



**Ayieko v South Nyanza Sugar Company Limited (Civil Appeal
E078 of 2023) [2026] KEHC 3090 (KLR) (4 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E078 OF 2023
DKN MAGARE, J
MARCH 4, 2026**

BETWEEN

JOHN OUMA AYIEKO APPELLANT

AND

SOUTH NYANZA SUGAR COMPANY LIMITED RESPONDENT

JUDGMENT

1. This appeal arises from the Judgment of Hon. C.N.C. Oruo delivered on 5.10.2023 in Rongo PMCC No. 160 of 2017.
2. The appellant pleaded a single ground in the Memorandum of Appeal dated 6.11.2023, that the learned magistrate erred in law and fact in failing to state that interest would start running from the date of filing the suit.
3. The appeal is clearly against a portion of the judgment dated 5.10.2023. The lower court found the Respondent in breach of contract and awarded losses incurred by the Appellant due to inaction by the Respondent. The Respondent was said to have not harvested the Appellant's sugarcane when the same became due as a result of which the 1st ratoon and 2nd ratoon were compromised leading to losses.
4. In its judgment, the court stated as follows:

The total award payable to the Plaintiff is tabulated as follows:

Plant crop - Ksh. 37,198.63

Ratoon 1 – Ksh. 27,540.40

Ratoon 2 – Ksh. 27,540.40

Total – Ksh. 91,979.43



Costs and interest of the suit.

Analysis

5. The issue that falls for this Court's determination is whether the lower court erred in law and fact by not stating when interest could start running.
6. 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.
7. This being a first appeal, the court should with judicious alertness re-evaluate the evidence, and consider arguments by parties and apply the law thereto, and, make its own determination of the issues in controversy. Except however, that it should give allowance to the fact that it neither saw nor heard the witnesses' testimonies. In the case of *Selle & Another vs. Associated Motor Board Company Ltd.* [1968] EA 123, the Court stated as follows:

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
8. The impugned interest, though not stated by the Appellant, was simple interest under Section 26 of the *Civil Procedure Act*. It is settled that simple interest on liquidated damages should commence from the date of filing the suit. In the celebrated *Mukisa Biscuits Manufacturing Company Limited v West End Distributors Limited* (1970) EA 469 the court stated as follows:

The principle that emerges is that where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interests from the date of filing suit. Where, however, damages have to be assessed by the Court, the right to those damages does not arise until they are assessed and therefore interest is only given from the date of the judgment.
9. The trial court erred in not stating when interest would start running. Leaving it open the way she did implied that simple interest could be applied by default at court rates from the date of judgment,



which was erroneous and would limit the Appellant's entitlement to full interest at court rates. In the case of *Intraspeed Logistics Ltd & 15 others v Commissioner of Police & another* [2018] eKLR, the court stated as follows:

...The plaintiffs are entitled to interest but in the absence of proof of commercial rates they are only entitled to interest at court rates.

10. Therefore, the Appellant was entitled to simple interest at court rates from the time of filing the suit, which was 3.7.2017. Interest on liquidated damages that the Appellant sought and obtained in the lower court accrued from the date of filing the suit, not the date of judgment. I interfere with the judgment to this extent. In *Jane Wanjiku Wambu v Anthony Kigamba Hato & 3 others* [2018] eKLR, the court stated as follows:

32. I have come to the conclusion that the Learned Trial erred by not adverting her mind to whether interest was payable on the liquidated sum she ordered the Respondent to pay to the Appellant. Had the Learned Trial Magistrate done so, she would have likely reached the conclusion that the Appellant was entitled to an award of interest at Court Rates from the time of filing the suit since she had already concluded that the Appellant was entitled to a liquidated amount which she had been deprived of by the actions of the Respondents. This is the predictable rule on award of interest on liquidated sums that has emerged from our Courts' repeated application of Section 26 of the *Civil Procedure Act*. The cases cited above reached the conclusion that where a claim is for liquidate damages, unless there is good cause, the interest should be calculated from the date of filing the suit.

11. It is thus the finding of this court that the lower court ought to have specified interest on a liquidated sum from the date of filing suit. That is the only extent to which this court makes a variation on the judgment of the lower court.

12. The issue of costs is governed by Section 27 of the *Civil Procedure Act*, which provides as follows:

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

13. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating



the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

14. In the circumstances of this case, each party will bear their own costs.

Determination

15. In the upshot, I make the following orders:

- a. The appeal is allowed and interest applied at court rates from the date of filing the suit.
- b. For the avoidance of doubt, interest on the award by the lower court will accrue at court rates from the date of filing the suit on 3.7.2017.
- c. Each party to bear own costs of the appeal.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 4TH DAY OF MARCH, 2026.
JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

No appearance for the Appellant

Mr. Bosire for the Respondent

Court Assistant – Michael

