



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2611 OF 2016

BETWEEN

PATRICIA S. MUMO.....CLAIMANT

VERSUS

ISIS AFRICA LIMITED.....RESPONDENT

RULING

1. Judgment was delivered in favour of the Respondent on 31st July 2019, for the sum of Kshs. 904,475.
2. The amount was to be paid by 1st December 2019, failing which, interest would be payable at court rates, from the date of Judgment, till completion of payment.
3. The Parties were ordered to meet their own costs of the Claim.
4. The Respondent has filed an Application for Review of Judgment. There are 2 grounds cited by the Respondent in seeking review: -
 - i. The Court ought to have awarded interest from 19th May 2014 when the Claimant resigned from employment, or from the date of Judgement and not the date of default.
 - ii. The Court ought to have awarded costs.
5. According to the Respondent there are errors apparent on the face of the record.
6. The Claimant relies on Grounds of Opposition, dated 20th July 2020. Her position is that the Respondent has not reached the threshold for review; there is no error apparent on the face of the record; there was no prayer for interest in Respondent's Counterclaim; and the Respondent should have appealed if aggrieved by the Judgment.
7. Parties agreed to have the Application considered and determined on the strength of the record.

The Court Finds: -

8. Review of decrees is regulated by Rule 33 of the E&LRC [Procedure] Rules, 2016. The Respondent invokes Rule 33 [1] [b], which empowers the Court to review its decrees on account of some mistake or error apparent on the face of the record.
9. There was no prayer for interest in the Counterclaim presented by the Respondent.
10. The Court exercised its discretion, and allowed the Respondent interest, if the Claimant failed to pay the decretal amount by 1st December 2019.
11. The Court specifically stated that interest was payable “*from the date of this Judgment, till payment in full.*”
12. The Respondent at paragraph 5 of its Notice of Motion, alleges that there is an error, because the Court ought to have granted interest from the date the Claimant resigned, 19th May 2014, or *from the date of Judgment.*

13. Did not the Court grant interest from the date of Judgment?

14. Under Rule 29 of the E&LRC [Procedure] Rules, 2016, it is entirely in the discretion of the Court to grant costs and interest. Section 12 [4] of the E&LRC Act, stipulates that the Court, may subject to the Rules, make such orders as to the costs, the Court considers just. Rule 29 [3] of the E&LRC [Procedure] Rules, 2016, states that the Court *may* direct that interest is paid.

15. The Court does not make an error, by exercising what is purely a discretionary jurisdiction. The Respondent is completely off the mark. It seeks review on an issue which the Court has granted in the Judgment- interest from the date of Judgment. Overall the Respondent faults the Court's exercise of discretion. The exercise of that discretion is given by the Law. Exercise of discretion did not amount to an error apparent on the face of the record.

IT IS ORDERED: -

a. The Application filed by the Respondent on 23rd September 2019 is declined.

b. Costs to the Claimant.

Dated and signed at Chaka, Nyeri County, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 9th day of April 2021.

James Rika

Judge