



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 832 OF 2014**

**JOHN WANJAU MAINA..... PLAINTIFF**

**VERSUS**

**ABERCROMBIE AND KENT LIMITED.....DEFENDANT**

**RULING**

1. On 5<sup>th</sup> April, 2019 Hon. Ndolo, J. made a Ruling that the suit was settled vide a consent recorded before Hon. Nderi Nduma J, on 2<sup>nd</sup> January, 2017 in terms of which the respondent was to pay the claimant Kshs. 848,366.47 in full and final settlement of the matter.

2. That the only outstanding issue was payment of interest and costs. Parties were directed by the learned judge, to file submissions on the issue of costs and interest.

3. It is a fact that the suit has been pending in Court since the year 2004, a period of 17 years.

4. The claimant had to wait for about 17 years to have the matter settled by consent of the parties.

5. It is apparent from the plaint filed on 14<sup>th</sup> January, 2004, the claimant sought the following reliefs: -

***(a) General damages.***

***(b) Interest on damages and costs of the suit.***

***(c) Any other relief the Court may deem fit to award.***

6. These reliefs were reiterated in the amended plaint which fact the respondent has admitted in paragraph 1.3 of its written submissions.

7. The general rule is that costs follow the event. It is also settled, that, where award of interest has been specifically pleaded, the Court has as a matter of course to award the same to the successful party be it in liquidated claim and /or a claim determined by consent of the parties at an agreed amount and/or by the Court upon hearing and determination of the suit.

8. The Civil Procedure Act, and Rules are clear on this matter and I need not belabour it.

9. Having considered the circumstances of this case, and the submissions by the parties, the Court finds and makes an order: -

***(a) That the respondent is to pay the decretal sum of Kshs 848,366.47 agreed upon by the parties in a consent recorded on 21<sup>st</sup> June, 2017 before Hon. Nderi Nduma J. with interest at Court rates from date of the consent till payment in full.***

***(b) That the respondent to pay the costs of the suit to the claimant.***

**Dated and delivered at Nairobi this 21<sup>st</sup> day of April, 2022.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

M/s Nyaguthii for the claimant

Mr. Weru for Respondent

Ekale - Court Assistant