



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
CAUSE NO. 330 OF 2013
SOUTHERN EASTERN UNIVERISTY COLLEGE.....CLAIMANT
-VERSUS-
PETERSON ONTUNYARESPONDENT

Mr. Wandati for Claimant

Mr. Kibathi for Respondent

JUDGMENT ON INTEREST AND COSTS

The parties in this matter recorded a consent to this effect.

- a. *“By consent of the parties the Claimant to repay the Respondent Kshs.645,000.00 within 30 days from the 29th day of May 2014 on condition the Respondent execute clearance forms to be furnished by the Claimant within 30 days.*
- b. *The parties to file submissions in respect of interest and costs within 21 days from 29th day of May 2014.*
- c. *The matter to be mentioned on the 26th day of June 2014 to confirm compliance.”*

Rule 27(9)(f) of the Industrial Court (Procedure) Rules 2010 provides;

“provided that subject to these Rules and to any written law, the court may at any time in the conduct of its proceeding issue.

- d. *an order for payment of interest on any principal sum awarded by the court.”*

Furthermore **Rule 28(3)** provides

“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 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”.

In **Supermarine handling Services Ltd vs Kenya Revenue Authority (2010) eKLR**, it was held that the justification for an award of interest on the Principal sum is to compensate a plaintiff for the deprivation of any money or specific order through the wrong act of a defendant.

It is noteworthy that this suit was filed by the Respondent following the withholding of Student's examination scripts and marks for failure by the Claimant to pay his remuneration for work done.

This dispute arose on or about the 20th November 2012 and by a letter dated 6th February 2013, he claimed a liquidated amount of Kshs.645,000 which the Respondent has agreed to pay in the filed consent.

It is apparent that the Claimant had taken to self-help by withholding the student's examination scripts and marks in addition to instituting this suit. These documents were received pursuant to an order of this court dated 7th June, 2014.

The retention of the aforesaid documents was detrimental to the business of the Respondent and to 3rd parties who are not part of the dispute. This is not an appropriate case for the court to award interest on the consent award with a view to discourage people from taking matters in their own hands when faced with a dispute of this nature.

With regard to the issue of costs, the guiding principle is that the costs follow the outcome.

This matter has resulted in a win-win situation given that the claimant got its documents and the Respondent got paid his remuneration.

In the final analysis the court is of the considered view that each party should bear their own costs of the suit.

Dated and Delivered at Nairobi this 31st day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE