



REPUBLIC OF KENYA



KENYA LAW
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**Owuor v Sameer Agriculture and Livestock Limited (Cause
1442 of 2015) [2022] KEELRC 1421 (KLR) (13 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1421 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1442 OF 2015
MA ONYANGO, J
MAY 13, 2022**

BETWEEN

JUDITH ATIENO OWUOR CLAIMANT

AND

SAMEER AGRICULTURE AND LIVESTOCK LIMITED RESPONDENT

RULING

1. Vide an application dated 9th March 2022 the Respondent/Judgment Debtor (herein referred as the Applicant) seeks the following orders:
 - i. The Honourable Court be pleased to determine the interest rate applicable
 - ii. The cost of this application be provided for.
2. The application is premised on the following grounds –
 - a. That judgment was entered in favour of the Respondent (sic) for Kshs.810,000.
 - b. That the Applicant has paid the Respondent (sic) the decretal sum minus the interest.
 - c. That the parties cannot seem to agree on the interest rate applicable
 - d. That this has necessitated the instant application.
 - e. That it is in the interest of justice that the court make a determination on the issue of interest applicable



3. The application is further supported by the affidavit of Paul Maina, the Assistant Legal Officer of the Respondent in which he substantially adopts the grounds in support of the application.
4. The Claimant/Decree Holder filed a replying affidavit sworn on 18th March 2022 opposing the application.
5. She deposes that judgment in this suit was delivered in her favour in the sum of Kshs.810,000/-. That the Court further awarded her costs and interest at Court rates and directed that the Applicant issues to her a certificate of service in accordance with Section 51 of the *Employment Act*.
6. The Decree Holder deposes that costs were taxed and a certificate of taxation issued by the Court on 13th May 2021 whereupon her Counsel wrote to Counsel of the Applicant computing the decretal sum, costs and interest as follows:

Judgement sum Kshs.810,000
 Interest at court rates from the date of judgement
 (24th July 2020) to July 2021
 (Kshs.810,000 x 12% x 1 year) Kshs.97,200.00
 Party and party costs Kshs.241,565.00
 Total Kshs.1,148,765.00

7. She deposes that her advocate requested for settlement of the decretal sum less statutory deductions to be remitted KRA, NSSF and NHIF. That the judgment sum was made up as follows: -

Net judgement sum Kshs.572,160.00
 Costs Kshs.241,565.00
 Total Kshs.813,725.00

8. She further deposes that the Respondent deducted Kshs.237,840/- being statutory deductions and undertook to remit the same to the statutory bodies which the Respondent has failed to remit or furnish proof of remittance to the decree holder.

9. She deposes that the Respondent has failed to pay interest at court rates from 24th July 2020 being the date of judgement to 11th August 2021 being the date when payment of the judgement sum less the

$$\frac{378 \text{ days}}{365 \text{ days}} \times (\text{Kshs.810,000} \times 12\%) = \text{Kshs.100,661.00.}$$

10. The application was heard in Court on 9th May 2022. Mr.Kefa Ombati appeared for the Decree Holder while Mr. Maina Karanja appeared for the Applicant/Judgement Debtor.
11. The only issue under contention is the rate of interest payable on the decretal sum. In the judgment of this Court, the Court ordered for payment of interest at Court rates from date of judgment until payment in full.
12. Mr. Maina submitted that Section 26(2) of the *Civil Procedure Act* provides that where a decree is silent on the rate or interest applicable the interest rate is 6%. He relied on the decisions in *Gervasio Muriira & 8 others v Mutbeka Farmers Co-op Society Limited* [2020] eKLR; *B.O.G Tambach Teachers Training College v Mary Kipchumba* [2018] eKLR and *Nicholas Sumba v Radio Africa Ltd, Jimmy Gatbu & another* [2017] eKLR.



13. Mr. Ombati on his part submitted that it is not true that the judgment is silent on interest rate. That Section 26(2) is the basis of the application. That the Section refers to further interest. That the authorities referred to are distinguishable. That the Court interest rate has been 12% since 1982. That the application is misplaced.
14. Section 26 of the [Civil Procedure Act](#) provides 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.
 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.
15. Interest rate of 6% is referred to in subsection 26(2) with respect to the payment of further interest where the decree is silent on the same. The decree herein does not mention further interest. The decree is clear that the decretal sum shall attract interest at Court rates.
16. In my view Court interest rate and the rate of interest referred to in Section 26(2) of the Civil Procedure Rules are not the same.
17. The practice notes made on 16th March 1982 state as follows –

Practice note no. 1 of 1982 [Civil Procedure Act](#) (Act 21) Section 26

Interest- rate of interest- power of the court to order payment of interest- interest on principal sum of decree-rate to be applied in the absence of a valid reason to order either a higher or lower rate.

March 16, 1982, Simpson AG CJ gave the following practice direction. 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 now be 12%.”
18. Under Section 26(1) of the [Civil Procedure Act](#), a Court has discretion to award interest rates.
19. It is this discretionary rate of interest that is the subject of the Practice Notes of 1982 that the Courts have adopted as Court interest rates. It is a matter of common practice that whenever a Court orders interest rates to be paid at Court rates, the reference is to the rate of 12% interest recommended in the 1982 Practice Directions.
20. In the judgment herein, the interest rate payable is therefore the rate provided in the Practice Rules of 1982 at 12% per annum. It is only where further interest rate is applicable that the rate of interest of 6% provided for in Section 26(2) would become applicable where the same is not provided for in the judgment and/or decree.



21. The application dated 9th March 2022 is therefore without merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF MAY 2022

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 1B** 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.

MAUREEN ONYANGO

JUDGE

