



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CASE NO. 63 OF 2018

GERVASIO MURIIRA & 8 OTHERS.....CLAIMANTS

VERSUS

MUTHEKA FARMERS CO-OP SOCIETY LIMITED.....RESPONDENT

RULING

1. The issue before me is the rendering of accounts. The Claimants assert that there are balances owing to them arising from the decree of this Court. They submit that for the 1st Claimant Gervasio Muriira a sum of Kshs. 54,100.75 remains unpaid; 2nd Claimant Isabella Nkatha is allegedly owed Kshs. 55,302.25; 3rd Claimant Kairithia Iburi balance claimed is Kshs.66,100.75; 4th Claimant Joseph Kaimenchu is allegedly owed Kshs. 29,660.70; 5th Claimant Stephen Murungi claims a balance of Kshs. 29,660.70; 6th Claimant Geoffrey Kaugiria claims Kshs. 43,080.60; 7th Claimant Patrick Iruki claims Kshs. 112,500.50 while the 9th Claimant claims a balance of Kshs. 48,000.70.

2. The Respondent in submissions filed on 26th August 2020 submitted that there is a dispute with the Claimants on interest. The Respondent submitted that the issue is what is the applicable rate of interest in the circumstances of the case. Section 26(2) of the Civil Procedure was called in aid. Section 26(2) provides as follows:-

26.(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.

The Respondent cited the case of **B.O.G Tambach Teachers Training College v Mary Kipchumba [2018] eKLR** where it was held that in the absence of any valid reasons for ordering a higher or lower rate of interest, the rate of interest should now be 12%. The Respondent submitted that had the trial court made provisions for the rate of interest on the principal sum it would have been required to be guided by the Chief Justice Directions on the rate of interest under Section 26(1) of the Civil Procedure Act then set at 14%. The Respondent that there being no order as to the rate of interest by the court, Section 26(2) of the Civil Procedure Act clearly stipulates that the applicable rate of interest at 6% per annum of which the Respondent has raised to 12% in the circumstances. The Respondent submitted that the amounts due would be for 1st Claimant Gervasio Muriira – Kshs. 25,157.80; 2nd Claimant Isabella Nkatha Kshs. 23,292.32; 3rd Claimant Kairithia Iburi – Kshs. 23,935.64; 4th Claimant Joseph Kaimenchu – Kshs. 18,437.49; 5th Claimant Stephen Murungi – Kshs. 18,429.56; 6th Claimant Geoffrey Kaugiria – Kshs. 26,145.61; 7th Claimant Patrick Iruki – 24,568.63 and the 9th Claimant Kshs. 19,566.56. this makes the total sum due on interest to be Kshs. 179,533.21. On the issue of costs for the application the Respondent submitted that the costs claimed are drawn by a person not entitled to or qualified for the legal fees. The Respondent cited the case of **Orix Oil (Kenya) Limited v Paul Kabeu & 2 Others [2014] eKLR** where the Court held there were circumstances where a court could deny a party interest and stated:-

...the Plaintiff being the successful party should ordinarily be awarded costs unless its conduct is such that it would be denied the costs or the successful issue was not attracting costs.

The Respondent submitted that no decretal sum was due and the Claimants actually were paid advances which amount to Kshs. 117,000/- in total. The Respondent submitted that in the event there is any sum owing it is the sum of Kshs. 179,533.21 being interest.

3. The Respondent has tabulated interest using the rate of 12% while the Claimants have applied 14%. The provisions of the Civil Procedure Act make provision for 6% interest where the Court is silent on the rate of interest to be applied. The Respondent has been generous to apply

a rate of 12% as this Court would have awarded 6%. As the Respondent conceded a higher rate of interest that is what will be applied and the sum therefore due to the Respondents is Kshs. 179,533.21 made up as follows:-

- a. 1st Claimant Gervasio Muriira – Kshs. 25,157.80;
- b. 2nd Claimant Isabella Nkatha Kshs. 23,292.32;
- c. 3rd Claimant Kairithia Iburi – Kshs. 23,935.64;
- d. 4th Claimant Joseph Kamenchu – Kshs. 18,437.49;
- e. 5th Claimant Stephen Murungi – Kshs. 18,429.56;
- f. 6th Claimant Geoffrey Kaugiria – Kshs. 26,145.61;
- g. 7th Claimant Patrick Iruki – 24,568.63; and
- h. 9th Claimant Kshs. 19,566.56

6. The Claimants are not entitled to costs legal professionals are entitled to and as such the costs on the motion are denied. They have been responsible for the delay in the speedy conclusion of the matter and should not benefit from their dilatoriness. In the final result the Respondent is to make payment of the sums due within the next 30 days and in default the Claimants at liberty to execute.

It is so ordered.

Dated and delivered at Nyeri this 30th day of September 2020

Nzioki wa Makau

JUDGE