



REPUBLIC OF KENYA



KENYA LAW
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**Munyua v Moi Teaching & Referral Hospital & 3 others (Cause
359 of 2016) [2026] KEELRC 371 (KLR) (16 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 371 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 359 OF 2016
NZIOKI WA MAKAU, J
FEBRUARY 16, 2026**

BETWEEN

EDITH KATHURE MUNYUA CLAIMANT

AND

MOI TEACHING & REFERRAL HOSPITAL 1ST RESPONDENT

WILSON ARUASA 2ND RESPONDENT

ANN CHEMWORSIO 3RD RESPONDENT

THOMAS NGETICH 4TH RESPONDENT

RULING

1. By a Notice of Change of Advocates dated 19th December 2025, the firm of KOMM Advocates came on record for the Respondents and subsequently filed an application dated 24th December 2025. The application arises from this Court's judgment delivered on 18th July 2019, in which the Claimant was awarded Kshs. 1,503,680/- together with interest at court rates. The Respondents seek the following orders:
 - a. Spent;
 - b. Spent;
 - c. That the decree for Kshs. 4,122,457.57 be set aside in its entirety;
 - d. That the applicable interest rate to the judgment sum be declared as 12% and the accrued interest be recomputed accordingly;
 - e. That costs of the application be provided for.



2. The application is premised on the grounds on its face and the supporting affidavit of Dr. Benjamin Kipchumba a senior administrator at the 1st Respondent. The Respondents contend that the Claimant applied an interest rate of 14%, resulting in the extraction of an excessive decree in the sum of Kshs. 4,122,457.57. The Respondents maintain that the applicable interest rate is 12% pursuant to Practice Notice No. 1 of 1982 issued by Simpson Ag CJ. According to the Respondents, application of the correct interest rate would yield a total sum of Kshs. 3,119,311.62, and given that Kshs. 1,503,680/- had already been paid, the outstanding balance would be Kshs. 1,615,631.62. They therefore assert that considerations of fiscal integrity require that the Claimant be paid only what is lawfully due.
3. In Response the Claimant swore a replying affidavit on 21st January 2026. She contended that the application was incompetent as the Respondents' advocate had failed to seek leave to come on record after judgment in accordance with Order 9 Rule 9 of the Civil Procedure Rules. She further argued that the application constituted an abuse of the court process, noting that the Respondents' counsel had previously sought indulgence to pay the decretal sum of Kshs. 4,122,457.57 prior to filing the application. The Claimant also contended that the decretal amount had been reviewed downward from Kshs. 6,656,156/- to Kshs. 4,122,157/- pursuant to the Court's directions, meaning that the warrants of execution issued were therefore sanctioned by the Court. She maintained that the Respondents were at all material times aware of the interest rate applied but failed to challenge it timeously. Consequently, she argued that no sufficient grounds had been laid to warrant the exercise of the Court's discretion in favour of the Respondents, that no substantial loss had been demonstrated, and that she was entitled to enjoy the fruits of her judgment. She urged the Court to dismiss the application with costs.
4. The parties thereafter filed written submissions.

Respondents'/Applicants' Submissions

5. The Respondents identified the following issues for determination:
 - i. Whether the Court rates applied in computing the decretal sum are excessive and contra-statute; and
 - ii. Whether the decretal sum ought to be recomputed.
6. On the first issue, the Respondents submitted that the applicable interest rate was 12% pursuant to section 26(1) of the *Civil Procedure Act*. They further relied on Practice Direction No. 1 of 1982 issued by Simpson Ag. CJ, which established 12% as the default court rate. To reinforce this position, they cited the decision of the Court of Appeal in *Kipchumba v BOG Tambach Teachers Training College* (Civil Appeal 100 of 2019) [2023] KECA 802 (KLR), where the Court held that, absent special or exceptional circumstances, the applicable interest rate is 12% per annum from the date of filing suit until payment in full.
7. The Respondents maintained that even though the court had discretion to order higher interest rates, the circumstances of this case did not justify the exercise of that discretion. They highlighted their willingness to settle the decretal amount and pointed out that they had already paid Kshs 1,503,680/=. They urged the Court to invoke its inherent jurisdiction under section 3A of the *Civil Procedure Act* to protect them from the application of unreasonable interest rates.
8. On recomputation of the decretal sum, the Respondents submitted that recalculation was necessary in the interests of equity and the fair administration of justice. They asserted that this would promote fiscal integrity by ensuring that interest remains within the confines of the law while guaranteeing that the Claimant receives only what is lawfully due.



Claimant's/Respondent's Submissions

- 9 On her part the Claimant identified the following issues for determination:
- i. Whether the application is competent, having been filed by an Advocate not properly on record;
 - ii. Whether the application has satisfied the conditions for grant of stay execution;
 - iii. Whether the Respondents are estopped from challenging the interest rate;
 - iv. Whether the Court can vary or cap the interest rate post judgment as sought; and
 - v. Whether the application offends the doctrine of finality of judgments.
10. On the issue of competence, the Claimant submitted that the application was fatally defective, having been filed by an advocate who had not properly come on record in compliance with Order 9 Rule 9 of the Civil Procedure Rules. She asserted that no leave of court was sought nor was any consent filed between outgoing and incoming counsel, rendering the Notice of Change irregular and devoid of legal effect. She further contended that non-compliance with Order 9 Rule 9 was not a mere technicality curable under Article 159(2)(d) of *the Constitution*, and urged the Court to strike out the application in limine.
11. With regard to stay of execution, the Claimant submitted that the Respondents had failed to meet the mandatory requirements under Order 42 Rule 6(2) of the Civil Procedure Rules. She averred that no substantial loss had been demonstrated, emphasizing that a money decree does not, by itself, constitute substantial loss. She further submitted that the application had been filed after inordinate delay, despite service of warrants of execution and the Respondents having been afforded several opportunities to challenge the interest computation earlier. Moreover, the Claimant contended that no security for due performance of the decree had been offered. She thus urged the Court to dismiss the application.
12. On estoppel, the Claimant submitted that the Respondents were precluded from challenging the 14% interest rate, having acquiesced to it by their conduct. She pointed out that warrants computed at 14% were served upon the Respondents without objection, and that the Respondents thereafter appeared in Court and gave assurances to settle the decretal amount as computed. She asserted that the present application, filed after the commencement of execution, amounted to approbation and reprobation. Reliance was placed on *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR, *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 13 and *Republic v Kenya Revenue Authority ex parte Aberdare Freight Services Ltd* [2004] eKLR in which the common thread was that a party was estopped from resiling from its earlier position.
13. On the issue of variation and recomputation of interest post-judgment, the Claimant submitted that the Court was functus officio. She contended that the Court had already exercised its discretion under section 26 of the *Civil Procedure Act* by awarding interest at 14%, and that once judgment and a decree had issued, the Court could not reopen or vary the substantive terms except through review or appeal. She maintained that the Respondents had not sought for review under Order 45 demonstrating any error apparent on the face of the record or discovery of new evidence, and thus the current application amounted to an abuse of process and a backdoor appeal.
14. On finality of litigation, the Claimant submitted that litigation must come to an end and that she was entitled to enjoy the fruits of her judgment. She averred that allowing the application would unjustly prejudice her through an unlawful reduction of the decretal amount. She further maintained that the



Respondents had approached the court with unclean hands and in bad faith hence should not benefit from equity. In conclusion, she urged the court to dismiss the application with costs.

Respondents' Supplementary Submissions

- 15 In their supplementary submissions, the Respondents reiterated their position that the applicable interest rate was 12%, and maintained that this position had not been substantively challenged. They submitted that the Court is vested with jurisdiction to set aside unlawful notices of execution, and that the issue of interest therefore tilted in their favour. On the question of representation, the Respondents asserted that Order 9 Rule 9 of the Civil Procedure Rules was inapplicable to proceedings before this Court. The Respondents contended that the provision applies only to the High Court and subordinate courts, and that the Civil Procedure Rules are applicable to proceedings before the Employment and Labour Relations Court only where expressly incorporated by the Employment and Labour Relations Court (Procedure) Rules. In support of this position, they relied on the case of *Prisca Jepngétich v Generation Career Readiness Social Initiative Limited* [2021] KEELRC 1672 (KLR) where the Court held that proceedings before the Employment and Labour Relations Court are governed by the *Employment and Labour Relations Court Act* and its Procedure Rules. The Respondents maintained that Order 9 Rule 9 had not been incorporated into those Rules and therefore could not govern change of advocates after judgment in this Court. They further submitted that section 22 of the *Employment and Labour Relations Court Act* safeguards the right to legal representation without qualification, and that dismissing the application on grounds of representation would elevate procedural technicalities over substantive justice. They accordingly urged the Court to allow the application.

Disposition

16. The Respondents have sought the reopening of the case citing an unlawful rate of interest highlighting the rate applied vide the Practice Directions of Simpson Ag. CJ (as he then was) in 1982. In Courts across this realm, the applicable rate of interest is 12% per annum with courts being permitted to order up to 14% per annum. In this case the rate of 12% should be applied as it was not directly ordered that the rate of 14% was to apply. The outstanding sum should be recalculated with this in mind. Previous payments were acquiesced to and therefore cannot be recalculated as the Respondents admitted and paid the sums on the decrees issued by this Court. To be clear, this order on 12% rate of interest is only applicable to the sums claimed to be outstanding. There is no order in respect of this application.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 16TH DAY OF FEBRUARY 2026

NZIOKI WA MAKAU, MCIARB.

JUDGE

