



REPUBLIC OF KENYA



**KENYA LAW**  
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**Igonyi & 66 others v Ogembo Tea Factory Ltd (Cause 286 of 2016)  
[2022] KEELRC 13325 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13325 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 286 OF 2016  
S RADIDO, J  
NOVEMBER 30, 2022**

**BETWEEN**

**ALFRED OGINGA IGONYI ..... 1<sup>ST</sup> CLAIMANT**  
**ARATI OMWANGE ..... 2<sup>ND</sup> CLAIMANT**  
**BONFACE OBIERO ..... 3<sup>RD</sup> CLAIMANT**  
**CLEMENT AYIENDA ..... 4<sup>TH</sup> CLAIMANT**  
**DAVID MOSOBA ..... 5<sup>TH</sup> CLAIMANT**  
**DISMAS OMWOYO ..... 6<sup>TH</sup> CLAIMANT**  
**EVANS ORANGI ..... 7<sup>TH</sup> CLAIMANT**  
**FRANCIS KEBWAGE ..... 8<sup>TH</sup> CLAIMANT**  
**GRACE NYABOKE ..... 9<sup>TH</sup> CLAIMANT**  
**HANDSON OGANGA ..... 10<sup>TH</sup> CLAIMANT**  
**HELLEN OYUNGE ..... 11<sup>TH</sup> CLAIMANT**  
**HENRY OMBOGO ..... 12<sup>TH</sup> CLAIMANT**  
**IBRAHIM ONDARA ..... 13<sup>TH</sup> CLAIMANT**  
**ISAC OSORO ..... 14<sup>TH</sup> CLAIMANT**  
**JAMES ONYAMBU ..... 15<sup>TH</sup> CLAIMANT**  
**JAMES SIBWOGA ..... 16<sup>TH</sup> CLAIMANT**  
**JENEPHER NYABERI ..... 17<sup>TH</sup> CLAIMANT**  
**JANET ORINA ..... 18<sup>TH</sup> CLAIMANT**  
**JERUSA ONCHARI ..... 19<sup>TH</sup> CLAIMANT**



JOWL MOCHUMA OKERO .....	20 <sup>TH</sup> CLAIMANT
JOEL NYAKORA .....	21 <sup>ST</sup> CLAIMANT
JOHN BONGOYE .....	22 <sup>ND</sup> CLAIMANT
JOHN NYABOGA .....	23 <sup>RD</sup> CLAIMANT
JOSEPH ONDARI .....	24 <sup>TH</sup> CLAIMANT
JOSEPHINE NYAMORI .....	25 <sup>TH</sup> CLAIMANT
LUCY BARONGO .....	26 <sup>TH</sup> CLAIMANT
MARCELLA MACHOMA .....	27 <sup>TH</sup> CLAIMANT
NATHAN OSORO .....	28 <sup>TH</sup> CLAIMANT
PETER OKWENDA .....	29 <sup>TH</sup> CLAIMANT
RICHARD OBONYO .....	30 <sup>TH</sup> CLAIMANT
RICHARD TANI .....	31 <sup>ST</sup> CLAIMANT
SIMION OYONGO .....	32 <sup>ND</sup> CLAIMANT
SIMON MOKAYA .....	33 <sup>RD</sup> CLAIMANT
ZIPORAH MATUNDRA .....	34 <sup>TH</sup> CLAIMANT
JANE NYAMBANE .....	35 <sup>TH</sup> CLAIMANT
AMOS MAGEMBE .....	36 <sup>TH</sup> CLAIMANT
ELIZABETH MORAA .....	37 <sup>TH</sup> CLAIMANT
DOMNIC ONYUOKI .....	38 <sup>TH</sup> CLAIMANT
EVALINE OSEKO .....	39 <sup>TH</sup> CLAIMANT
IBRAHIM NYAMGARESI .....	40 <sup>TH</sup> CLAIMANT
JULIANA ORINA .....	41 <sup>ST</sup> CLAIMANT
RHODA KWAMBOKA .....	42 <sup>ND</sup> CLAIMANT
SELINA NYABONYI .....	43 <sup>RD</sup> CLAIMANT
MESHACK KEINDA ONDARI .....	44 <sup>TH</sup> CLAIMANT
NEMWEL OGECHI .....	45 <sup>TH</sup> CLAIMANT
JAMES NYABWANGA .....	46 <sup>TH</sup> CLAIMANT
RAEL OTWEKA .....	47 <sup>TH</sup> CLAIMANT
LABAN NYANDEGE .....	48 <sup>TH</sup> CLAIMANT
NELSON MOGENI .....	49 <sup>TH</sup> CLAIMANT
HANNINGTON MARUBE AKUNA .....	50 <sup>TH</sup> CLAIMANT
MISHAEL OMWENO .....	51 <sup>ST</sup> CLAIMANT



<b>PENINA OSEKO .....</b>	<b>52<sup>ND</sup> CLAIMANT</b>
<b>DISHON MAKORI .....</b>	<b>53<sup>RD</sup> CLAIMANT</b>
<b>GLADYS MIRUKA .....</b>	<b>54<sup>TH</sup> CLAIMANT</b>
<b>JOSEPH MOMANYI .....</b>	<b>55<sup>TH</sup> CLAIMANT</b>
<b>JOYCE KEREBI .....</b>	<b>56<sup>TH</sup> CLAIMANT</b>
<b>JOYCE OGECHI .....</b>	<b>57<sup>TH</sup> CLAIMANT</b>
<b>MARGARET ORINA .....</b>	<b>58<sup>TH</sup> CLAIMANT</b>
<b>MARY MAOBE .....</b>	<b>59<sup>TH</sup> CLAIMANT</b>
<b>MARY MAYAKA .....</b>	<b>60<sup>TH</sup> CLAIMANT</b>
<b>ONDIEKI NYANDIRI .....</b>	<b>61<sup>ST</sup> CLAIMANT</b>
<b>ELIJAH KERONGO .....</b>	<b>62<sup>ND</sup> CLAIMANT</b>
<b>ONCHWERI OYARO .....</b>	<b>63<sup>RD</sup> CLAIMANT</b>
<b>HESBON ONCHARI .....</b>	<b>64<sup>TH</sup> CLAIMANT</b>
<b>NATHAN ONYANGO .....</b>	<b>65<sup>TH</sup> CLAIMANT</b>
<b>NATHAN ONYANGO .....</b>	<b>66<sup>TH</sup> CLAIMANT</b>
<b>HEZRON MOTARO ONWONG'A .....</b>	<b>67<sup>TH</sup> CLAIMANT</b>

**AND**

**OAGEMBO TEA FACTORY LTD ..... RESPONDENT**

### **RULING**

1. For the court's attention is a motion dated June 29, 2022 by the claimants seeking orders:
  - (1) That this honourable court be pleased to review, vary, or set aside part of its ruling delivered on February 16, 2022 denying the claimants interest on the sum of Kshs 18,672,257/- from the date of filing the claim until payment in full plus costs of the claim.
  - (2) That this honourable court be pleased to award the claimants interest on the sum of Kshs 18,672,257/- at court rates from the date of filing the claim and costs of the claim to the claimants in tandem with the consent judgment recorded in court on October 22, 2010.
  - (3) That costs of this application be in the cause.
2. The primary grounds in support of the motion were that the court did not award interest and costs to reflect the consent entered into by the parties on October 22, 2010, that the court only addressed its mind to the question of interest from March 30, 2020 and not from date of filing the cause, that the parties agreed to the payment of interest from the date of filing the cause in the consent of October 22, 2010, and that the failure to award the interest was an error apparent on the face of the record.
3. The respondent filed grounds of opposition on July 19, 2022.



4. In the grounds, it was asserted that the court lacked the jurisdiction to entertain the motion being *functus officio*, the claimants had approached the court with unclean hands, the question of interest and costs could only be properly be taken on appeal and that because execution had been commenced, the motion was an abuse of the court process.
5. Pursuant to court directions, the claimants filed their submissions on the motion on November 25, 2022 (should have been filed and served by October 14, 2022). The respondent's submissions were not on record by the agreed timeline.
6. The court has considered the record, motion, affidavits, and submissions and come to the view that the motion should be declined for the following reasons.
7. One, in the judgment delivered on July 9, 2019, the court did not award any interest.
8. Two, similarly in the same judgment, the court directed each party to bear own costs of the suit.
9. This court, therefore, could not award interest on the sums which had not been ascertained by the time of the judgment.
10. Three, the court had, in the aforesaid judgment, directed the parties to compute and agree on the sums owing, but the parties did not agree until March 30, 2020, when the claimants signified the acceptance of the offer by the respondent.
11. Four, the interest and costs awarded by consent in Kisii High Court Civil Case No 17 of 2007 were specific to the sum of Kshs 4,181,720/-.
12. Five, failure by a court to award interest and costs is not an error apparent on the face of the record but is rather a matter which should be taken on appeal.
13. Lastly, the motion must have been an afterthought since the claimants only filed it after commencing the execution process.

### **Conclusion**

14. For the above reasons, the court finds no merit in the motion, and it is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30<sup>TH</sup> DAY OF NOVEMBER 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **Appearances**

For claimants Ondabu & Co Advocates

For Respondent Nyachiro Nyagaka & Co Advocates

Court Assistant Chrispo Aura

