

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**CIVIL APPEAL NO. E029 OF 2024**

**CHARLES MUGENDI GITARI.....**

**APPELLANT**

**VERSUS**

**DIRECTLINE ASSURANCE**

**CO.LTD.....RESPONDENT**

*(Being an Appeal and Decree against the Judgement of Hon. O. Kinyua (Resident Magistrate) delivered on 9<sup>th</sup> September 2024 in CHUKA CMCC NO. E058 of 2021.)*

**JUDGEMENT**

1. By way of Plaintiff dated 19<sup>th</sup> January 2018, the Plaintiff in Chuka CMCC No.28 of 2018 sued the Defendant seeking general and special damages arising out of a road traffic accident that occurred on 17<sup>th</sup> October 2017. The Plaintiff's case was that

on the material day, he was off the Embu-Meru road within Chuka Town Stage when the Defendant and or his driver, agent, servant, assignee and or employee so negligently drove, managed and/or controlled Motor vehicle registration number KCD 610 that he caused or permitted the same to get out of control and knock the Plaintiff who consequently sustained injuries. The Plaintiff blamed the Defendant for the accident.

2. The case, hereinafter the primary suit, proceeded for hearing and judgment was entered on 12<sup>th</sup> June 2019 in favour of the Plaintiff in the following terms: -

- i. Liability 100%
- ii. General damages Kshs. 700,000
- iii. Special damages Kshs. 146,567
- iv. Costs and interest.

3. The Plaintiff then filed a declaratory suit dated 4<sup>th</sup> March 2021 being Chuka CMCC No. 58 of 2021, (hereinafter the declaratory suit) seeking to enforce the judgment and decree dated 12<sup>th</sup> June 2019.
4. The Defendant (Insurer) filed a defence dated 7<sup>th</sup> June 2021. The Defendant acknowledged having insured motor vehicle KCD 610D under Policy Number 07004935 Certificate Number A79999374. It further stated they had satisfied the judgment in Chuka CMCC No. 28 of 2018 (primary suit) in full.
5. The Defendant stated that it had remitted the decretal sum plus costs totaling to Kshs. 984,847 on 24<sup>th</sup> April 2020 settling the Plaintiff's claim.

6. On 9<sup>th</sup> September 2024, judgment was entered in favour of the Plaintiff with orders in the following terms:-

**“11.** As thus I find that the plaintiff deserves the order/declaration to the effect that the defendant is obliged and liable to honour the decree arising in the accident suit.

**12.** However, as to the prayer that the defendant is obliged to satisfy the decree together with interests at 14 % p.a. from 12<sup>th</sup> June 2019 till payment in full is in my view not awardable. Looking at the decree subject of the instant suit, the court in paragraph (c) of the decree clearly stated that “the plaintiff shall be entitled to interests and costs of the suit”. The court did not explain itself as to what percentage should be used to compute the interest nor did it state as to when the

same should start running. The trial court having not expressly stated the above, this court cannot impose terms not in the initial decree. In my view, the defendant can only be compelled to satisfy the decree as was ordered in the primary suit. The interest being sort (sic!) can be computed in the said decree when executing and ought not to be part of the decree herein. I thus allow the plaintiff's claim as prayed in prayer (a) to the extent that I order that a declaration be and is hereby made that the defendant is obliged and liable to satisfy the decree arising from Chuka Law Court in MCCC 28 of 2018. As to costs, it is trite that costs follow events. I thus award costs to the plaintiff with interests from the date of filing the suit."

7. Dissatisfied with the judgement, the Appellant lodged this appeal vide the Memorandum of Appeal dated 24<sup>th</sup> September 2024 on the following grounds: -

- i. The trial court erred in law and in fact in failing to appreciate the suit before it was an execution process arising by virtue of the Respondent's statutory obligation to settle a decree that was issued against its insured by dint of the Insurance (Motor Vehicle Third Party Risks) Act CAP 405.
- ii. The trial court erred in law and in fact in making a finding that since the decree arising in Chuka CMCC No. 28 of 2018 failed to disclose the rate of interest or the date interest would start accruing then the courts hands were tied thus misinterpreting the

provisions of Section 26 of the Civil Procedure Act 21 Laws of Kenya.

- iii. The trial court erred in law and in principle in failing to appreciate that a decree is made up of the principal award, costs and interests and thus to state that the Respondent is bound to only settle the decree in the accident case but not the interest would amount to sitting on appeal on a decision issued by a court of concurrent jurisdiction.
- iv. The trial court erred in law and in principle in awarding interest from the date of filing suit when the suit before it was not of a monetary nature but one seeking a DECLARATION.

8. The Appellant prayed that this court orders that a declaration do issue that the Respondent is obliged to satisfy the decree arising in Chuka CMCC No. 28

of 2018 together with interest at 14 % p.a from 12<sup>th</sup> June 2019 till payment in full and the Respondent to bear the costs in full.

## **ANALYSIS AND DETERMINATION.**

9. The Appeal was canvassed by way of written submissions as per the directions of the court. The Appellant filed his submissions dated 14<sup>th</sup> March 2025 which address the sole issue of interest and the date it was due. The Respondent did not file its submissions.

10. It is trite that the duty of the Appellate court is to re-evaluate and assess evidence in the trial court. In the case of **Abok James Odera T/A A.J Odera & Associates -vs- John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR**, the court held that:-

**“This being a first appeal, we are reminded of our primary role as a first**

**appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way”**

11. From the record and submissions, only one central issue arises as follows: -
  - i. Whether the trial court in the declaratory suit erred in holding that the decree in the primary suit did not entitle the Appellant to interest from 12th June 2019.
12. The Appellant submitted that the trial court in the declaratory suit was wrong to award interest on either the costs of the suit or the order of declaration; in asserting that it was being asked to impose things that were not in the decree in the accident case because the trial court did not

explain itself as to what percentage or from when it began running, and; in not appreciating that the declaratory suit was in itself an execution process.

13. The Appellant contended that interest like costs follow the cause and unless expressly denied it is deemed to have been awarded and the rate is set by law at 14% p.a unless varied by the court. In support of his argument, he relied on the case of **Andrew Kuria Njuguna T/A Onganet Enterprises & Anor V Rose Wambui Kuria [2012] eKLR** where the court the stated that:-

**“A decretal sum arises after a decree has been issued. It is the total sum due under a decree and it encompasses the principal sum, the costs as well as interest.”**

14. The Appellant further relied on **High Furniture Mart Ltd v PS Office of the President & Anor [2006] eKLR** where the court held that the prevailing court interest rates is 14 % p.a.

15. It is trite that a declaratory suit under Section 10 of the Insurance (Motor vehicle Third Party Risks) Act is **not a fresh cause of action**. It is a **statutory execution mechanism**, whose purpose is simply to compel the insurer to honour a decree regularly obtained against its insured. The legal position is that a court in the declaratory suit under subrogation suits is only called upon to declare who between the insured and the insurer was liable to satisfy the decree. Such a court cannot be called upon to expand or reduce the award.

16. A decree that omits interest is **incomplete**, not void, and Section 99 Civil Procedure Act allows correction if needed. The trial court in the primary suit vide the judgment dated 12<sup>th</sup> June 2019 awarded costs and interests without specifying the date from which interest was to run.

17. **Section 26 of the Civil Procedure Act** provides for interest as follows:-

**“26. (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.”**

18. The import of the above section is that even where a decree does not restate the interest rate, **interest still flows automatically** from Section 26 of the Civil Procedure Act and the judgment date.

19. The Court of Appeal in **Haria & another v Shah (Civil Appeal 362 of 2018) [2024] KECA 527 (KLR)** stated as follows: -

**“55. We are alive to the fact that under our jurisdiction, while an award of interest is largely discretionary, courts are guided by the provisions of section 26 (1) and (2) of the Civil Procedure Act is applicable. It provides as follows on the issue of interest:**

**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.**

**56. It is trite then that a court under our jurisdiction has discretion to order that interest be paid on the amount adjudged from the date of the suit, before the institution of the suit, from the date of**

**the court’s decree and where the decree is silent with respect to payment of further interest, the same is payable from the date of decree to the date of payment or earlier date.”**

20. In this case, trial court in the primary suit expressly awarded *interest*. It is immaterial that it did not indicate the rate and when the same was supposed to run as section 26 (2) would take care of the trial court’s silence. In the case of **Madison Insurance Company Ltd vs. Mungot [2022] KEHC 9800 (KLR)**, Mulwa J held that:-

***“When the effective date of interest is not pleaded as is the case in this instant appeal, provisions of Section 26(1) and (2) come into play. However, when the court is silent on the effective date for interest to start accruing, Judge Kasango***

***J. In Directline Assurance Co. Ltd vs. Jeremiah Wachira Icharia [2016] eKLR held that there is no discretion that can be exercise in silence.”***

21. It is clear to this court therefore that what the Appellant needed was a clarification of the award or a mere mathematical calculation before the court in the primary suit. To that extent therefore the court in the declaratory suit was right in stating that it could not impose terms not in the initial decree. The court however ought to have stopped at the declaration that the insurer was liable to settle the decree. It fell in error when it attempted to interpret the judgement in the primary suit and arrived at the conclusion that interest was not awarded.

22. The judgement in the primary suit clearly awarded general damages, special damages, costs and interest. The decree dated 12<sup>th</sup> June 2019 clearly stated that “the plaintiff shall be entitled to interest and costs of the suit.”

23. I have perused the record and observed that the Defendant had settled the decree including costs for which there was a certificate of costs. Indeed, that was the defence of the Defendant in the Declaratory suit. The question is, why did the parties not calculate interest in the normal manner in the primary suit trial court? It is trite that the correct forum for parties to clarify a judgement is in the court that issued the judgement.

24. The judgement was silent on the interest rate applicable, the applicable law therefore is section 26(2) which provides 6% p.a till payment in full.

25. In the end, the appeal partially succeeds.

(i) The Defendant is liable to settle interest of any unpaid decretal sums from the date of judgement in the primary suit at 6% per annum.

(i) As correctly submitted by the Appellant, the court in the declaratory suit was in error to award interest from date of filing suit. The same is set aside. The Plaintiff in the declaratory suit is entitled to and is granted costs only in that suit.

- (ii) The Appellant shall have half the costs of this appeal.

Orders accordingly.

**Judgment delivered, dated and signed at Chuka this 13th day of February, 2026.**

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**R. LAGAT-KORIR**

**JUDGE**

**Judgment delivered in the presence of Ms Maroko holding brief Mr. Ogweno for the Appellant and in the absence of Respondent. Muriuki (Court Assistant).**