



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO.1660 OF 2017**

**(Formerly Machakos HCCC No. Case No. 33 of 2000)**

**(Before Hon. Justice Hellen S. Wasilwa on 25<sup>th</sup> June, 2020)**

DANSON MBUBI MUTABI.....CLAIMANT/RESPONDENT

-VERSUS-

KONZA RANCHING & FARMING

CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT/APPLICANT

**RULING**

1. Pending for determination before me are two Applications.

2. The First Application is the Notice of Motion Application dated 13<sup>th</sup> February, 2020, filed by the Respondent/Applicant. The same is filed under certificate of urgency and is brought under Order 42 Rule 6, Order 51 Rules 1, 4 and 10 and Sections 1A, 1B and 3A of the Civil Procedure Act and all enabling provisions of the law including the Judicature Act. Seeking orders that:-

*1. This Application be certified as urgent and service thereof be dispensed with in the first instance (Spent).*

*2. This Honourable Court be pleased to Order a stay of execution of the Judgment, decree and all consequential orders arising therefrom pending inter partes hearing hereof and the final disposal of this Application.*

*3. This Honourable Court be pleased to set aside the decree herein dated 6<sup>th</sup> February, 2020, the proclamation and warrants of attachment as the same were obtained irregularly, un procedurally and in total aberration of the rules of procedure hence null and void.*

*4. Costs of this Application be borne by the Claimant.*

3. The Application which is premised on the grounds that:-

*a) Judgment was delivered in favour of the Claimant for Kshs. 2,325,780.00 and costs were taxed at Kshs. 416,027.00 making the total award Kshs. 2,741,807.00/-.*

*b) That on 3<sup>rd</sup> February 2020, the Respondent paid the Claimant a sum of Kshs. 2, 941,807/- towards settlement of the Judgment.*

*c) On 10<sup>th</sup> February, 2020, the Claimant proclaimed the Respondent's property claiming a sum of Kshs. 8,355,185/- as the decretal amount.*

*d) The Applicant stands to suffer irreparable loss and/or harm if the orders sought herein are not granted as the subject claimant is a man of no known means of income capable of refunding the decretal sum in event the application herein shall be successful.*

*e) It is in the wider interests of justice that the orders sought herein are granted.*

4. The Application is further supported by the Affidavit of **DAVID MUTANGILI**, the Respondent's Chairman sworn on 13<sup>th</sup> February, 2020, in which he reiterates the averments made in the Notice of Motion Application.

5. In response to the Application the Claimant filed a Replying Affidavit deposed by **DANSON MBUBI MUTABI**, the Claimant herein on 18<sup>th</sup> February, 2020, the Application by the Respondent/Applicant dated 13<sup>th</sup> February, 2020 is an abuse to the Court process, is an afterthought and ought to be dismissed with costs to the Claimant.

6. The Claimant further averred that that the draft decree was served upon the Applicant as required under Order 21 Rule 8 and that the Applicant failed to respond to the same within the requisite 7 days and as a result the Court proceeded to issue a decree, the warrants of attachment and execution.

7. He further maintained that Judgment in this matter was entered in his favour on 20/12/2018 in the presence of counsel for the Applicant which judgment awarded him interest from the date of filing the suit to the date of the Judgment.

8. The Claimant acknowledged receipt of three cheques whose amounts totalled to Kshs. 2,941,807/-. He further averred that he is a man of means capable of repaying any sums as ordered by the Court.

9. It is on this basis that the Claimant urged this Honourable Court to dismiss the Application with costs to the Claimant.

10. The 2<sup>nd</sup> Applicant is the one dated 24<sup>th</sup> February, 2020 in which the Respondent/Applicant is seeking to review the award of this Honourable Court of 20<sup>th</sup> December, 2018 and filed a memorandum in support of review in which it acknowledged the Judgment delivered in favour of the Claimant in this matter on 20<sup>th</sup> December, 2018.

11. The Respondent/Applicant further avers that the Claimant is claiming a total of Kshs. 5,610,828 as interest compounded from the date of filing the suit. It maintains that this sum is double of the award herein which is extremely punitive, exorbitant, excessive, unconscionable and unreasonable in the circumstances.

12. It is the Respondent's contention that this Honourable Court erred in law by condemning it to pay interest from the date of filing of the suit noting that the same had been in court for almost 20 years. It further contended that by being condemned to pay such interest it is being held responsible for the delay in finalizing this matter which is not fair.

13. The Respondent further stated that it was forced to sell its remaining properties to settle the decretal sum in the matter herein and that it on the 3<sup>rd</sup> February, 2020 paid the entire sum of Kshs. 2,941,807/- thus settling the entire decretal sum thus demonstrating its willingness to abide by Court Orders.

14. The Respondent maintained that it has been forced to sell off most of its assets to settle its liabilities. It further maintained that the Orders to pay interest will greatly prejudice it and its members occasioning it immense financial losses.

15. It is on this basis that the Respondent/Applicant urged this Honourable Court to allow its Application for Review and set aside the award for interest at Court rates from the date of filing suit.

16. In response, the Claimant filed a Reply to Review of the Award on 3<sup>rd</sup> March, 2020, in which he avers that the Application is not supported in law and is otherwise an abuse to the Court process. He further urged this Honourable Court to dismiss the same with costs to the Claimant.

17. He further maintains that the Applicant has not raised any grounds for review of this Court's Judgment maintaining that the Applicant only seeks to re-open this case through unfair and unprocedural means. He therefore urged this Honourable Court to dismiss the instant Application as it is only meant to delay him from enjoying the fruits of the Judgment entered in his favour.

18. Parties agreed to dispose of the Applications by way of written submissions.

#### **Submissions by the Parties**

19. In its submissions in support of both Applications the Respondent/Applicant maintained that the draft decree sent for approval had a total sum of Kshs. 2,741,807/- as the amount payable to the Claimant. It further maintained that it did pay the sum of Kshs. 2,941,807/- in full and final settlement of the decretal sum.

20. It is further the Respondent's contention that the Claimant now seeks for payment of Kshs. 5,610,828/- as interest without demonstrating how it arrived at the said figure which is unprocedural and irregular thus necessitating the Application for review and set aside. To buttress its argument cited the Court of Appeal decision in the case of **VRM Vs MRM & Another (2006)** which is relied on in the case of **Kosar Sultana Vs Khalid Iqbal (2017) eKLR** where it was held that Courts have discretion to review its judgment if sufficient reasons are adduced to warrant such a review. The Respondent urged this Honourable Court to exercise its discretion and review its judgment.

21. The Respondent further submitted that the sum in interest is more than double of the amount the decretal sum and is therefore inordinately high and unconscionable given the circumstances of the case. It further submitted that being condemned to pay the sum of Kshs. 5,610,828/- as interest will therefore be unfair and urged this Honourable Court to allow its Applications as pleaded.

22. The Respondent further maintained that the tabulation of interest if at all ought to be tabulated from the year 2017 when this matter was lodged in the Employment and Labour Relations Court. The Respondent further urged this Honourable Court in the interest of justice to waive interest and that the matter be marked as closed as the Claimant has already been paid the decretal sum.

23. I have examined the averments of the Parties herein.

24. On the first application, the Applicant seek stay of execution of the warrants of attachment obtained from Court in which the Applicant aver were obtained irregularly.

25. The issue of irregularity of warrants of attachment is an execution issue, which is basically the work of a Deputy Registrar. When a Party disagrees with a taxation from a Deputy Registrar, the Applicant files a reference on the taxation, which is not what the Applicant has filed herein.

26. The Applicant also filed an application seeking review of this Court's orders as per the judgement directing that interest be paid form the date of filing of this suit.

27. The legal position on interest on Judgements is provided at Section 26(1) of the Civil Procedure Act which states as follows:-

*“(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”.*

28. The position therefore is that in awarding interest on Judgement, the Court is minded to look at the events before and after Judgement. The Court exercises its discretion depending on an individual case.

29. In determining this case, I took note of the length of time this case took to resolve from the year 2000 and the involvement of the Parties and their impact on delay in resolving the matter. The award was on moneys payable on redundancy, which the Respondent should have paid at the time of redundancy. I do not intend to go back into the issue because in my view, this is a matter for the Court of Appeal and not for review. I find no reasons to review my Judgement.

30. On stay, there is also no reason to stay because it is not contingent upon any activity which is pending before this Court or any other higher Court.

31. There will be no order of costs.

Dated and delivered in Chambers via zoom this 25<sup>th</sup> day of June, 2020.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties