

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL CASE NO. 493 OF 2014

RIFT VALLEY RAILWAYS KENYA LIMITED
PLAINTIFF

VERSUS

CANNON ASSURANCE LIMITED
.....DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit seeking special damages in the sum of Kshs. 68,434,944.71 together with interest and costs. The claim arises out of an insurance policy known as the “Cannon Bond Policy” allegedly issued by the Defendant in October 2011.
2. The Defendant filed a defence and counterclaim dated 12th February 2015 denying liability and seeking judgment against the Plaintiff in the sum of Kshs. 8,044,487.07 together with compound interest at 10% per annum from June 2013 until payment in full.
3. On 18th March 2025, the Plaintiff failed to attend court to prosecute its claim. Consequently, the Plaintiff’s suit was dismissed for non-attendance. What remains for determination is the Defendant’s counterclaim, which proceeded to hearing.

Plaintiff's case (now dismissed)

4. In its plaint, the Plaintiff averred that on or about 10th May 2011, it approached the Defendant seeking an insurance plan to facilitate systematic savings to meet anticipated redundancy and voluntary termination costs. It is pleaded that the policy was for a term of two years with an assured sum of Kshs. 350,985,519.00 inclusive of taxes and levies.
5. The Plaintiff further pleaded that it entered into Insurance Premium Financing (IPF) agreements with CFC Stanbic Bank Limited and Diamond Trust Bank Limited to finance the premiums payable to the Defendant.
6. It contended that upon seeking full surrender of the policy to fund its retrenchment programme, the Defendant failed to meet the full surrender value, thereby occasioning additional financing costs and interest totaling Kshs. 68,434,944.71.
7. As earlier stated, the Plaintiff's claim was dismissed for want of prosecution and therefore does not fall for substantive determination.

Defendant's case and counterclaim

8. The Defendant admits issuing the Cannon Bond Policy but states that the same was subject to payment of the full premium. Upon the Plaintiff's request for Insurance Premium Financing, the policy was limited to a sum assured of Kshs. 322,157,024.25, with an additional Kshs. 28,828,496.75 in respect of taxes and charges.

9. It is the Defendant's case that under the IPF arrangements, any unutilized or refundable premiums were to be held in trust for the financing banks in the event of default.
10. The Defendant contends that the Plaintiff defaulted in honoring its obligations under the IPF agreements, leading Diamond Trust Bank (DTB) to appropriate Kshs. 8,044,487.07 from fixed deposits placed by the Defendant as security.
11. In support of the counterclaim, the Defendant called one witness, Isaac Wabuge, who adopted his witness statement dated 30th October 2024 and produced the bundle of documents dated 9th February 2015. He testified that the Plaintiff defaulted in premium payments and that the Defendant paid DTB Kshs. 28,200,442.00, leaving a balance of Kshs. 8,044,487.07, which is now claimed from the Plaintiff.
12. The Plaintiff did not adduce any evidence to rebut the counterclaim.

Analysis and determination

13. The Plaintiff suit having been dismissed the only surviving issue is the counterclaim. Having considered the counterclaim, the witness testimony and the submissions, the following issues arise for determination:
 - i. Whether the Defendant has proved its counterclaim on a balance of probabilities.*
 - ii. Whether the Defendant is entitled to the sum of Kshs. 8,044,487.07.*

iii. Whether compound interest at 10% per annum is payable.

iv. Who should bear the costs.

14. The burden of proof lies on the party who asserts a claim. Section 107 of the Evidence Act provides that he who alleges must prove.

15. In **Kirugi & Another v Kabiya & 3 Others [1987] KLR 347**, the Court of Appeal held that even where evidence is uncontroverted, the claimant must still prove its case on a balance of probabilities.

16. In the present case, the Plaintiff did not contest the counterclaim. The Defendant's evidence therefore, remains uncontroverted. The documentary evidence placed before the Court demonstrates the existence of IPF arrangements, the Plaintiff's defaulted in honouring repayment obligations, and the appropriation by DTB of Kshs. 8,044,487.07 from the Defendant's deposits.

17. The Defendant's witness testified that the loss arose directly from the Plaintiff's failure to honour its irrevocable undertaking under the IPF agreements.

18. The Court is satisfied that the Defendant discharged its burden of proof. The evidence establishes a direct causal nexus between the Plaintiff's default and the Defendant's financial loss.

19. The counterclaim is for a specific and ascertained sum. Special damages must not only be specifically pleaded but strictly proved. The Defendant pleaded the precise sum of Kshs. 8,044,487.07 and produced documentary proof demonstrating that the amount was appropriated by the bank as a consequence of the Plaintiff's default.
20. The Court therefore finds that the Defendant is entitled to judgment in the sum of Kshs. 8,044,487.07.
21. The Defendant has also sought an award of compound interest at the rate of 10% per annum from June 2013.
22. The law on compound interest is settled. Compound interest is not awarded as a matter of course. It must be founded upon an express contractual provision, statutory authorization, or established mercantile usage. In the absence of such foundation, courts ordinarily award simple interest. In **Highway Furniture Mart Ltd v Permanent Secretary Office of the President & Another [2006] eKLR**, the Court emphasized that:

“Interest prior to judgment must arise from agreement, statute, or trade usage; otherwise, it is discretionary and ordinarily simple.”
23. Further, in **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR**, the Court of Appeal reiterated the binding nature of contractual terms and held:

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”

24. In the present case, the Defendant has not placed before the Court any contractual clause expressly providing for compound interest at 10% per annum. Neither has it demonstrated any statutory or trade usage basis for compounding.

25. In those circumstances, this Court declines to award compound interest. Instead, it shall exercise its discretion under Section 26(1) of the Civil Procedure Act, which provides:

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 prior to 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.

26. Guided by that provision, the Court awards interest at court rates from the date of filing the counterclaim until payment in full.
27. Upon evaluation of the evidence on record, the Court is satisfied that the Defendant has proved its counterclaim on a balance of probabilities.
28. On the issue of costs, Section 27(1) of the Civil Procedure Act provides that costs follow the event unless the Court, for good reason, orders otherwise. The Defendant having succeeded in its counterclaim, and there being no reason to depart from the general rule, it is entitled to costs.
29. In the result, judgment is hereby entered for the Defendant on the Counterclaim as follows:
- i. Kshs. 8,044,487.07.***
 - ii. Interest at court rates from 12th February 2015 (the date of filing the counterclaim) until payment in full.***
 - iii. Costs of the counterclaim.***
 - iv. For avoidance of doubt, the plaintiff's primary suit remains dismissed for want of prosecution.***

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **26th** day of **February** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Mitto for Defendant-Counter claimer

Court Assistant: *Carlos*