



Ng'ang'a v Sinopec International Petroleum Services Corporations Limited (Employment and Labour Relations Appeal 57 of 2017) [2024] KEELRC 1978 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1978 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL 57 OF 2017**

HS WASILWA, J

JULY 31, 2024

BETWEEN

PAUL NG'ANG'A APPLICANT

AND

**SINOPEC INTERNATIONAL PETROLIUM SERVICES CORPORATIONS
LIMITED RESPONDENT**

RULING

1. This ruling is in respect of the Appellant/ Applicant Notice of Motion Application dated 2nd July, 2024, filed pursuant to section 16 of the *Employment and Labour Relations Act*, 2011, Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 and all other enabling provisions of the law, seeking for the following Orders; -
 1. Spent.
 2. That the judgement and decree dated and delivered by Hon. Lady Hellen Wasilwa on the 26th day of June, 2024 be and is hereby reviewed and the Appellant be awarded interest at Court rates from the date of the judgement of the lower Court.
 3. That costs of this application be provided for.
2. The basis upon which the Application is filed is as indicated in the face of the Application and the supporting affidavit sworn by the Appellant on 2nd July, 2024.
3. It is stated that the Court on 26th June, 2024 delivered its judgement in this appeal in their favour but that the Court awarded interest to the Appellant at Court rates from the date of that judgement, when the trial court had awarded costs from the date of delivery of its judgement that was on 6th December, 2017.



4. That the said trial court award has not been paid to the Appellant to date. Further that there is no appeal or cross-appeal filed against the said award of interest by the lower Court. Furthermore, that the question of interest was not one of the issues that fell for determination by this Court in the appeal nor did the parties address the Court on that issue.
5. Therefore, that the Court by awarding the Appellant interest from the date of its judgement has in essence set aside and varied the award of interest to the Appellant by the lower Court without being moved to do so and without the Appellant being granted a chance to be heard. Moreover, that the Court did not give any reason for the variation of the date from which interest on the award was to run from that of the judgement of the lower Court to that of its judgement.
6. Based on the foregoing, he stated that there is an error apparent on the face of the record in the judgement of this Court in so far as it relates to the award of interest to the Appellant from the date of the judgement of the superior Court which is a sufficient ground to review its judgement to correct the error in the award of interest.
7. He stated that the application has been made within a reasonable time immediately after delivery of the judgement in issue.
8. In the supporting affidavit, the affiant contends that in allowing the appeal and at the same taking away the benefit of the accrued interest from him, amounts to the Court giving with one hand and taking away with the other.
9. The Application is opposed by the Respondent who filed a replying Affidavit sworn on 8th July, 2024, by Omwenga Kwamboka, the Advocate ceased of this matter on behalf of the Respondent.
10. In the Affidavit, the deponent stated that this Court rendered its judgement on 26/6/2024, in favour of the Appellant, where in the amount awarded was reviewed upwards and awarded interest from the date of judgement thus addressing itself to the totality of the issue.
11. She stated that there is no error apparent on the face of record or is there any ground of review available to the Appellant as provided by law. Further that the award of interest is a discretion of the Court which the court has exercised by awarding interest from the date of its judgement. Hence the issue is resolved and the fact that this Court has rendered itself on all the issues raised, the Court is functus officio and the current application is untenable.
12. She stated that in inviting this Court to change its mind on award of interest is tantamount to asking this Court to sit in Appeal of its own judgement.
13. It was stated also that when this Court set aside the decision of the trial Court for lacking jurisdiction, there was no award capable of earning any interest in the lower Court. Therefore, that the decision by this Court was proper and legally sound. She added that the allegations that the issue of interest did not fall for determination is not true, for the same reason that the lower court findings were set aside in totally, thus the issue remain pending and required this Court to determine it.
14. It is her position that the Appeal herein was not caused by any action and or inaction of the Respondent, therefore that it would be unfair if this Court would order them to pay accrued interest from the year 2017.
15. The deponent also stated that litigation must come to an end, however the same is stalling courtesy of the Applicant's various Applications, which the Respondent is forced to defend in effect retain counsel, which costs is expensive. On that basis, she urged this Court to disallow the Application.



16. The Application herein was canvassed by written submission, however only the Respondent filed Submissions, while the Applicant relied on their Application and the supporting affidavit.

Respondent's Submissions.

17. The Respondent submitted on two issues; whether the interest as awarded by the Court was proper and whether the Application for review is merited in the circumstances.
18. On the first issue, it was submitted that judgement in the trial Court was delivered on 6th December, 2017 and the Appellant, appealed against the Judgement, resulting to the trial Court decision being set aside on 23rd January, 2020. That the Appellant filed a further Appeal to the Court of Appeal, however before the Court of Appeal case was heard, Direction on WIBA matters were issued, Consequently, the Appellant withdrew its Appeal before the Court of Appeal and filed an Application for Review before this Court, which this Court heard the Appeal on merit and delivered its Judgement on 26th June, 2024. Hence, the time taken between the time the initial Appeal was filed and the determination thereof was not precipitated by the Respondent and thus interest for the said period, should not be attributed to the Respondent.
19. It was argued further that the award of compensation which the Appellant sought to be enhanced is in the nature of general damages, which interest is ordinarily paid from the date of the judgement. Moreover, that the Respondent did not contribute in keeping the Appellant away from enjoying the fruits of its judgement. Further that the delay was occasioned by the fact that the Jurisdiction of the Court was ousted for a while until directions were given by the Chief Justice in April, 2023.
20. To reiterated the argument that interest on general damages are awarded from the date of judgement, the Respondent relied on the case of *New Tyres Enterprises v Kenya Alliance Insurance* [1988] KLR 380 where the Court held that;-

“the court, under section 26(1) of the *Civil Procedure Act* has a wide measure of discretion on the question of interest.”
21. He also relied on the case of *Kenya Commercial Bank of Kenya V Sheikh Osman Mohammed* [2013] eKLR, where the Court held that;-

“the principle is that the award of interest is a matter of discretion but generally interest on general damages is awarded from the date of judgement, being the date when the principal obligation to pay is established.”
22. Based on these case law, the Respondent urged this Court to uphold its decision of awarding interest on damages from the date of the Judgement of this Court.
23. On whether the Application for Review is merited, it was submitted that award of damages is at the discretion of the Court aimed at meeting the ends of justice. Therefore that having set aside the entire judgement of the Trial Court, and being that the delay in determining the Appeal was not occasioned by any act of the Respondent, interest on the award given should remain from the date of judgement and not the date of judgement of the trial Court. In any event that to ask for review on the element of interest is the same as asking this court to sit on Appeal of its judgement.



24. In support of this, he relied on the case of *Republic v Public Procurement Administrative Review Board & 2 Others* [2018] eKLR, where the Court held that:-

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.”

25. He also relied on the case of *Sarder Mohammed V Charan Singgh Nand Singh and Another* [1959] EA 793, where the Court relied on the Supreme Court of India case of *Ajit Kumar Rath v Sate of Orisa & Others*; 9 Supreme Court case 596 at page 608, where the Court held that:-

“The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason... any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”

26. In conclusion, the Respondent submitted that the stringent conditions for review have not been met in this Application and the upshot is that the Applicant has failed to prove his Application on a balance of probability.

27. I have considered the application of the parties herein plus the submissions herein. The Applicant sought review of this court’s judgment dated 26th June 2024 which omitted to provide for costs of the case with effect from the date of judgment of the lower court.

28. I find that indeed, this was an error, the applicant having been awarded costs at the lower court and a matter at which this court was not invited to consider and which matter should be allowed to stay as ordered at the lower court.

29. I therefore find the application is merited and I allow it and review my judgment and indicate that costs of the appeal and of the lower court will be borne by the Respondents and interest be paid with effect from the date of judgment of the lower court. Costs in this appeal.

RULING DELIVERED VIRTUALLY THIS 31ST DAY OF JULY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of: -

Amboko for Applicant – present

Kiogora Mutai for Respondent – present

Court Assistant - Fred

