgment debt must be claimed within the statutory period, failing which the claim becomes stale and unenforceable.

27. The respondents also rely on the case of Lowsley v. Forbes (t/a L E Design Services) [1999] 1 AC 329 (HL), where the House of Lords is said to have declared that while the judgment sum itself may be enforceable for twelve years, interest recoverable thereunder is strictly limited to six years. That therefore in this case, the Deputy Registrar's computation of interest beyond six years from 2011 is manifestly contrary to both statute and precedent.

28. It is also submitted that the cumulative figure of KES 57,000,000 (Kes 24m paid already plus the Registrar's amount of Kes 33m) arising from the original judgment debt of KES 7,500,000 is exorbitant, unconscionable and inconsistent with the equitable purpose of interest as compensation rather than punishment and/or unjust enrichment.

29. The respondents also relied on the Supreme Court decision in Samuel Kamau Macharia v. Kenya Commercial Bank & 2 Others [2012] eKLR where the apex Court is said to have underscored that courts must interpret and apply the law in a manner that fosters substantive justice and prevents abuse of the judicial process.

30. The Respondents further rely on the case of Abdulhamid Ebrahim Ahmed v. Municipal Council of Mombasa [2004] eKLR, where the Court is said to have warned against permitting claims that would "offend the conscience of equity and good conscience," observing that interest must not become a vehicle of oppression or unjust enrichment.

31. It is also submitted that the 2nd Respondent is a public entity bound by the Constitutional principles enunciated by Article 201 of *the Constitution* namely prudence, accountability and responsible financial management in the use of public resources. That suffice it to say that in the discharge of its function this Court is similarly guided.

32. The Respondents rely on the case of Republic v. Attorney General & Another Ex parte James Alfred Koroso [2013] eKLR where the court is said to have reaffirmed that public funds must be expended

with strict adherence to *the Constitution* and that courts should be vigilant against orders that may "unduly enrich" individuals at the expense of the taxpayer. The Privy Council in Attorney General v. Blake [2001] 1 AC 268 (UKHL) is also said to have cautioned that restitutionary or excessive awards that go beyond compensation constitute unjust enrichment and are inconsistent with equitable principles of damages.

33. The Respondents also submit that it would be manifestly unjust and contrary to public policy for this Honourable Court to sanction payment of over Kshs. 32,000,000 in purported arrears of interest especially where the Respondents have already paid three times the principal judgment debit.

34. According to the respondents, the doctrine of finality in litigation is a cornerstone of justice. The Respondents also submit that endless re-litigation and perpetual accrual of interest undermine the very purpose of decrees and the sanctity of judicial pronouncements.

35. They also rely on the case of Njenga v. Njenga [1991] KLR 401, where the court is said to have held that "litigation must come to an end," and that courts must prevent the abuse of their process by perpetual revival of extinguished claims. A similar position is said to have been taken in the case of Re W (A Child) [2010] EWCA Civ 57, where the English Court of Appeal is said to have reaffirmed that it is in the public interest that disputes be resolved conclusively and efficiently.

36. The Respondents maintain that the lawful computation, consistent with Section 4(4) of the *Limitation of Actions Act*, is as follows:

    General damages KES 1,000,000

    Interest @12% WEF 02.03.2011

    1,000,000 x 12/100 x 6 KES 720,000

    Special damages KES 6,500,000

    Interest @12% WEF 28.04.1996 to 01.03.2011

    6,500,000 x 12/100 x 7,613/365 KES 16,268,876.71

    COSTS KES 351,518

    TOTAL DECRETAL AMOUNT KES 24,840,394.71

    AMOUNT PAID KES 24,840,394.70

    BALANCE KES 0.01

    Balance rounded off to the nearest cent Kes 0.00

37. The Respondents contend that the judgment debt has already been fully settled and that any further claim is unlawful. They argue that the Deputy Registrar's Report of 22nd July 2025 wrongly computed the outstanding amount at over Kshs. 32,000,000, contrary to statute and equity, because interest on a judgment debt is only recoverable for 6 years under Section 4(4) of the *Limitation of Actions Act*, thus, no interest could lawfully accrue after June 2017.

38. They also submit that enforcing the impugned computation, raising the total payable to nearly to Kshs.57,000,000 million from an original Kshs 7,500,000 would cause unjust enrichment, violate principles of prudent public finance management and amount to abuse of process. They therefore urge the Court to set aside the Report, affirm that the lawful sum of Kshs.24,840,394.70 has been fully paid, and mark the matter as settled and closed.

Analysis and Determination

39. I have carefully considered the parties' affidavits, the impugned report of the Deputy Registrar dated 22nd July 2025, the rival submissions, and the applicable statutory and judicial authorities.

40. The issues for determination are:

    a. Whether the computation adopted by the Deputy Registrar is lawful and specifically, whether interest on the decretal sum continued to accrue beyond the six-year period considering the provisions of Section 4(4) of the *Limitation of Actions Act*

    b. Whether the Respondents' part-payments in 2022 and 2024 revived the limitation period under Section 23 of the *Limitation of Actions Act* so as to keep the decree alive for purposes of further accrual of interest.

    c. The other issue is whether enforcing the Deputy Registrar's computation would amount to unjust enrichment

    d. What orders should this Court make

Whether interest on the decretal sum continued to accrue beyond the six-year period in view of the provisions of Section 4(4) of the *Limitation of Actions Act*

41. The Respondents argue that interest on the judgment debt is recoverable only within six (6) years from the date it became due and that therefore no interest could lawfully accrue after June 2017, given that the decree was issued in June 2011. They rely on Section 4(4) of the *Limitation of Actions Act* and several authorities.

42. The Applicant's on the other hand, contends that interest continues to accrue until the decretal sum is fully settled, provided the decree-holder remains active in execution. The Applicant argues that interest is part of the judgment debt, not a separate cause of action and that therefore the limitation under Section 4(4) cannot extinguish ongoing accruals so long as execution efforts are not abandoned.

43. There are conflicting decisions on this issue of whether section 4(4) of the *Limitation of Actions Act* bars charging of interest on decretal sum after lapse of six years. In Kisya Investments Limited v Attorney General & another (Civil Suit 2832 of 1990) [2023] KEHC 3741 (KLR) (Civ) (24 April 2023) (Ruling), Sergon J stated as follows:

> " 16. The second issue is whether the Applicant is barred under Section 4(4) of the *Limitation of Actions Act* from further charging interest. The Applicant pointed out that the Respondent is not permitted to charge interest after the lapse of six years from the date it is due.
>
> 17. There is no dispute that the Plaintiff was awarded Judgment in the sum of Kshs 31,222,071/35 plus interest on September 10, 1997. The principal sum was to attract interest from the date of Judgment until full payment.
>
> 18. Its trite law that the outstanding amount would continue to attract interest so long as the Judgment sum remains unsettled. There is evidence indicating that the Plaintiff has failed to settle the Judgment sum. The law did not intend to stop the charging of interest on the outstanding amount even after the lapse of six years. The record shows that the Plaintiff has made part payment of the Judgment sum.

19. The period to levy interest did not stop. It is a continuing period so long as the Judgment remains unsettled.

44. The learned Judge in the above case did not refer to any other judicial pronouncement that interpreted the provisions of section 4(4) of the *Limitation of Actions Act* alongside section 23(3) of the same Act. It follows that the decision remains persuasive and that this Court must interpret section 26 of the *Civil Procedure Act* alongside the *Limitation of Actions Act*, first by reproducing the provisions of the two statutes here.

45. Section 26 of the *Civil procedure Act* provides as follows:

> " 26. Interests
>
> (1) Where and in so far as a 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 the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, 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 to such earlier date as the court thinks fit.
>
> (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

46. There is no dispute that interest is ordinarily an incident of the judgment in money decrees and that it continues to run until satisfaction of decree as stipulated in section 26 of the *Civil procedure Act*. However, the legislative framework under Section 4(4) of the *Limitation of Actions Act* expressly limits the period within which "interest on a judgment" may be recovered. This statutory cap is a substantive limitation enacted by Parliament and not merely a procedural bar. The section reads as follows:

> " 4(4)An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due."[emphasis added]

47. In Civil Appeal No 3 of 1964 Dhanesvar Mehta vs Minalal M.Shah (1965) E.A.321 the Court of Appeal for Eastern Africa held:

> " The overriding purpose of all limitation statutes is based on the maxim interest reipulbicaeut sit finis litium, and it has been the policy of the court to lean against stale claims....."

48. In the case of Assia Pharmaceuticals Ltd v Kenya Alliance Insurance Co. Ltd [2021] KEHC 19 (KLR) the High Court stated as follows on this subject of limitation of actions:

> " The law of limitation is found upon maxims such as "Interest Reipublicae Ut Sit Finis Litium" which means that litigation must come to an end in the interest of society as a whole, and "vigilantibus non dormientibus Jura subveniunt" which means that the law assists those that are vigilant with their rights, and not those that sleep thereupon. The law of limitation identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant.
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> 27. Section 4 (4) of the *Limitation of Actions Act* provides that: -(4)An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.
>
> 28. The last part of the above provision is instructive. It provides that "no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due." The judgment is dated June 2, 2004, 17 years ago. From the applicant's own admission, the last payment was made on August 13, 2014. Even though the applicant was not clear, the sum of Kshs. 7,507,243/= was in respect of the principal sum. What is clear is that without providing a clear tabulation as to how the amount being claimed is arrived at, the applicant states that the amount of Kshs. 24,023,177.60 being pursued comprises of accrued interests.
>
> 29. One thing is clear from a reading of section 4(4) cited above, that is, recovery of interest on a court judgment may not be recovered after the expiry of 6 years. When the *Limitation of Actions Act* or any other statute prescribe a period of limitation for initiating legal proceedings, any legal action has to be brought within such prescribed period. As it is imperative to give finality to administrative as well as judicial decisions in the interests of justice, no court or tribunal can entertain any petition/suit/application made after the expiry of the limitation period, unless sufficient cause for delay has been proved by the petitioner/plaintiff/applicant. Therefore, those who sleep over their rights have no right to agitate for them after the lapse of the prescribed period.
>
> 30. The *Limitation of Actions Act* provides the limitation periods for different claims. Regarding claims for interests on court judgments, it provides six years from the date the interest became due for actions relating to arrears of interest with regard to a judgment debt. It is important to mention that the word "action" in section 4(4) of the *Limitation of Actions Act* has been judicially construed to include execution proceedings. This position was appreciated by the Court of Appeal in Njuguna v Njau,[13]Malakwen Arap Maswai v Paul Koskei[14] and M'ikiara M'rinkanya & another v Gilbert Kabeere M'mbijiwe.[15] In these three decisions, the Court of Appeal construed the word "action" in section 4 (4) of the Act as including all kinds of civil proceedings including

execution proceedings.[13][1981] KLR 225.[14]Eldoret Civil Appeal No 230 of 2001 (unreported [15][2007] eKLR.

31. The other important point to note is the nomenclature of section 4(4). The word "may" has been appears in the said provision. The use of the said word means that provision is not couched in mandatory terms. This position was enunciated by the Court of Appeal in M'ikiara M'rinkanya & another v Gilbert Kabeere M'mbijiwe (supra) that: -"The main ground of appeal is that the learned judge failed to appreciate the meaning and essence of section 4 (4) of the Act and the authority cited to him. This appeal raises the question of the true construction of section 4 (4) of the Act. Firstly, there is the problem of the construction of the words "may not" in the phase:- "An action may not be brought ....." The learned Judge construed the phrase "may not" as giving the court discretion whether or not to allow the enforcement of a judgment after the expiration of twelve years from the date of delivery. But does the court have any discretion in law? It is noticeable that the phrase "may not" is not confined to section 4 (4) of the Act only. The same phrase is used throughout in Part II of the Act in relation to the other causes of action. It is also used in the whole of section 4 of the Act in relation to actions founded on contract and other related actions. It is used in section 4 (2) of the Act in relation to actions founded on tort and in section 4 (3) regarding actions for accounts. It is also used in section 7 in relation to actions to recover land and in section 8 in actions to recover rent. It is again used in relation to other causes of action in sections 10 (3), 19 (1), 19 (2) of the Act. The use of the phrase "may not" does not however give the court absolute discretion whether or not to apply the limitation periods prescribed for various causes of action. If the legislature intended to give absolute discretion to the courts it would have expressly provided so in the Act. The Act should be construed as a whole in order to discover the legal meaning of the phrase. After prescribing limitation periods for various actions, the legislature provided safety mechanism or escape routes from the rigours of the Act to avoid injustice by providing for the extension of limitation periods in the restricted cases specified in part III of the Act. These include cases where a person to whom the cause of action accrues is under disability. Indeed, section 3 of the Act provides that part II of the Act which specifies various limitation periods is subject to part III which provides for extension of the periods of limitation. It provides:

"This part is subject to part III which provides for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud, mistake and ignorance of material facts". If the legislature used the phrase "shall not" instead of "may not" in relation to causes of action specified in part II of the Act, then, part II would have been repugnant to part III. The learned judge erred in construing the phase "may not" in isolation and thus arrived at a wrong finding. It is an erroneous construction of section 4 (4) of the Act or other sections in part II where the same phrase is used to say that the court has a discretion. The true construction in our respectful view, is that, the periods of limitation prescribed by the Act in part II are not absolute as they are subject to extension in cases where a party brings himself squarely within the ambit of the provisions of part III."

> 32. From the above excerpt, it is clear that the periods of limitation prescribed by the *Limitation of Actions Act* are not absolute as they are subject to extension in cases where a party demonstrates sufficient cause for the extension. Despite this clear position of the law, and notwithstanding the fact that the respondent in its grounds of opposition filed on June 2, 2020cited section 4 (4) of the *Limitation of Actions Act*, the applicant never took cue from the objection to cure the defect by seeking an extension from this court. Instead, it opted to prosecute its application which has been pending in court since 2019."

49. The above decision cites the Court of Appeal decision in M'IKIARA M'RINKANYA & Another v GILBERT KABEERE M'MBIJIWE [2007] KECA 115 (KLR) [Tunoi, O'kubasu,Githinji JJA] and settles the legal position that limitation period operates even where the claim is raised in execution and not through a fresh suit. The Court of Appeal in the above appeal dealt with the question of the true construction of section 4 (4) of the *Limitation of Actions Act*.

50. In the above case, the Court of Appeal was dealing with a case where the two appellants were aggrieved by the judgment and decree of the High Court at Meru (Kasanga Mulwa, J.) in Meru High Court Civil Case No. 216 of 2001 (2001 suit) dated 23rd January, 2003 whereby the High Court dismissed the appellants' suit against the respondent.

51. In the dismissed suit, the appellants had sought a declaration, inter alia, to the effect that by virtue of section 4(4) of the *Limitation of Actions Act*, the respondent could not take any action including execution in respect of the decree/judgment in Meru Senior Resident Magistrate's court Civil Suit No. 115 of 1979 (the 1979 suit).

52. The appellants in the above appeal averred in their plaint that the respondent never executed the 1979 judgment even after the appeal was dismissed on 21st February, 1984. The appellants sought a declaration to the effect that the execution of the judgment was statute barred. More particularly, prayer (a) of the plaint sought: "An order of declaration that an action may not be taken including execution of the decree/judgment in respect of Meru CMCC No. 115/1979".

53. The respondent averred in paragraph 6 of the defence that: "... he is entitled to execute the judgment of this nature with leave of court for provisions of *Limitation of Actions Act* ... are not in mandatory terms".

54. The High Court agreed with the construction of section 4 (4) of the *Limitation of Actions Act* by the respondent and held that:

> " The final judgment in this case was delivered on 21.2.1984. Evidently the 12 years period has elapsed, it is to be noted that the statute uses the words "may not" in the section above quoted. The wording of the statute does not call for mandatory adherence and appears to leave the court with a discretion to allow or not to allow execution even after the 12 years period has lapsed".

55. The High Court further considered the principles upon which the court exercises judicial discretion and exercised discretion in favour of the respondent. The main ground of appeal was that the learned Judge failed to appreciate the meaning and essence of section 4 (4) of the Act Limitation of Actions and the authority cited to him.

56. The above position taken by the High Court was overturned by the Court of Appeal, with the holding that the execution of the decree for possession of the land was statute – barred and that the superior

court erred in dismissing the appellants' suit. The Court of Appeal accordingly in allowing the appeal, substituted therefor an order allowing the appellants' suit and granting declaratory judgment in terms of prayer (a) of the plaint dated 24th November, 2001 to the effect that the execution of the judgment was statute barred.

57. The Judgment in the above appeal settles the question of whether a judgment which has not been executed for 12 years can be executed with leave of court in view of the fact that section 4(4) of the *Limitation of Actions Act* is not couched in mandatory terms.

58. In the present case, it is not in dispute that the primary decree of the court was for general damages, special damages, costs of the suit and interest, as decreed by the Court. The suit arose following an accident in which the applicant herein who was the plaintiff sustained debilitating injuries while on duty as a member of the Kenya Armed Forces-now Kenya Defence Forces. Judgment was rendered on 3rd March, 2011 in HCCC NO. 1051 of 1996. Despite pleas by the applicant's counsel, even after mandamus was issued in the case compelling the accounting officer, Ministry of Defence to settle decree, and even citing and convicting the said accounting officer for being in contempt of Court, no settlement was forthcoming.

59. Although the applicant got the decree and certificate of order against the government issued and served upon the accounting officer, no payment was made until 2022.

60. Now that the issue of interest payable has been raised at this stage, this Court must address that issue, noting that from the decree and certificate of order against the Government issued on 14th November, 2011, the applicant /plaintiff was adding the certified costs of Kshs 351,518.90 awarded on 10th October, 2011 to the decretal sum as per the decree which included the interest on general damages and on special damages as awarded in the judgment and also added further interest from 3.3.2010 to 3.11.2011 hence the 22,916,828,34. This sum, from a reading of the certificate of order against the government, seem to include interest calculated on the costs awarded on 10th October, 2011.

61. That said, the law under section 4(4) of the *Limitation of Actions Act* is that interest can only be recovered in the first six years following judgment and that after six years, the interest lapses and is therefore irrecoverable.

62. In other words, and counting from the date of judgment when the Court awarded the plaintiff/ applicant herein general damages, special damages and costs of the suit plus interest, that interest, not having been recovered in the first six years of the date of judgment or when the said interest became due and payable and therefore on the date of default, it became irrecoverable the moment the clock ticked six years.

63. In ABC Capital Ltd v Nzioka (Commercial Civil Case E046 of 2020) [2021] KEHC 77 (KLR) (Commercial and Tax) (24 September 2021) (Judgment) Muigai J had this to say concerning this issue of limitation period for recovery of interest after six years:

> "20. The issue of interest was pleaded in the Plaint of 26th May 2010 as follows; interest on the prayers (a) & (b) sought above at Court rates from 3rd October 2008 until payment in full and that is what the Trial Court granted in its judgment of 30th July 2019.
>
> 21. The Appellant took issue with the interest levied in the judgment, that it is in contravention of Section 4(4) of Limitations of Actions Act which reads thus;
>
> (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a

certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

22. This Court interprets the provision to provide that interest shall accrue from the date of judgment and recovery of interest shall be made upto and not after 6 years from the date of judgment.

23. In the instant case, the Trial Court's Ruling of 30th July 2019 granted; interest at Court rates to be calculated from the date of filing the suit being 26th May 2010 until payment in full.

24. The Respondent invoked Section 26 of CPA on the Court's discretion in grant of interest on the principal sum adjudged from the date of the suit to the date of the decree and/or any period before the institution of the suit.

25. In the instant case, the Trial Court's discretion was exercised and granted interest as prayed for in the Plaint.

26. The Court granted what the Plaintiff sought in the Plaint and in the absence of any objection, granted interest as prayed. In the premises, the court shall retain interest at Court rates from the date of filing suit until payment in full and not beyond 6 years from the date of judgment of 30th July 2019."

64. In Makwata Construction and Engineering Company Ltd v Limuru Girls School (Miscellaneous Civil Application 532 of 2015) [2024] KEHC 16037 (KLR) (Commercial and Tax) (20 December 2024) (Ruling) Neutral citation: [2024] KEHC 16037 (KLR) the Court-Mabeya J stated as follows:

> " 22. On the issue of charging interest, the judgment debtor relied on section 4(4) of the *Limitation of Actions Act* which provides that: -
>
> "SUBPARA (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due."
>
> 23. In Assia Pharmaceuticals Ltd v Kenya Alliance Insurance Co. Ltd (Civil Case 1605 of 1999) [2021] KEHC 19 (KLR) (Commercial and Tax) (21 July 2021) (Ruling), it was held that: - "The *Limitation of Actions Act* provided the limitation periods for deferent claims. Regarding claims for interests on court judgments, it provided six years from the date the interest became due for actions relating to arrears of interest with regard to a judgment debt. The word "action" in section 4(4) of the *Limitation of Actions Act* had been judicially construed to include execution proceedings. The use of the word "may" meant that the provision was not couched in mandatory terms."
>
> 24. It is apparent from the foregoing provision that interest in a judgment cannot be recovered after the expiry of six years from the date it becomes due. According to section 4(4) of the *Limitation of Actions Act*, time begins to run from the moment of default in payment.

25. The judgment in this case was entered in 2016. The time for payment of the decretal sum together with interest thereon started to run from the date of the judgment. Liability to pay arose once costs were assessed and execution thereof commenced. That is sometimes in 2017 when the applicant tried to challenge the decree. In this regard therefore, time began to run in the year 2017 when there was default in paying the decretal sum."

65. For all the above reasons, I am in agreement with the respondents that indeed, the interest accruing and payable on the judgment could only be claimed within the six-year period from the date when it was due and not after the end of six years from such date. This then leads me to determine the next question which is:

Whether the Respondents' part-payments in 2022 and 2024 revived the limitation period under Section 23 of the *Limitation of Actions Act*.

66. Having established the statutory bar to the recovery of interest accruing to the judgment sum and on costs, the next question is whether the 2nd respondent's part-payments which only came in 2022 and 2024 revived the limitation period under Section 23 of the *Limitation of Actions Act*.

45. Section 23(3) of the *Limitation of Actions Act* is under Part B of the Act and it provides as follows, material to these proceedings:

" B – Acknowledgement and Part Payment

23. Fresh accrual of right of action on acknowledgement or part payment

...

...

(3) Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to movable property of a deceased person, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:

Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt.

67. From the proviso to the above section 23(3), a fresh limitation period is computed from the date of a written acknowledgment or part-payment of the amount which has lapsed by virtue of the limitation period. However, the part payment does not revive the lapsed interest. Instead, it is treated as part payment of the principal sum or decretal amount.

68. The Applicant contends that the 2nd Respondent's payments in March 2022 and August 2024 constituted unequivocal acknowledgment of indebtedness and that therefore even if the six-year period extinguished the interest accrued on the principal sum awarded in the subject decree, this part payment revived the limitation period afresh, making the decree perpetually enforceable until full satisfaction.

69. From the court record, it is clear that, as at March 2022, the decretal sum had not been paid and neither had any part of it been paid towards settlement of the decree. That being the case, the part-payments

made by the judgment debtor/ respondent constitutes acknowledgment of the interest, noting that in the settlement of decrees, the first amount to be recovered is the interest after which the principal sum or balance thereof remains, and upon which, further interest would accrue.

70. However, the critical question is what exactly is revived? Section 23 (3) revives the right to enforce the judgment within a fresh twelve-year period, where the acknowledgment thereof is made before the expiry of the limitation period. It does not create a new right to recover statutorily time-barred or arrears of interest that had already lapsed under Section 4(4) of the *Limitation of Actions Act* that is, after six years.

71. In other words, a revival under Section 23 (3), following part payment or acknowledgment cannot override an express statutory extinguishment. The acknowledgement or part payment thereof only revives the enforceability of the outstanding decretal debt to the extent that the decree remained legally recoverable but does not revive or re-activate interest that has been rendered statute barred under Section 4(4) of the *Limitation of Actions Act*.

72. Applying the above principle to this matter, and noting that the period for recovery of the principal sum had not lapsed, the part-payments in 2022 and 2024 only revived the interest accruing after the part payment and not the arrears of interest which would have been payable during the first six years after the date of judgment or decree, when the interest first became due and payable.

73. It is for that reason that I find and hold that the computation of interest by the Deputy Registrar went beyond the six-year period, contrary to the limiting provisions of Section 4(4) as read with section 23 (3) of the *Limitation of Actions Act* which stipulate that a claim for interest outside the statutory six-year window is time-barred regardless of the subsistence of the decree. Thus, old (or arrears) interest is irrecoverable even if the judgment itself remains valid. However, it was not the Deputy Registrar's fault as there was no limitation period raised as at the time that she calculated the interest. The issue of limitation arose after she had calculated the interest as directed by the Court, to establish whether there was any amount due on the decree, with the respondents claiming that they had settled while the applicant contended that there was a balance in excess of Kshs 30million.

74. This is because, part payment has the effect of reviving interest to start running from the date of part payment and therefore the new limitation period of six years begins from the date of the part payment.

75. In the end, I find and hold that computation of interest by the Deputy Registrar was contrary to the express provisions of section 4(4) as read with section 23(3) of the *Limitation of Actions Act* and the same is hereby vacated and set aside.

> "The next question is Whether enforcing the Deputy Registrar's computation would amount to unjust enrichment"

76. The Respondents submit that enforcing the impugned report would inflate a judgment of Kenya Shillings 7,500,000 million into nearly Kenya Shillings 57,000,000 and thereby produce unjust enrichment. They also invoke Article 201 of *the Constitution* on prudent and accountable use of public funds.

77. Courts are indeed called upon to guard against unjust enrichment and therefore they must mindful of constitutional values on public finance. However, such considerations cannot override a lawful decretal entitlement which is lawful.

78. In the present case, the bulk of the amount challenged is over Kshs.32,000,000 arising solely from interest which had lapsed and therefore became irrecoverable after six years from the date when the said interest was due and payable. Since such interest is prohibited by law, any demand based on it would

indeed constitute an unjust enrichment and violate the constitutional dictates under Article 201 of *the Constitution* on public finance prudence.

On what orders this court should make,

79. This Court reiterates that whereas section 26 of the *Civil Procedure Act* is the procedural law that governs the accrual and computation of interest on a decree, providing that the interest is payable on the decretal sum until payment in full, the *Limitation of Actions Act* is the substantive law that imposes statutory limits on the period within which such interest is recoverable. Section 4(4) of the *Limitation of Actions Act* expressly restricts the enforcement of interest on a judgment debt to a period of six years from the date of the judgment.

80. In other words, once six years elapses before the interest awarded is paid, that interest becomes irrecoverable. On the other hand, whereas acknowledgement or part payment revives causes of action, in the case of interest, section 23(3) of the *Limitation of Actions Act* provides that such acknowledgment or part payment does not revive interest that is already statute -barred. The acknowledgment or part payment only resets the limitation period for the prospective or remaining interest accruing from the date of such acknowledgment or part payment.

81. Accordingly, where no acknowledgment or part-payment is made for more than six years, the decree-holder becomes time-barred from recovering arrears of interest that fell due more than six years before the first payment. Interest only continues to accumulate in theory, but the law prevents the decree-holder from enforcing the portion that is older than six years.

82. Applying these principles to this case, if interest began accruing on 3rd March 2011 when judgment was rendered, or on the date when costs were assessed in the case of costs, and the first part-payment was only made on 24th March 2022, the applicant cannot recover interest that accrued between 3rd March 2011 and 2nd March 2017, or in the case of interest on costs, the period between the date of assessment and the end of six years, as the periods are beyond the statutory six-year window.

83. The part-payment made on 24th March 2022 however, acts as an acknowledgment of the interest debt and therefore resets the limitation period going forward, such that a fresh six-year limitation period begins to run from that date of part payment, but only in respect of interest on the principal, if any such principal remained outstanding upon such part-payment being made.

84. Therefore, applying the principles espoused in sections 4(4) and 23(3) of the *Limitation of Actions Act*, first, is that the interest accruing from 3rd March 2011, the date of the judgment and decree until 3rd March 2017 and up to 23rd March 2022 when part payment was made is equally not recoverable since the interest got extinguished by the elapse of six years from the date of decree and secondly, the arrears of the interest which got extinguished is equally not recoverable; and only the interest accruing after the part payment, that is, from 24th March, 2022 onwards until payment in full would be recoverable. This is because, the part payment does not revive the arrears of interest retrospectively.

85. In the end, I find the computation by the Deputy Registrar contained in the report dated 22nd July 2025 to be erroneous. It is hereby set aside.

86. However, to perfect this ruling, the Deputy Registrar is hereby directed to work out the interest payable if any, from 24th March 2022 on the principal sum which remained unpaid from that date and in the case of interest on costs, on the date when interest was lawfully due, taking into account the findings of this court in this ruling and file the calculations into court within 10 days unless the period is extended by this Court.

87. Once the Deputy Registrar completes the exercise, she will file the report into this court. The matter shall be mentioned on 27/1/2026 before this Court to confirm compliance and for further orders of this Court.

88. It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF DECEMBER, 2025

R.E. ABURILI

JUDGE