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REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI COMMERCIAL AND TAX DIVISION
MILIMANI LAW COURT
HCCOMM CIVIL APPEAL NO. E046 OF 2025

ANNE WAIRIMU KURIA.....

APPELLANT

VERSUS

TAMARIND PROPERTIES

LIMITED.....1ST RESPONDENT

HFC BANK LIMITED..... 2ND

RESPONDENT

TAMARIND VALLEY EMBAKASI LIMITED..... 3RD

RESPONDENT

[Being an Appeal from the Judgment and Decree of the Chief Magistrate’s Court at Milimani Honourable B.M. Cheloti - PM made on 28th May, 2024, in Milimani CMCOMMSU E608 of 2021]

BETWEEN

ANNE WAIRIMU KURIA.....

PLAINTIFF

VERSUS

TAMARIND PROPERTIES LIMITED..... 1ST

DEFENDANT

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HOUSING FINANCE COMPANY LTD..... 2ND

DEFENDANT

TAMARIND VALLEY EMBAKASI LIMITED..... 3RD

DEFENDANT

JUDGMENT

1. This is Appeal arose from the decree of **Honourable B.M. Cheloti - PM** delivered on 28th May 2024. It is in respect to **Milimani MCCOMMSU E608 of 2021.**

Background facts:

2. The facts of the case are very similar to **HCCA E173 of 2024 Tamarind Properties Limited -vs- Anne Wairimu Kuria & 2 Others.**

3. The Appellant was the successful Plaintiff before the Trial Court. The 1st Respondent was the unsuccessful 1st Defendant. The 3rd Respondent was the 3rd Defendant. An interlocutory judgment was entered in favour of the Plaintiff against the 3rd Defendant in default of appearance and a defence. The suit against the 2nd Defendant was withdrawn long before the matter went through a trial. Therefore, they were not the subject of the judgement and or Decree of the Lower Court. They are also not parties to the Appeal.

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4. The Plaintiff sued the Defendants jointly and or severally seeking the following reliefs as per the Further Amended Plaint amended on 03.9.2021.
- a) *An order of permanent injunction restraining the Defendants and/or their agents, servants, employees and anyone acting on its behalf from selling and/or in any other way, interfering with the Plaintiff's quiet possession and/or ownership of the suit property being House No. CD2 erected on L.R. No. 7340/1077 and/or dealing with the same in a manner inconsistent with the interests of the Plaintiff thereon.*
 - b) *An order of mandatory injunction compelling the defendants to cause the partial Discharge of Charge on the suit property namely: House No. CD2 erected on L.R. No. 7340/1077 and to register the lease thereof in favour of the Plaintiff.*
 - c) *In the alternative and/or addition to prayer No. (b) above the Honourable Court be pleased to issue an order for specific performance of the Agreement for sale dated the 18th March, 2011 between the Plaintiff and the 1st 3rd Defendant.*
 - d) *General damages for breach of contract, mental torture and anguish against the Defendants.*

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- e) *Special damages for the loss of rental income at the rate of Kshs. 21,000.00 from 30th March, 2020 until the date of registration of the Lease in favour of the Plaintiff or the date of determination of the suit herein.*
 - f) *Further in the alternative to prayers (a), (b) and (c), this Honourable Court be pleased to issue an order of against the 1st and 3rd Defendants jointly and or severally for the refund to the Plaintiff and of the full purchase price in the sum of Kshs. 3,400,000/= paid by the Plaintiff to the 1st 3rd Defendant together with accrued interest at commercial rates or court rates, whichever is higher.*
 - g) *The costs of this suit and interest at Court rates.*
 - h) *Any other remedy that this Court may deem fit and just to grant.*
5. The Appellant sought the reliefs above as arising out of a breach of contract for sale of a property. This being a House No. CD2 erected on L.R. No. 7340/1077 in Embakasi. She sought for a refund of the purchase price of Kshs. 3,400,000/=.
6. The Appellant sued the Respondents jointly and/or severally for the reliefs sought.
7. The 1st Respondent opposed the suit and filed a defence. In respect of the 3rd Respondent, they did not enter and

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appearance or file a defence. This being a liquidated claim, a judgment was entered against the 3rd Respondent. The matter thereafter went on for a full trial in respect of the Appellant's claim as a Plaintiff against the 1st Respondent as the 1st Defendant.

8. The Court delivered a judgment on 29th May 2024 and held as follows:

a) That the 1st and 3rd Defendants to jointly and severally refund to the Plaintiff the full purchase price in the sum of Kshs.3,400,000/= paid by the Plaintiff to the 3rd Defendant.

b) The costs of this suit be borne by the 1st and 3rd Defendants

c) Interest on (a) and (b) above at court's rates from the date of delivery of this judgment until payment in full.

9. The 1st Defendant/Appellant being dissatisfied with the decision of the Trial Court, has preferred this appeal. It seeks the following reliefs in the Memorandum of Appeal dated 14.02.2025.

a) This appeal be and is hereby allowed.

b) The judgment of the Chief Magistrate's Court at Milimani

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- c) The Appellant be granted the costs of this Appeal.*
 - d) That this Honourable Court be pleased to make any further orders and directions that it may deem fit and just in the circumstance of the case.*
11. It is instructive to note that this Appeal is limited to the issue of interest only.

Issues for Determination

12. The Court has considered the Record of Appeal and the respective submissions filed by the parties as well as the oral highlights. It frames a single issue for determination.
- a) Whether the Trial Court erred in awarding interest from the date of judgment instead of from the date of filing suit.*

Analysis

13. This is a first Appeal. The Court is therefore duty bound to re-look, re-consider and re-evaluate the evidence presented before the trial court afresh. Then this Court has to reach its

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own conclusions. However, this Court has to bear in mind that it neither saw nor heard the witnesses, and should make allowances for such. **See Selle & another vs. Associated Motor Boat Co. Ltd & others [1968] E.A 123.**

14. When it comes to interfering with the exercise of judicial discretion, the Court turns to the case of **Mbogo & another Vs. Shah [1960] E.A. 93.** The assessment of awards of general damages is an exercise of Judicial discretion. The Appellate Court will not interfere unless the trial Court misdirected itself and has clearly been wrong in exercise of the discretion, that there has been a resultant injustice.

a) **Whether the Trial Court erred in awarding interest from the date of judgment instead of from the date of filing suit.**

15. **Section 26** of the **Civil Procedure Act** states 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.

15. Awarding of interest calls into play the exercise of discretion. The Court of Appeal has restated this position in **Haria & another v Shah [2024] KECA 527 (KLR)**.

“We are alive to the fact that under our jurisdiction, while an award of interest is largely discretionary, courts are guided by the provisions of section 26 (1) and (2) of the Civil Procedure Act is applicable. It provides as follows on the issue of interest:

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.*

It is trite then that a court under our jurisdiction has discretion to order that interest be paid on the amount adjudged from the date of the suit, before the institution of the suit, from the date of the court's decree and where the decree is silent with respect to payment of further interest, the same is payable from the date of decree to the date of payment or earlier date."

15. The Court notes that though this was a money decree, for a liquidated claim, the Trial Court awarded interest from the date of Judgement. This was money that the Appellant had paid over to the Respondents for a consideration that had wholly failed. She was duped into a purchase of a house, yet she never got the house. It would appear to this Court to be manifestly unfair to allow the Respondents to have kept the Appellant from the use of her money for a considerable period of time. The award of interest is also meant to

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compensate. The Trial Court did not assign any reasons why it directed payment of interest from the date of judgement.

16. The Appeal on this issue is well taken as the Court cannot find any explanation as to the Trial Court's exercise of discretion. It is not even clear whether that discretion was exercised or at all. For that reason, the Court will interfere with the discretion as it did not follow the laid down principles of the law. In **Haria & another v Shah [2024] KECA 527 (KLR)** the Court of Appeal was of the view that the following principle would apply in awarding interest in liquidated claims;

"As regards to when the interest rate should start accruing, we are of the view that this being a contractual liquidated sum, the interest should run from the date of filing the suit as this was money due to the respondent but he was kept out of it. This is a scenario unlike in general damages where the sum due must be assessed first by the court and the interest thereof starts running from the date of judgement.

In so holding, we are fortified by the decision of this Court in South Nyanza Sugar Company Limited vs. Oreko (Civil Appeal No. 138 of 2017) [2022] KECA 570 (KLR) (24 June 2022) where it was held that:

"The objective for awarding interest is to ameliorate the loss suffered by a party who has

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been kept out of use of money that would otherwise be due to him...The indubitable outcome is that interest on special damages will be from the date of filing of suit as the money would have been due to the claimant at the very least on that date."

We find and hold that the interest on Kshs. 36, 191, 604/= shall run from the date of filing suit, that is 19th July 2007 and at the rate of 12% until payment in full."

17. The Courts have followed this well beaten path **in Serenge v Mandala [2023] KEHC 801 (KLR)** and **Martin Gicimu Kamanga v Board of Governors, St Anne's Junior School, Lubao [2021] KEHC 1809 (KLR)**. There would be no good reason not to follow the same path.
18. As to costs, the same follow the event unless otherwise stated. There is no good reason to deny the successful Appellant the costs of this Appeal.

Determination

19. The Appellant's Appeal succeeds in the following terms;
 - (a) *This appeal be and is HEREBY allowed.*
 - (b) *The judgment of the Chief Magistrate's Court at Milimani*

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and is HEREBY set aside/quashed and instead substituted with an award of interest on the judgment/Decretal sum from the date of filing suit until payment in full.

c) The Appellant is granted the costs of this Appeal.

20. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS
12TH DAY OF MARCH, 2026.**

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of:

Mr. Ochieng for the Appellant.

N/A for Miss Gacheru for the 1st Respondent.

N/A for the 2nd Respondent.

N/A for the 3rd Respondent.

Peter Wabwire - Court Assistant.