

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E171 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

AGNES KAMAUCLAIMANT

VERSUS

ABERDAIR AVIATION LIMITEDRESPONDENT

RULING

1. Parties herein recorded a Consent Judgment on 14th October, 2025 in terms of a written **“Judgment by Consent”** dated 15th July, 2025 and duly signed by the parties and/or their Counsel. The **“Judgment by Consent”** is worded as follows:-

By Consent:-

The suit herein be and is hereby partially marked as settled in the following terms:-

1. *That the Respondent shall pay the sum of USD 7,500 in full and final settlement of the Claimant’s salary*

arrears in three (3) equal monthly instalments of USD 2,500 payable on the 15th day of each month commencing July 2025 until payment in full;

2. That if any instalment in (1) above is not paid within twenty-one (21) days from the due date, the entire outstanding amount shall become immediately due and payable in one lump sum payment. The Claimant shall thereafter be at liberty to execute against the Respondent for the said outstanding amount.

3. That each party shall bear its costs of the suit.

4. That prayer (3) of the Claimant's Memorandum of Claim dated 14th February, 2025 on interest is deferred for the Court's determination.

5. We, the undersigned Advocates for the Respondent, confirm that we have entered into the above consent with the Claimant on behalf of the Respondent, according to its instructions and without coercion, duress or undue influence whatsoever.

DATED at NAIROBI this 15th day of July 2025.

2. Prayer (3) in the Claimant's Memorandum of Claim dated 14th February, 2025 is worded as follows:-

“3. Interest at commercial rate or Court rate, or as the Court may deem fit, from 2017.”

3. The matter has been placed before me, by consent of both parties, to rule on the issue of Interest on the claimed and consented sum of USD 7,500 as sought in the foregoing prayer.
4. Both parties have filed written submissions for and against the awarding of interest as prayed by the Claimant.
5. Section 26 of the Civil Procedure Act provides as follows:-

“(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 percent per annum.”

6. The sum claimed in the Claimant’s suit, **USD 7,500** was, according to the pleadings filed and the Consent Judgment subsequently entered, **made up of the Claimant’s salary arrears**. It is a common ground, according to both the pleadings and written submissions filed herein, **that the salary arrears felt due in the year 2017**.

7. The suit herein is shown to have been instituted **on 6th March, 2025** vide a Memorandum of Claim **dated 14th**

February, 2025. Despite the passage of time and the provisions of **Section 89 (formerly Section 90) of the Employment Act**, parties recorded a Consent Judgment in favour of the Claimant against the Respondent, only leaving out the issue of interest on the awarded sum of salary arrears for the Court to determine. It is apparent that the issue of interest was deferred for the Court's determination because the parties herein were unable to agree on the same.

8. The Respondent submitted that the Claimant, having taken **over eight (8) years to institute the proceedings herein since the lapse of her employment with the Respondent [in 2017]**, should **not** be allowed to reap from her indolence by having an award of interest spanning such an extended period since the cause of action arose. That the Respondent **has acted in good faith and taken deliberate steps towards settling the outstanding salary arrears.** That an award of interest **from 2017 would be punitive and excessive in the circumstances.** That the Claimant should be **estopped** from claiming interest following the parties' negotiations.

9. The Respondent further submitted that the Claimant, having accepted the terms of payment of the outstanding salary arrears by instalments, cannot now renege from that position and claim otherwise. That the claim for interest is a pure afterthought which cannot be entertained. The Respondent cited the Court of Appeal's decision in **National Bank of Kenya Limited - vs - Hamida Bana & 103 Others [2017] eKLR** where the bench adopted, with approval, the reasoning in **State of Punjab & Others - vs -Dhanji Singh Sandhu - Civil Appeal No. 5698 - 5699 of 2009** where the Supreme Court of India expressed itself on the principle of estoppel as follows:-

“The principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. “The Supreme Court in the Rajasthan

State Industrial Development and Investment Corporation Ltd & Another AIR 2013 SC 1241,
made an observation that a party cannot be permitted to blow hot and cold, fast and loose or approbate and reprobate. Where one knowingly accepts the benefit of a contract or conveyance or order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of good conscience.”

10. That by accepting the Respondent’s proposal to settle the principal sum in instalments without reservation on interest, the Claimant led the Respondent to believe that payment of the principal sum would constitute full and final satisfaction of the claim.

11. It was submitted by the Claimant that the claim herein was **for salary arrears which ought to have been paid in or before the year 2017;** and that despite the Claimant

giving the Respondent numerous opportunities to make payment, it took for the suit herein to be commenced for the Claimant's salary arrears to be paid. That it has taken a **total of 8 years for the Claimant to get her salary arrears.**

12. The Claimant cited the Court's decision in the case of **South Nyanza Sugar Company Limited - vs - Oreko (2022) KECA 570 (KLR)**, where the Court of Appeal held as follows:-

“The objective for awarding interest is to ameliorate the loss suffered by a party who has been kept out of use of money that would otherwise be due to him. Although, by dint of the words of Section 26, the grant of interest is discretionary, it is a discretion to be exercised judiciously. One way of proper exercise of this discretion is to make an award that is in consonance with the underlying objective for which an order of interest is made.”

13. Responding to the Respondent's submission on the **doctrine of estoppel**, the Claimant referred the Court to paragraph 4 of the written consent whereby **the issue of interest was left for determination by the Court.**
14. It is to be appreciated that the recording of a Consent Judgment regarding the Claimant's principal claim for owing salary **despite the passage of time placed both the claim and the decree therefrom within the parameter of the law.** The Respondent is **estopped** from either pleading limitation regarding interest on the principal sum or accusing the Claimant of **indolence** for taking too long before suing to recover her salary arrears, money that she had worked for, and which the Respondent had **failed** to pay until it was sued. The Respondent has not told the Court **why** the salary arrears had not been paid before suit.
15. Awarding of interest on the decreed sum **is in the discretion of the Court**, which the Court must exercise Judiciously, **taking into account the peculiar circumstances of the case herein.** It is to be noted that the Consent Judgment recorded herein did **not** contain a

waiver of the Claimant's right to claim and/or pursue an award of interest as prayed in her Memorandum of Claim. Parties could simply not agree on that issue, and they agreed/consented to leave it for determination by the Court. The principal sum was settled within 3 months of signing of the Consent Judgment, and delay in settling the salary arrears **cannot** be said to have been **caused** by the Claimant's **acceptance** of payment by 3 equal monthly instalments. The delay in payment dates back to **2017**.

16. The Respondent's **good conscience** in agreeing to settle the salary arrears despite the suit having been filed out of time cannot, however, be wished away. Consequently, and in the interest **of fairness**, I award the Claimant interest on the decreed sum at Court rates, to be calculated, **not from 2017** as sought in the Memorandum of Claim, **but from 2021 until the date when the sum was settled**.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS

6TH DAY OF FEBRUARY 2026

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Ms A. Kamau the Claimant

Miss Nyamu for the Respondent