



**Gatuhi v Kenya Climate Ventures (Employment and Labour Relations Cause 212 of 2019) [2024] KEELRC 285 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 285 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 212 OF 2019  
MN NDUMA, J  
FEBRUARY 15, 2024**

**BETWEEN**

**JOAN MUMBI GATUHI ..... CLAIMANT**

**AND**

**KENYA CLIMATE VENTURES ..... RESPONDENT**

**RULING**

1. The petitioner entered a consent – judgment dated September 25, 2023, the terms of which are as follows:-
  - a. That the respondent to issue a Certificate of Service to the claimant within fourteen (14) days upon execution of this consent.
  - b. That the claimant is awarded the sum of Kshs. 870,000/= (Kenya shillings eight hundred and seventy thousand) being three (3) months’ pay in lieu of notice, payable within forty five (45) days upon execution of this consent.
  - c. That the claimant is awarded the sum of Kshs. 725,000/= (Kenya shillings seven hundred and twenty-five thousand) being gratuity calculated at two and half months’ salary as provided in the Human Resource Manual, payable within forty-five (45) days upon execution of this consent.
  - d. That the claimant is awarded seven (7) months’ damages of Kshs. 2,030,000/= (Kenya shillings two million and thirty thousand) for unfair termination, payable within forty-five (45) days upon execution of this consent.
  - e. That the claimant is also awarded costs of Kshs. 312,000/= (Kenya shillings three hundred and twelve thousand), payable within forty-five (45) days of the execution of this consent.



- f. That the parties to file submissions on the award of interest on the sums above for the court to determine.
2. The petitioner referred the issue of payment of interest to the court having failed to agree on the same.
3. In determining the issue of costs and interest, this court is guided by the provisions of *Employment and Labour Relations Court (procedure) Rules, 2016*. In particular rule 29(3) provides as follows:-
- “Where a suit involving a liquidated amount that is claimed and specified at the time of filing a statement of claim, and the court orders that the amount claimed or part of the amount be paid to the claimant it may in addition to that order, direct that interest be paid on the liquidated amount awarded at court rates.”
4. In *Caltex Vil (Kenya) Limited versus Royo Limited* [2016] eKLR, the Court of Appeal held that:
- “This appeal raises two important issues. The first relates to the jurisdiction of this court as to whether the court has powers to grant an order not specifically pleaded in the plaintiff, pleadings are a shield and a sword for both sides. They have the potential of informing each party what they expect in the trial before the court. If a party wishes the court to determine or grant a prayer it must be specifically pleaded and prayed.”
5. In the present matter the claimant seeks to be awarded interest from the date of filing suit on liquidated or special damages by dint of two consented awards being terms (b) and (c) of the consent judgment.
6. The respondent states that the two awards cannot be granted interest from the date of filing suit since the memorandum of claim does not specifically provide for such a relief.
7. In *Joseph Osewe Ogola and 46 others versus Republic, Singh Sandhu* [2017] eKLR, the court stated:
- “It is clear from the plaint and draft further amended plaint that there was no prayer of liquidated damages specified in the plaint or amended plaint. It is further clear that the amount awarded was tabulated by the labour officer on directions of the court. The mention of a figure in prayers is not the same as liquidated amount that is claimed and specified at the time of filing a statement of claim (emphasis added).”
8. In *Shariff Salim and another versus Malundu K. Kava* (1989) eKLR the Court of Appeal stated:-
- “There is no gain saying the fact under section 26 of the *Civil Procedure Act*, the award of interests on a decree for payment of money for the period from the date of the suit to the date of the decree is a matter entirely within the discretion of the court. But this discretion being a judicial one must be exercised judicially. The whole issue at the end of the day is to do justice to both parties’.”
9. The claimant states that from the consent it is evident that the claim is a liquidated judgment and an award of interest to the claimant will be the most judicious application of discretion.
10. The claimant in the memorandum of claim specifically pleaded for alternative prayers as follows:-
- i. Certificate of Service;
  - ii. Three (3) months’ pay in lieu of notice at Kshs. 290,000/= amounting to Kshs. 870,000/=;



- iii. Salary for the remaining contractual period sixteen (16) months amounting to Kshs. 4,640,000/=;
  - iv. Bonuses entitlement under the contract of employment;
  - v. Twenty (20) days of accrued leave to March 31, 2019 amounting to Kshs. 267,692/=.
  - vi. Thirty two (32) days of expected leave until end of the contract amounting to Kshs. 428,308/=.
  - vii. Damages for unfair termination (twelve (12) months' salary amounting to Kshs. 3,480,000/=.
  - viii. Interest on the sums due above at court rates from the date of filing suit.
  - ix. Costs of the suit
11. Clearly, the claimant had pleaded for payment of interest at court rates from the date of filing suit in respect of the liquidated special damages as set out in prayers (ii) (iii) (v) and (vi). In the consent, item (b), the petitioner agreed that the respondent do pay the claimant Kshs. 870,000/= being three (3) months' pay in lieu of notice as was specifically pleaded in the memorandum of claim. The parties also agreed that the respondent do pay gratuity to the claimant in the sum of Kshs. 725,000/= being gratuity calculated at two and half months' salary as was specifically pleaded in the memorandum of claim.
12. The court finds that these two awards, being items (b) and (c) in the consent are payable by the respondent to the claimant with interest at court rates from date of filing suit till payment in full. However the award of damages in the sum of Kshs. 2,030,000/= and costs in the sum of Kshs. 312,000/= is payable with interest from date of the consent judgment being 25/9/2023 till payment in full.
13. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mr. Webo for claimant

Mr. Matheka for Respondent

Ekale: Court Assistant

