

REPUBLIC OF KENYA
HIGH COURT OF KENYA AT BUSIA
MISCELLANEOUS APPLICATION (JR) NO. 15 OF 2011

REPUBLIC.....APPLICANT

VERSUS

MUNICIPAL COUNCIL OF BUSIA.....1ST

RESPONDENT

THE CLERK, MUNICIPAL COUNCIL OF BUSIA.....2ND

RESPONDENT

AND

COUNTY GOVERNMENT OF BUSIA.....INTERESTED PARTY

EX PARTE: JULIUS ORINA MANWARI t/a MANWARI & COMPANY, ADVOCATES

RULING

1. On 3rd October 2025, I delivered a ruling herein, citing Mr. Gypson Ojiambo Wafula, the County Executive Officer of the interested party, responsible for finance, and the accounting officer, for contempt of court, for failure to settle the award, the subject of the *mandamus* order made herein on 30th July 2013. The said *mandamus* order had been sought and obtained vide a Motion, dated 25th May 2011, claiming a total of Kshs. 7,804,294.00, being combined taxed Advocate-client fees, for some 75 or so cases, in which the *ex parte* applicant had allegedly acted for the respondents, who were the predecessors of the interested party. The ruling of 30th July 2013, was by Kimaru J, but was delivered by Tuiyot J.
2. There has been, over the years, a push for settlement of the decree arising from that ruling. Several contempt applications were filed, some were handled by Karanjah J, and some by me. I dismissed one, on 15th March 2024, which targeted Ms. Topister Wanyama, a County Executive Officer, of the interested party, responsible for finance, on the basis that she was not the relevant accounting officer, who would

have been responsible for settlement of that decree. It was Ms. Topister Wanyama who disclosed the name of the appropriate accounting officer, Mr. Gypson Ojiambo Wafula. Mr. Gypson Ojiambo Wafula was served with the relevant papers, to wit, the order of 30th July 2013, pursuant to orders that I had given on 26th July 2024. There was no compliance, hence contempt proceedings were initiated, vide the Motion of 14th February 2025, which led to the citation of Mr. Gypson Ojiambo Wafula, and his conviction and sentence on 21st October 2025.

3. Mr. Gypson Ojiambo Wafula subsequently filed an application, dated 21st October 2025, seeking stay of execution of sentence, and raising a variety of other issues, and stay orders were granted, which he has been enjoying to date. He presented proof that a portion of the monies claimed had been paid. Payment vouchers for Kshs. 4,481,246.65, Kshs. 82,832.65, Kshs. 240,214.00 and Kshs. 3,451,206.00 were attached, to support his case.
4. On 25th November 2025, Mr. Mogi, the Advocate for the *ex parte* applicant, conceded to have been paid Kshs. 7,804,294.00, which was the principal amount pronounced by Kimaru J, in the ruling of 30th July 2013. Mr. Omboko, the County Attorney, for the interested party, argued that the interested party had fully complied with the order of 30th July 2013. Mr. Mogi countered that the interest on that amount had not been settled. According to the application, dated 14th February 2025, the total decretal amount stood at Kshs. 36,841,473.00, as at that date, upon interest being loaded on the judgment sum of Kshs. 7,804,294.00. Mr. Omboko countered that the order, of 30th July 2013, was silent on interest, hence interest was not applicable, nor payable.
5. I ruled, on 25th November 2025, that it appeared that the principal amount, of Kshs. 7,804,294.00, had been paid in full, and what had been left outstanding was whether interest accrued on that figure of Kshs. 7,804,294.00. I directed the parties to file written submissions on that issue. There has been compliance.

6. The *ex parte* applicant contends that the amount of Kshs. 7,804,294.00 was to be paid in 30 days, it was not paid, hence, interest accrued, at the rate of 14%, from 30th July 2013 till 22nd October 2025, when the principal amount was fully settled. It is further contended that the total principal or decretal amount, exclusive of interest, was not even Kshs. 7,804,294.00, but Kshs. 7,917,036.00, because costs had been assessed at Kshs. 112,742.00, as per the certificate of taxed costs of 3rd February 2014. It is submitted that that amount, of Kshs. 112,742.00, is still outstanding.
7. On the interest, he cites Paragraph 7 of the Advocates (Remuneration) Order, 1962, and section 26 of the Civil Procedure Act, Cap 21, Laws of Kenya. Paragraph 7 of the Advocates (Remuneration) Order, 1962 allows Advocates to charge interest at 14%, on disbursements and costs, provided that the claim for interest is raised before the bill is paid. Section 26 of the Civil Procedure Act gives discretion to the court to order interest on a principal sum. It further provides that where the decree is silent on interest, from the date of decree, interest shall be deemed to have been ordered at 6% per annum.
8. It is further submitted that the interested party had acquiesced to interest charged at 14% per annum, when it appeared to concede that it owed Kshs. 36,000,000.00, on 21st October 2025, and when it approved a payment voucher of Kshs. 3,700,000.00.
9. On its part, the interested party submits that the ruling, of 30th July 2013, was silent on interest. It is submitted that award of interest is not automatic or a matter of right, for it rests with the discretion of the court, and where it is not awarded, then it cannot be paid. It is submitted that, although the *ex parte* applicant had prayed for interest at 14% per annum, in the application of 25th May 2013, that prayer was not considered. Decisions, in *Otieno Nalwayo vs. Mumias Sugar Company Limited* [2015] KEELRC 404 (KLR) (Onyango, J) and *Joseph Kamira Wanjau vs. Lloyd K. Kabaiya & 2 others* [2018] eKLR [2018] KEHC 1839 (KLR) (Janet Mulwa, J), are cited, where it was held that where interest is not awarded by the court, it cannot be payable.

10. It is not contested, that the ruling of 30th July 2013 was silent, on whether interest was to be loaded on the principal amount of Kshs. 7,804,294.00. The issue that arises is whether, in view of that silence, the *ex parte* applicant would be entitled to charge interest on the decretal amount, at 14% or any other rate. The *ex parte* applicant asserts that he is entitled, the interested party submits that he is not.
11. I have considered the provisions of the statutes and the case law cited by the parties, and I have done my own review of statutes and case law on the subject. The issue that arises is whether interest should be charged on a judgment sum, where the court decision, making the award of the principal sum, is silent on interest, and, if interest can or ought to be charged, at what rate.
12. My understanding of it is that the right to post-judgment interest, as in this case, is covered by statute, and the law implies, so long as there is statutory basis for it, that interest, on a judgment sum, automatically runs from the date of pronouncement until paid in full. It is my further understanding that because the statute provides for it, the court does not even have to provide for it, and where, there is silence in a judgment on it, the statutory rate would apply.
13. The dispute herein is on post-judgment interest. The question, then, would be which statute applies or provides for it. The *ex parte* applicant has cited the Advocates Remuneration Order and the Civil Procedure Act.
14. The Advocates Remuneration Order would not apply, as what was before Kimaru J was not a taxation of an Advocate-Client bill. The Advocate-client bills had already been taxed, and the resultant certificates of taxation made decrees of the court, and these Judicial Review proceedings were for recovery of the total sums of those decrees. The issue of entitlement to costs or fees was not being re-litigated, nor subjected to appeal or ordinary review, in these proceedings, where the Advocates Remuneration Order would have been in contention. Rather, the instant

proceedings were on recovery of the taxed costs. The rates of interest, chargeable by Advocates, under the Advocates Remuneration Order, would only be for consideration by a court at taxation, but not at enforcement of the resultant decree upon taxation. Where a *mandamus* order has been made, in a recovery or enforcement suit or cause, such as the instant one, the Advocates Remuneration Order would be of no application, on calculation of interest, for its place would have been taken by the provisions of the Civil Procedure Act on interest.

15. The Civil Procedure Act provides for interest, at section 26. Section 26(1) gives discretion to the court to state the rate of interest chargeable on a principal amount awarded, and applies to both pre-judgement and post-judgement interest. Section 26(2) applies exclusively to post-judgement interest, and caters for those cases where the decision of the court is silent on whether interest would accrue on the principal amount, and at what rate. That is to say that section 26(2) would apply where no order on interest has been made under section 26(1). Section 26(2) provides that, in the event of such silence, it should be deemed that the amount would attract interest at 6% per annum. My understanding of that provision is that silence, on interest, in a decision of the court, does not mean interest is not payable. Where interest is not provided for or stated, in a ruling or judgment, on the amount awarded as principal sum, it shall be deemed that the same would accrue at 6% per annum.

16. I have reviewed some decisions, on section 26(2) of the Civil Procedure Act. I will start with the Court of Appeal, given that its decisions bind me. In *Kenya Planters Co-operative Union Limited vs. Interchem Co. Limited & 6 others* [2024] KECA 178 (KLR) (Warsame, M'Inoti & Mativo, JJA), it was stated that section 26(2) of the Civil Procedure Act applies where no other rate of interest has been specified by the court, and in the case of such silence, the rate would be 6% per annum.

17. My colleagues, at the High Court, have also weighed in. In *BOG Tambach Teachers Training College vs. Mary Kipchumba* [2018] eKLR [2018] KEHC 2836 (KLR)

(Muriithi, J), it was held that where a decree is silent on interest, it would be deemed that interest has been ordered at 6% per annum. The High Court decision above was followed, with approval, in *Kenindia Assurance Company Limited vs. Kariuki* [2022] KEHC 18074 (KLR) (Mrima, J), where it was said that, in the absence of an order on interest, the applicable rate would be that stated in section 26(2) of the Civil Procedure Act, that is 6% per annum. Similar remarks were made in *Ali & another (Suing as the Administrator of the Estate of the Late Hussein Asman Ali) vs. Multiple Hauliers EA Ltd* [2023] KEHC 26488 (KLR) (Olel, J).

18. The courts with equal status to the High Court have also dealt with the issue. In *Achuti & 29 others vs. County Government of Nakuru & another* [2025] KEELRC 2262 (KLR) (Rika, J), it was stated that section 26(2) of the Civil Procedure Act applies to correct judgments which are silent on interest, particularly where a party has expressly applied for interest in its pleadings.

19. I have considered the decisions above, against those cited by the interested party, that is to say *Otieno Nalwayo vs. Mumias Sugar Company Limited* [2015] KEELRC 404 (KLR) (M. Onyango, J) and *Joseph Kamira Wanjau vs. Lloyd K. Kabaiya & 2 others* [2018] eKLR [2018] KEHC 1839 (KLR) (Janet Mulwa, J). I am unable, with respect, to agree with the positions taken in the latter decisions. Section 26(2) of the Civil Procedure Act is, in my view, in clear and unambiguous language. Entitlement to interest is to be read into the silences in decisions which do not award post-judgement interest. Interest, at the rate of 6% per annum, automatically accrues, to decrees where interest is not specified in the ruling or judgment. There can possibly be no alternative construction to be given to that provision.

20. That then would mean that the *ex parte* applicant herein is entitled to interest, by virtue of section 26(2) of the Civil Procedure Act, at 6%, on the principal amount of Kshs. 7,804,294.00, from the date of the decree, that is 30th July 2013, until payment in full. There is also the matter of the costs of the Judicial Review proceedings. Costs were taxed, and awarded at Kshs. 112,742.00. Those costs do not appear to have

been settled. The costs form part of the decree. They should attract interest, at the same rate, of 6% per annum, from the date of the certificate of taxed costs.

21. The *ex parte* applicant has agitated for interest at 14% per annum. He has not provided legal justification for calculation of interest at that rate, apart from citing the Advocates Remuneration Order, which is of no application at this stage. There was also submission on acquiescence, by the interested party, to interest at 14% per annum. I have seen no proof of such acquiescence, from the material before me. In any case, the right or entitlement to post-judgment interest is not a matter for the discretion of the court, or the acquiescence of the parties, it has its foundation in statute. It is imposed by statute, and the court cannot use discretion to take it away from a party. Interest at 6% per annum is statutory.

22. The interested party has submitted about the slip rule not being available to be used to ascertain whether imposition of interest was left out inadvertently, on the implication that the court could have mistakenly omitted to award interest. Whatever the case, whether it is amnesia or use of discretion, where an award of money is made, and there is silence on the interest chargeable on it, section 26(2) of the Civil Procedure Act would apply. I would not wish to be drawn into considering whether not making a pronouncement on interest, or not explicitly stating interest would apply, would be an error, or omission, or slip, or exercise of discretion. Whatever it is, section 26(2) of the Civil Procedure Act covers it.

23. I could, though, still wade into that discussion. My understanding, of section 26 of the Civil Procedure Act, is that it grants discretion to the court to award interest. The court may or may not award interest. It is not bound to. Where there is silence, in a judgement or ruling, on interest, it should not be construed that the court made an error, or failed or omitted to award interest. It should, rather, be understood to be part of the exercise of discretion by the court, on whether or not to award interest. The court chooses not to award interest, by specifically or expressly or explicitly stating so. Put differently, where the court intends that interest should not apply,

should be a matter of explicit statement by the court, in clear and unambiguous terms, that interest shall not apply. Where there is a silence, there would be an automatic award of interest, at 6% per annum, by dint, of section 26(2), for that silence should be read to deem award of interest. The silence should be understood to be exercise of discretion, to have interest charged at 6% per annum.

24. The final order, in the circumstances, shall be that the interested party is hereby granted 90 days, to settle the accrued 6% interest, per annum, on the principal sum of Kshs. 7,804,294.00. It shall also, within the same period, pay the taxed or assessed costs of Kshs. 112,742.00, together with accrued interest, at 6% per annum, on that sum. The matter shall be mentioned, on 16th June 2026, for compliance. The bond, granted to Mr. Gypson Ojiambo Wafula, is hereby extended till 16th June 2026, and shall automatically stand cancelled, should the total decretal amount, together with the accrued interest, not be settled by that date. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 13TH DAY OF
MARCH 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Mogi, instructed by Manwari & Company, Advocates for the *ex parte* applicant.

Mr. Omboko and Mr. Akotsi, instructed by the County Attorney, for the interested party.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the 2nd interested party.

