



Eldomatt Supermarket Limited v Nagaki (Employment and Labour Relations Appeal E034 of 2023) [2026] KEELRC 357 (KLR) (6 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 357 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E034 OF 2023
MA ONYANGO, J
FEBRUARY 6, 2026**

**BETWEEN
ELDOMATT SUPERMARKET LIMITED APPELLANT
AND
EMMANUEL MUNYONDO NAGAKI RESPONDENT**

RULING

1. Vide an application dated 27th June, 2025 the Appellant the following orders:
 - a. That the application be certified as urgent and be heard ex-parte in the first instance.
 - b. That there be stay of execution and payment of interest on the award herein be suspended pending the hearing and determination of this application.
 - c. That this Honourable court makes a determination on when interest on its judgement of 9th May 2025 is supposed to be calculated from and declare that it can only be from the date of judgment.
 - d. That the award of interest in MCELRC 35 of 2019 from the date of filing claim was erroneous.
 - e. That interest be computed from the date of judgment.
 - f. That the costs of this application be provided for.
2. The application is supported by the grounds on the face thereof and the affidavit of Jaideep S Shah sworn on 27th June, 2025. In summary, the applicant states that in its judgment delivered on 9th May, 2025 this court reduced the award of the trial court in Eldoret CMELRC No. 35 of 2019 from Kshs. 563,503 to Kshs. 209,797. That the Appellant had paid the decretal sum plus costs of Kshs. 136,525 all amounting to Kshs. 346,292 as per deposit slip which was attached to the affidavit of Jaideep S Shah as



- Annex JSS1. That the payment was made in good faith awaiting the resolution of the issue of interest and the total payable, which in the Appellants opinion should be from date of judgment.
3. The Appellant states that it should not be penalized for delay in prosecuting the claim by having interest computed from the date of filing suit.
 4. In its submissions in respect of the application the Appellant submits that this court having set aside the award of the trial court, all the orders of the trial court were vacated.
 5. The Appellant submits that interest ought to be calculated from the date of the judgment of this court, relying on the decision in *New Tyres Enterprises Ltd v Kenya Alliance Insurance Co. Ltd* [1988] eKLR where the Court of Appeal stated: "... the liability of the Respondent to pay ... was not determined until the date of the judgement, and that is the date from which interest should be payable."
 6. The Respondent opposed the application through Grounds of Opposition as follows:
 - a. The application is fatally defective and legally untenable.
 - b. The application is misconceived, baseless and lacks merit.
 - c. The orders sought in paragraphs 3, 4 and 5 of the application cannot be granted by this Honourable court, as this court having delivered its final determination in its judgment dated 9th May 2025, this court is therefore functus officio and hence cannot entertain the application now before court.
 - d. The Appellant, if aggrieved by this Honourable Court's judgment dated 9th May 2025, it ought to have preferred an appeal to the Court of Appeal but not file a frivolous and baseless application now before court.
 - e. The application is grossly incompetent and should be dismissed.
 7. In the Respondent's submissions it argues that this court is functus officio as it has already rendered itself on the appeal, relying on the decision in *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR.
 8. The Respondent further relied on the decisions in *Telkom Kenya Limited v John Ochanda (Suing on His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited)* [2014] KECA 600(KLR) and *Jersey Evening Post Ltd v AI Thani* [2002] JLR 542 at page 550.
 9. The Respondent further submits that costs are awarded at the unfettered discretion of the court as was held in *Joseph Oduor Anode v Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009[2012] and Hon. Justice (Rtd) Richard Kuloba in *Judicial Hints on Civil Procedure: 2nd Edition* (Nairobi: Law Africa, 2011) page 94.

Determination

10. Having considered the application together with the grounds and affidavit in support thereof, the grounds of opposition and the rival submissions, the only issue arising for determination is the date from which interest should accrue on the decretal sum.
11. Section 12(4) of the *Employment and Labour Relations Court Act* provides that: In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.
12. Further, Rule 70 of the *Employment and Labour Relations Court (Procedure) Rules, 2024* provides:
70.



- (1) The Court shall be guided by section 12(4) of the Act and Advocates (Remuneration) Order in awarding costs.
 - (2) A party and party bill of costs shall be filed in the main suit.
 - (3) An advocate and client bill of costs shall be instituted through a miscellaneous application.
 - (4) The Court may order reasonable reimbursements of money spent in the course of litigation by a litigant acting in person or represented by a trade union or an employers' organization.
 - (5) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.
 - (6) In any suit the court may, upon application and for good reasons stated, order that security for the whole or part of the costs of any respondent or third or subsequent party be given by the other party.
13. Magistrates Courts are bound by the Act and rules when exercising jurisdiction under this Act.
 14. As provided in the Act and rules, this Court has discretion to award interest as it deems fit while exercising both original and appellate jurisdiction.
 15. The court further has powers to review its own decisions when a party seeks the same and suo motu where appropriate, as provided in section 16 of the Act which provides:
 16. Review of orders of the Court
The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.
 16. Rules 75 and 76 of the Employment and labour Relations Court (Procedure) Rules, 2024 permit the court to review its orders to correct any errors or to give make clarity to its decisions.
 17. In the instant case the judgment of the court did not address the issue of interest which is now the point of disagreement between the parties. Only this court can give clarity on the same. The position taken by the Respondent that this court is functus officio is thus erroneous.
 18. It is trite that interest on compensation is only payable from the date when it is determined. Interest cannot accrue from date of filing suit when no award has been made or ascertained.
 19. For these reasons I hereby clarify that interest is payable on the decretal sum from the date of the award of the trial court.
 20. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 6TH DAY OF FEBRUARY, 2026

MAUREEN ONYANGO

JUDGE

