



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 173 OF 2011
FREDRICK MUSEMBI.....CLAIMANT
VERSUS
PUBLIC SERVICE CLUB.....RESPONDENT

Mr. Kibe Mungai for respondent/applicant

Mr. Muyu for claimant/respondent

RULING

1. The parties filed a consent dated 19th June 2012 in which all issues in the suit were compromised except the question of interest, which was to be resolved by the court upon hearing and determining the notice of motion application dated 14th November 2016.

2. The consent on terms of payment was pursuant to a judgment of the court delivered on 1st September 2016 in which the court directed

“The award is payable with interest at court rates from date of filing suit till payment in full.”

3 The issue being raised is whether interest is payable from date of filing suit or from date of judgment.

4. The respondent/applicant seeks review of the judgment under Rule 32 of the Employment and Labour Relations Court (procedure) Rule 2010 now Rule 32 of the 2016, rules of the court.

5. The applicant relies on the case of **Francis Joseph Kamau Ichatha –vs– Housing Finance Company of Kenya Limited [2015] eKLR** for the proposition that;

“Special damages must be claimed specifically and proved

*strictly and are recoverable only where they can be included in the appropriate measure of damage
-.”*

6. The applicant argue that the claim pleaded for interest without any specification as to when it should be deemed to have started accruing and never proved the award of interest from date of filing suit at the hearing.

7. In **Dipak Europonium –vs– Bond’s Clothing, Civil Appeal No. 64 of 1972 [1973] E.A. 553** as quoted in **Francis Joseph Kamau Icata –vs– Housing Finance Company of Kenya Ltd [2015] eKLR** it was held;

“The court’s right to award interest is based on Section 26 (1) of the Civil Procedure Act (Cap 21) which states that where and in so far a decree is for the payment of money, the court may, in the decree, order interests 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 pleading 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 wrongful act of another person, he should be awarded interest from the date of filing suit. Where, however, damage have to be assessed by the court the right to those damages do not arise until they are assessed and therefore interest is only given from the date of judgment.”

8. In the present case the award of Kshs.1,170,000/= consists of terminal benefits that ought to have been paid by the respondent/applicant upon termination of employment but were wrongfully withheld by the respondent/applicant.

9. This award is payable with interest at court rates from date of filing suit till payment in full since the determination of the award did not involve any assessment of damages.

10. The application has no merit and same is dismissed with costs to the claimant/respondent.

Dated and Delivered at Nairobi this 19th day of May 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE

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PRINCIPAL JUDGE