



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 2093 OF 2011

JACQUELINE KWAMBOKA..... CLAIMANT

VERSUS

INTERNATIONAL ENERGY

TECHNIK LIMITED..... 1ST RESPONDENT

Mr. Moseti for Claimant

Mr. Wanjohi for Respondent

RULING

Background

1. The Application is brought under **Section 16** of the **Industrial Court Act 2011** and **Rule 32 (1) of the Industrial Court (Procedure) Rules 2010** seeking a review of the Judgment of Hon. D.K. Njagi Marete on 4th March 2014 in the following terms;

- a. That the principal being a liquidated sum of Ksh.882,000.00 to accrue interest at the rate of 14% per annum from 9th December, 2012, till settlement.
- b. That interest on compensation in the sum of Kshs. 126,000.00 and costs accrue from the date of judgment.

2. The Applicant faults the Trial Judge for failing to make an award for interest as prayed.

This is important in view of the Notice of Appeal and Application for stay of execution pending Appeal which is likely to delay the payment of the decretal amount for a long time.

3. The Applicant relies on the provisions of **Rule 28(3)** of the **Industrial Court (Procedure) Rules 2010** which reads:

“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.”

4. Furthermore the Applicant invokes **Rule 32(1)** which provides that review of a judgment or ruling of the Court may be granted;

- a. upon discovery of new and important matter or evidence which was not within the knowledge of the Applicant or could not be obtained then, after exercise of due diligence; or
- b. on account of some mistake or error apparent on the face of the record; or
- c. on account of the judgment or ruling being in breach of any written law.

5. **Response**

The Respondent opposes the Application on the grounds that;

- a. grant of interest is a discretion of the trial judge and cannot be compelled.
- b. that the Claimant did not in the first place pray for an award of interest and therefore following the decision of the Court of Appeal at Nairobi in **Civil Appeal No. 219 of 1998**, a party is bound by the pleadings, and the Court may not award that has not been pleaded.

6. In response, the Claimant submitted that it is trite law that special (liquidated) damages accrue interest from the date of filing suit till fully settled while interest on general damages accrue from date of judgment and costs from the date of taxation.

6. That discretion by the trial judge must be exercised judiciously, and that given that there was a finding by the judge that the termination of the contract of employment was unlawful, it is fair and just that interest be paid as prayed.

7. **Determination**

A perusal of the Judgment shows that the Court did not address itself to the issue of interest on the award at all.

The Claimant did not pray for interest on the claims sought or at all in the Statement of Claim dated 9th December 2011 and filed on 13th December, 2011.

The failure by the Trial Judge to address the matter must be read in this context.

This notwithstanding, the trial Judge had the discretion to address the matter *suo moto* in view of **Rule 28(3)** of the Court Rules but he did not.

8. Since the matter was not pleaded in the first place, failure by the Judge to address the issue cannot be construed to be a ground for review in terms of **Rule 32(1)** of the Court Rules.

Infact, the law commands that the Court does not award that which has not been pleaded.

Accordingly, the Application is dismissed with costs to the Respondent.

Dated and Delivered at Nairobi this 10th day of December 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE