



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1759 OF 2011

(formerly High Court CC No. 689 of 2004)

(Before Hon. Justice Hellen S. Wasilwa on 3rd December, 2018)

GILBERT KAMBUNI ONGERI.....CLAIMANT/APPLICANT

VERSUS

KENYATTA NATIONAL HOSPITAL BOARD.....RESPONDENT

RULING

1. The Claimant Applicant filed a Notice of Motion Application dated 29th June 2018 seeking orders of review of this Court's judgment delivered herein on 12th June 2018 to provide that the interest awarded therein run from the time of filing of the suit as opposed to from the date of judgement.

2. The Claimant has submitted that in his Statement of Claim he sought special damages constituting salary in lieu of notice, unpaid salary arrears, outstanding leave days and allowances. He cited Justice Odunga in the case of **Francis Joseph Kamau Ichatha v Housing Finance Company of Kenya Limited [2015] eKLR** relying on the decision in **Samuel Philip Kidoti vs. Kenya Cargo Handling Services Ltd. Civil Appeal No. 76 of 1992**, where the learned judge stated as follows:-

“This Court would therefore have to determine whether the sum awarded was special or general damages. “Special damages”, it has been held are compensation for special damage, which is not presumed by law to be natural and probable or direct consequence of the act, or omission complained of but which does in fact result in circumstances of the particular case and of the injured party’s claim to be compensated.”

3. It is the Claimant's contention that the set out claims are special damages and therefore interest pertaining to them should accrue from the date of filing of the suit in question.

4. The Claimant also cited **Francis Joseph Kamau Ichatha v Housing Finance Company of Kenya Limited (supra)**, where Odunga J. stated as follows:-

“The law is that interests on general damages accrue from the date of judgement as opposed to special damages which accrue interest from the date of filing of the suit. This was held by the Eastern Court of Appeal in Dipak Emporium vs. Bond’s Clothing Civil Appeal No. 64 of 1972 [1973] EA 553 where the Court held:-

“The Court’s right to award interest is based on section 26(1) of the Civil Procedure Act (Cap 5) which states that 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 prior to 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 payment or to such earlier date as the court thinks fit...Where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing suit. Where, however, damages have to be assessed by the court, the right to those damages does not arise until they are assessed and therefore interest is only given from the date of judgement.” (Emphasis ours).

5. The Respondent opposed this application. They contend that special damages must be pleaded and proved and that what was awarded by

the court does not fall in the category of special damages. The Respondents cited Zacharia Waweru Thumbi versus Samuel Njoroge Thuku (2006) Eklr where the Court opined as follows:-

“The law is clear on the head of damages called special damages. Special damages must be both pleaded and proved before they can be awarded by the court. Law Reports and text books on torts are replete with authorities on this, which need not be reproduced here. Suffice it to quote from the decision of our Court of Appeal in HAHN -VS- SINGH, Civil Appeal No. 42 of 1983 [1985] KLR 716 at page 717 and 721 where the learned judges of appeal — Kneller, Nyarangi JJA and Chesoni Ag. J.A. held that special damages must not only be specifically claimed (pleaded) but also strictly proved for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves. If I was to explain or define special damages to a layman, I would say “they are reimbursement to the plaintiff/victim of tort for what he has actually spent as a consequence of the tortious acts complained of.” This point cannot be overstressed. A claimant of special damages must not only plead the claim but also go further and strictly prove, usually by documentary evidence that he actually spent the sum claimed.” (Emphasis added).

8. I have examined the parties’ averments and submissions herein. I note that from the Plaintiff, the Claimant sought damages for unlawful dismissal, pay in lieu of notice of 6 months, unpaid salaries, house allowance, medical allowance, and outstanding leave days amongst other prayers. In my judgement, I awarded the Claimant 1 months’ salary in lieu of notice, pending leave days, unpaid salaries and allowances, damages for defamation and damages for unlawful dismissal.

7. My understanding of the law as it stands is that damages are must be proved. Indeed these were proved and that is why this court awarded the clamant that limb. Special damages must be proved with documentary evidence. In this respect the special damages proved include leave days, unpaid salaries and allowances and notice pay. I believe then for these, interest should accrue from the date of filing this claim. As for the other items awarded in terms of damages, interest has to remain at court rates with effect from the date of the judgement.

8. The application for review succeeds in part therefore with items awarded on damages remaining as previously awarded with interest running from the date of judgement and items 1 to 3 being awarded with interest accruing from the date of filing this claim. There will be no order as to costs on this application.

Dated and delivered in open Court this **3rd day of December, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Weru holding brief for Bonyo for Claimant – Present

Kathoko holding brief for Gachuri for Respondent – Present