



Njeru v Meru South Farmers Cooperative Society Union Limited (Employment and Labour Relations Appeal 2A of 2024) [2024] KEELRC 2816 (KLR) (14 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 2816 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS APPEAL 2A OF 2024
ON MAKAU, J
NOVEMBER 14, 2024**

BETWEEN

FELISTER MUKWANJIRU NJERU APPELLANT

AND

**MERU SOUTH FARMERS COOPERATIVE SOCIETY UNION
LIMITED RESPONDENT**

JUDGMENT

Introduction

1. The main issue in this appeal relate to the rate of interest chargeable on a decretal sum and costs of the suit in a case where the trial court fails to indicate the same in the judgment.
2. A brief background of this case is that Appellant filed a plaint dated 17th December 2004 seeking employment benefits totalling to Kshs. 475,407.55 together with costs and interest thereon. On 24th June 2009, the trial Court Hon Ngare (SRM) entered judgement in favour of the Appellant for the sum of “Kshs. 260,0005.20 plus cost and interest”. On 22nd September 2009, the Court assessed the costs at Kshs. 100,725.35.
3. It seems that the respondent never settled the decretal sum plus the costs and by a notice of Motion dated 27th December 2021, it sought for stay of execution until the Court calculates the interest payable from the date of decree. In the respondent’s view, the interest ought to be at the rate of 6% per annum but the Appellant contended that the interest ought to be at 14% per annum. The court gave an interim stay on condition that the decretal sum was deposited in a joint Account between the counsel for the two sides.
4. By a ruling rendered on 9th November 2022, Hon Gandani (CM) pronounced that the rate of interest applicable was 6% based on section 26(2) and 27(2) of the *Civil Procedure Act*. The appellant proffered this appeal premised on seven grounds which it collapsed into two during submission.



5. The appeal was first filed in the High Court but later it was transferred to this court for determination. The appellant prayed for the ruling in Chuka CMCC No. 66 of 2004 to be set aside in its entirety, and substituted with an order that the applicable interest rate in this case is 14% per annum. She further prayed for costs of the appeal and at the lower court.

Submissions

6. The appellant submitted that on the following two grounds
 - a. What is the applicable interest in the circumstances of the case?
 - b. Whether the appellant is entitled to interest on both decretal sum and costs.
7. On the first question, it was submitted that the impugned ruling lacked merits as it set aside the applicable interest of 14% and directed that the applicable interest rate was 6% per annum. For emphasis, reliance was placed on BOG Tambach Teachers Training College v Mary Kipchumba [2018] eKLR where the Court discussed the issue of interest rate applicable to a decree and costs of the suit.
8. On the question, it was submitted that the applicant was entitled to interest on both the decretal sum and the costs of the suit. Consequently, the court was urged to set aside the impugned ruling and strike out the application dated 14th February 2021 with costs for being incompetent, bad in law and incurably defective.
9. On the other hand, the Respondent submitted that the main issue in the appeal was on the interest rate applicable in the circumstances of this case. It was submitted that correct interest rate in this case ought to be 6% as recognized by the lower court in the impugned decision. Reliance was placed on the provision of section 26(2) of the *Civil Procedure Act* to argue that the interest on judgment is 6% per annum where the trial court's judgement is silent on the percentage.
10. The Court was urged to consider the case of *Madison Insurance Company Limited v Mung'ot (Civil Appeal 215 of 2020)* KEHC 9800 (KLR) (Civ) (14 July 2022).
11. As regards the cost of the appeals, it was submitted that the Appellants should be condemned to pay since separate appeals were filed yet the trial court entered one ruling.
12. Besides, it was argued that, the Appellants were yet to pay the Kshs. 10,000/= throw away costs ordered by this Court on 12th April 2024 as condition for leave. Consequently, it was submitted that the failure by the appellant to comply with the said leave order means that the appeals ought to fail automatically. Further that, costs awarded by the Court in Chuka on 8th November 2023 were also not paid thus indicating the Appellants' unclean hands and thus the court ought to dismiss the appeals with costs.

Determination

13. This is a first appeal and my mandate is to re-evaluate the evidence, and the arguments presented before the trial Court as contained in the record of appeal and then reach my own conclusion bearing in mind that I never saw the witnesses when they gave their testimonies. In the case of *Selle v Associated Motor Boat Company Ltd* (1968) EA 123 where the court held thus: -

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this



respect. In particular, the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

14. Having considered the record of appeal, it is a fact that the trial court entered judgment for the appellant and awarded her costs and interest but never specified the applicable rate. Therefore, the only issue in contention is the interest rate applicable to both the decretal sum and the costs. The argument put forward by the Appellant is that the court rate of 14% should be applicable but the Respondent argued that the rate applicable was 6% as there was no specification of the rate by the Court. The Respondent further argued that the monies deposited in the escrow account was earning interest and therefore it should not be subjected to pay any other interest.

15. Section 26 of the *Civil Procedure Act* states as follows:

"(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."

16. The above sub-section (1) talks of interest in two levels. First is the interest chargeable for the period between the date of filing suit and date of the decree which ought to be at the rate fixed by the Court. The second is further interest chargeable from the date of the decree to the date of payment in full. The first is what is otherwise called the court rate and the default rate is 12% as per the Practice Notice Number 1 of 1982 by Chief Justice Simpson which stated thus:

"The *Civil Procedure act* (cap 21 laws of Kenya) section 26 enables the court to order interest on the principal sum adjudged in a decree both before and after the date of the decree to be paid at such rate as the court deems reasonable.

In the absence of any valid reason for ordering a higher or lower rate of interest, the rate of interest should be 12%."

17. The above Practice Notice was done to provide for a default rate of interest on the principal sum up to the time of the decree in the event the trial court failed to specify the applicable interest rate. It follows that where the trial court fails to exercise the discretion to specify the interest rate applicable on the principal up to the time of the decree, the rate shall be 12% per annum.

18. As regards further interest on the principal after the date of the decree, subsection 2 clarifies that, where the court does not provide for payment of interest from date of decree until payment in full, the decretal sum shall attract interest at the rate of 6%.

19. I see no difficulty in resolving the issue of interest in this appeal. The appellant was awarded interest but no rate was specified. Under section 26 above, the interest rate on the principal from the date of



filing the suit to the time of the decree is 12% per annum while rate of interest from the date of the decree to payment in full is 6% per annum. To that extent I find and hold that the lower court erred in concluding that the only interest payable on the decretal sum (principal) is the one provided in section 26(2) above being 6% per annum, without distinguishing the said interest levels. The interest rate of 6% only applies to further interest after the date of the decree and not earlier.

20. As regards costs of the suit, Section 27 of the *Civil Procedure Act* states as follows:

“ 27. Costs

1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”

21. Like in the case of interest on the decree, the Court has discretion to state the rate of interest payable on the costs of the suit up to a limit of 14% per annum. It is however, silent on what rate to apply automatically when the court fails to specify the interest rate. In the instant case the lower court ruled that the rate applicable is the 6% provided under section 26(2) of the Act. No justification was given for applying the said provision on costs yet parliament separated the two issues by enacting section 27 to deal with costs alone.

22. I take the view that by providing for the 14% interest rate under section 27(2) of the Act, parliament intended to make it the default interest in the event the trial court fails to specify the rate of interest to apply to costs of the suit. Consequently, where the court fails to specify the interest to be applied, then the rate of 14% shall apply on the costs assessed from the date of filing the suit. To that extent, I also find that the lower court erred by holding that the interest rate on the costs of the suit is 6% pursuant to section 26(2) of the Act.

Disposition

23. In view of the foregoing matters, I find merits in the appeal and allow in the following terms:

- a. The ruling in Chuka CMCC No.66 of 2004 and delivered on 9th November 2022 is hereby set aside.
- b. The applicable interest rate on the decretal sum and costs is as follows:
 - i. 12% on the decreed sum from date of filing to the date of the decree.
 - ii. 6% on the decreed sum from the date of the decree until payment in full.



- iii. 14% on the costs of the suit from the date of filing suit until payment in full.
- c. Costs of the appeal is awarded to the appellant.
- d. The Judgment to apply to all the other 7 appeals indicated in my order issued on 24th July, 2024.

DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF NOVEMBER, 2024.

ONESMUS N MAKAU

JUDGE

ORDER

This Judgment Has Been Delivered To The Parties Via Teams Video Conferencing With Their Consent, Having Waived Compliance With Rule 28 (3) Of The Elrc Procedure Rules Which Requires That All Judgments And Rulings Shall Be Dated, Signed And Delivered In The Open Court.

ONESMUS N MAKAU

JUDGE

