



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU
CAUSE NO. 16 OF 2013

(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)

JOHN OSEWE OGOLA & 46 OTHERSPLAINTIFFS/APPLICANTS

-VERSUS-

RAGHBIR SINGH SADHU..... DEFENDANT/RESPONDENT

RULING

What is before me for determination is an application filed by the Plaintiffs under section 26 and 99 of the Civil Procedure Act, Order 51, Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. The Plaintiffs seek the following orders-

1. The application be certified as extremely urgent and should be heard on a priority basis.
2. The honourable court be pleased to direct that the interest on the cost of this suit be calculated from the year 2003, being the year when the suit was filed as opposed to 2014 when the suit was decided.
3. The Honourable court be pleased in the alternative, to rectify the order made in the judgement so as to disclose the date when the interest began to accrue as per section 99 of the CPA Act in order to clarify when such interest began to accrue.
4. The Honourable court be pleased in the alternatively to give directions regarding when interest on the cost of the suit began to accrue.
5. The cost of this application be provided for.

The application is grounded on the supporting affidavit of MR. JAMES AGGREY MWAMU, Counsel for the Applicants and on the following grounds-

- (a) That a judgment was delivered in favour of the applicants on 23rd January, 2014 by Honourable Wasilwa J.
- (b) That the judgment directed the respondent to pay the sum of Kshs.3,939,882/- to the applicants as well as interest on the amount at court rates plus cost of the suit.
- (c) That the Judgment did not state when the interest above began to accrue, whether as from the date when the case was filed or as from the date when the judgment was delivered.

- (d) That the lack of clarity as to when the interest began to accrue has led to uncertainty on the calculation of the total decree sum.
- (e) That this has occasioned delays in execution of the decree given the uncertainty.
- (f) That such delay is prejudicial to the applicants.
- (g) That this application is brought in good faith.

Although the application on the face of it states that it is supported by the affidavit of MR. JAMES AGGREY MWAMU the affidavit annexed to the application is sworn by WILLIAM ODONGO MATORO in which he states that he is one of the Claimants in the suit. In the affidavit in support of the application WILLIAM ODONGO MATORO deposes that they filed suit in 2003 and judgment was delivered in the year 2014 in favour of the Applicants following a rigorous trial. That the court awarded the applicants Shs. 3,939,882 as well as interest on the amount at court rates. He deposes that the court did not state the date when interest should begin to accrue.

WILLIAM ODONGO MATORO deposes that an application for execution was made on 22nd December 2016 for Kshs. 12,442,632, an amount which included interest from date of filing suit but the Deputy Registrar rejected the same and directed that interest be calculated from the date of Judgment. Mr. Matoro deposes that the Applicants subsequently filed another decree of Kshs. 5,043,048.96 which was approved by the Deputy Registrar. He deposes that the applicants feel the interest is too low and should be reckoned from date of filing suit as the claim was for liquidated damages. He deposes that the Deputy Registrar advised that only the Judge can determine the date from which interest should accrue and hence the filing of this application.

The Respondent opposes the application and filed a replying affidavit of MITCHELL J.B. MENEZES, Counsel for the Respondent. In the affidavit Mr. Menezes states that in the plaint filed by the Applicants on 17th March 2003 they sought the following remedies-

- a) Damages;
- b) Costs of suit;
- c) Interest at court rates from date of suit.

He deposes that judgment was delivered on 23rd January 2014 when the court awarded the plaintiff Kshs. 3,939,882, interest on the amount at court rates plus costs of the suit. He states that the court did not expressly provide for computation of interest on the award from the date of filing suit till payment in full. He further deposes that in their plaint the applicants did not expressly plead special damages and interest should accrue from date of judgment. He states the application herein is devoid of merit, is incompetent and should be dismissed with costs to the Respondent.

At the hearing of the application Mr. Mwamu for the applicants submitted that the Plaintiffs' suit was amended twice, the last amendment being on 27th September 2010 when the claim was amended to Kshs. 5,223,925. He stated that this figure is captured in the decree. He submitted that the claimant prayed for interest from date of filing of suit. He submitted that the judgment is not clear from what date interest is supposed to accrue. He submitted that since these are terminal dues, interest should run from date of filing suit.

Mr. Mwamu submitted that in the authorities filed by the Respondent which he wished to rely on, the courts determined that interest should accrue from date of filing suit. He submitted that after judgment the court referred the matter to the Ministry of Labour which reduced the amount to Kshs. 3.9 million. He submitted that if the court allowed interest to run from 2014 the employer will not appreciate the suffering of the employees who had to wait for so long. He prayed that the court finds that interest is to run from 2003.

Mr. Taremo for the Respondent opposed the application. He submitted that Mr. Mwamu had introduced new evidence that is not in the application. He submitted that the issue for determination is not that the judgment did not specify when interest should start accruing but rather that the award of interest is in the discretion of the court. He submitted that in the instant case the court ruled that interest should start accruing after date of judgment.

Mr. Taremo submitted that it is a legal principle that award of interest should be made where a party is entitled to a liquidated amount. He states that in the plaint filed in this case there is only a prayer for damages.

Mr. Taremo further submitted that in the application the applicant did not file evidence of the amended plaint although he had a chance to do so. He submitted that the submissions by Mr. Mwamu made with reference to the amended plaint be disregarded and that the court relies on the documents filed with the application.

Mr. Taremo urged the court to find and uphold the award in the judgment that interest accrues from date of judgment.

Determination

I have considered the rival submissions by the parties in support of and against the application.

The Employment and Labour Relations Court Act does not make any reference to award of interest. Rule 29 of the Employment and Labour Relations Court Act however provides for interest as follows-

29 (1) The Court shall be guided by section 12(4) of the Employment and Labour Relations Court Act and the Advocates (Remuneration) Order in awarding costs.

(2) The Court may order reasonable reimbursements of money spent by litigants in the course of litigation.

(3) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.

The rules are specific on the circumstances when the court may award interest. It is only where at the time of filing a statement of claim (or plaint as in this case) the claimant or plaintiff specifies the liquidated amount claimed. The rules also make the award of interest discretionary.

In the present case the plaint attached to the Respondent's replying affidavit does not contain any prayer for special damages. I have perused the file but have been unable to locate an amended plaint with special damages. What I have seen is a draft Further Amended Plaint in which there is a prayer for Kshs. 5,223,925 which is claimed as "***terminal benefits in the sum of shillings 5,223,925 as particularised in paragraph 10 herein.***" Paragraph 10 on the other hand reads as follows-

10. By reason of the matters aforesaid the plaintiff and each of them have lost the benefits accruing from their respective employment as particularized.

As is provided under rule 29 of the Employment and Labour Relations Court (Procedure) Rules 2016, it is only *where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim* that the court may award interest. Even in the rules there is no provision for payment of interest from date of filing suit.

Rule 28 of the Industrial Court (Procedure) Rules 2010 (now repealed) which were applicable at the time of judgment in this claim has similar provisions as follows-

- 28. Costs and Interest.**
- (1) *The Court shall be guided by section 12(8) of the Act in awarding costs to a party.*
- (2) *The Court shall not award exemplary or punitive costs.*
- (3) *Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, the Court may in addition to that order, direct that interest be paid on the liquidated amount awarded at applicable interest rates as if the suit was filed in the High Court.*

It is clear from the Plaintiff and draft Further Amended Plaintiff that there was no prayer for liquidated damages specified in the plaintiff or amended plaintiff. It is further clear that the amount awarded was tabulated by the Labour Officer on the directions of the court. The award of interest by the court was made entirely at the discretion of the court. The mention of a figure in prayers is not the same as *a liquidated amount that is claimed and specified at the time of filing a statement of claim*. Further, the applicant has not challenged the exercise of the discretion or given reason why I should interfere with such exercise of discretion by my sister Wasilwa J. whose judgment is the subject of this application.

From the foregoing it is clear that the Applicants have not proved that they are entitled to the orders sought. They did not prove that the order of the court for award of interest entitles them to interest from date of filing suit or that there was an error on the face of the judgment requiring clarification. I find no merit in the application and dismiss it. Each party shall bear its costs of the application.

Dated, Signed and Delivered this 4th day of May 2017

MAUREEN ONYANGO

JUDGE