



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 62 OF 2018

(Formerly Nakuru Cause No. 278 of 2016)

(Originally Nakuru High Court Civil Case No. 6 of 2007)

DR. JOSEPH GITILE NAITULI.....CLAIMANT

VERSUS

EGERTON UNIVERSITY.....1st RESPONDENT

PROFESSOR JAMES K. TUITOEK..... 2nd RESPONDENT

RULING

1. In a judgment delivered on 31 May 2019, the Court awarded the Claimant leave, leave travelling allowance and unpaid SSP pay. Although the Claimant had prayed for interest on the awards, the Court did not allow interest.
2. On 14 January 2020, the Claimant lodged a motion with the Court seeking
 1. **THAT** this Honourable Court be pleased to review its judgment delivered on 31st May 2019, with a view to awarding interest on leave, leave travelling allowance and unpaid SSP pay as awarded in favour of the Claimant/Applicant at the court's rate as from 25th October 2006 when the same became due.
 2. **THAT** the cost of this application be provided for.
3. According to the Claimant, and relying on Nairobi HCCC No. 546 of 2011, *Alex Muthinji Njeki & Ar v the Attorney General*, the failure to allow interest when pleaded/prayed for was an error on the face of the record or constituted sufficient reason which could be reviewed.
4. The Claimant also cited *Lata v Mbiyu* (1965) EA 592 and *Dipak Emporium v Bonds Clothing* (1973) EA 553 to urge that a party in respect of whom an award has been made is entitled to interest from the date of filing the suit (or from date of judgment).
5. In the view of the Claimant, the failure by the Court to award interest from 2006 when the amounts fell due would amount to unjust enrichment of the Respondents.
6. The Respondents were of a contrary opinion and they filed a replying affidavit sworn by the 1st Respondent's Legal Officer and submissions in opposition to the motion on 31 January 2020.
7. Therein, the Respondents submitted that the Claimant had not met the test of other sufficient reasons and drew the attention of the Court to *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* (2016) eKLR where the Court outlined the contours of sufficient reason .. means that the reason must be one sufficient to the Court to which the application for review is made and they cannot be held to be limited to the discovery of new and important matter or evidence, or the occurring of a mistake or an error apparent on the record.
8. The Respondents also cited the Court of Appeal of Tanzania in Civil Appeal No. 147 of 2006, *Registered Trustees of the Archdiocese of Dar es Salaam v the Chairman Bunju Village Government & Ors* and *Daphne Parry v Murray Alexander Carson* (1963) EA 546 where the Courts indicated that the term *sufficient cause* should be given a liberal but judicious interpretation.
9. Going further, the Respondents urged that the Court had made a determination on the question of interest when it rendered itself thus From the foregoing, save for the awards made herein on account of breach of contract, the Court finds no merit in the Cause thus rendering

the issue *res judicata*.

10. In conclusion, the Respondents contended that the application being made 7 months after judgment and without the offering of any explanation for the non-action was inordinately late and was merely an afterthought.
11. The Court has considered the application, affidavits in support and opposition and the submissions.
12. It took the Claimant about 7 months to move the Court seeking the order of review. The Cause was filed in 2007.
13. If indeed the Claimant was keen and diligent and wanted interest from the date of filing suit (or date of judgment), he should have moved the Court promptly after judgment.
14. There was no attempt to explain why it took 7 months to file the motion. The Court finds the delay inordinate.
15. On the merits of the application, the Court expressly stated at paragraph 109 of the judgment that save for the awards made, there was no merit in the Cause which would include the plea for interest.
16. The award of interest is hinged on section 26 of the Civil Procedure Act. It is a discretionary power which should be exercised judiciously.
17. Consequently, the Court is of the opinion that the contention that it was silent on the question of interest is not correct and even if it was correct, would not be *other sufficient reason* to bring the application within the review jurisdiction.
18. If that were the position, the end result would be Courts being asked to sit on their own decisions where a party is not satisfied, instead of utilising the appeal hierarchy.
19. The Court finds no merit in the motion and it is dismissed with costs to the Respondents.

Dated, signed and delivered through video/email on this 15th day of May 2020.

Radido Stephen

Judge

Appearances

For Claimant Kamau Kuria & Co. Advocates

For Respondents Sheth & Wathigo Advocates

Court Assistant Judy Maina