



Economic Insurance Brokers Limited v Interfreight East Africa Limited & another (Civil Appeal E075 of 2024) [2025] KEHC 750 (KLR) (Commercial and Tax) (31 January 2025) (Judgment)

Neutral citation: [2025] KEHC 750 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E075 OF 2024
BM MUSYOKI, J
JANUARY 31, 2025**

BETWEEN

ECONOMIC INSURANCE BROKERS LIMITED APPELLANT

AND

INTERFREIGHT EAST AFRICA LIMITED 1ST RESPONDENT

KENINDIA INSRUNACE COMPANY 2ND RESPONDENT

(Being an appeal against part of judgment of the Magistrate's Court at Milimani Commercial Courts (Honourable Becky Cheloti) in its case number 9367 of 2018 dated 28th February 2023)

JUDGMENT

1. The appellant was on 28-02-2024 awarded Kshs 4,776,396.00 in the lower court. The court ordered further that the decretal sum inclusive of costs shall attract interest at court rates from the date of judgement until payment in full. The appellant was dissatisfied with the part of the judgment on interest and now prays that the same be overturned and replaced with an order that interest shall accrue from the date of filing the suit in the lower court until payment in full.
2. In its memorandum of appeal dated 27th March 2024 the appellant argues that;
 1. The learned magistrate erred in law in failing to award interest on the awarded sum of Kshs 4,776,396.00 from the date of filing suit or an earlier date.
 2. That the learned magistrate wrongly disregarded the law and precedent on awarding of interest and consequently improperly exercised her discretion in awarding interest from the date of judgement.



3. That the learned magistrate misdirected herself on the applicable law, principles and consequently arrived at a wrong decision.
3. This appeal was canvassed by way of written submissions. The appellant filed its submissions dated 6th November 2024 while the respondents did not to file any submissions. I have read the said submissions and authorities cited therein alongside the judgment of the lower court. The facts as enumerated in the submissions and the judgement are not disputed. The only issue in this matter is whether or not the trial court exercised its discretion properly in awarding interest. The appellant argues that the established legal principles embodied in judicial pronouncement are to the effect that claim for liquidated compensation should attract interest from the date of filing suit.
4. The power to award interest in a civil suit is at the discretion of the trial court. Section 26(1) of the *Civil Procedure Act* provides 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 before 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 the decree to the date of payment or to such earlier date as the court thinks fit.’
5. It is trite law that an appellate court should not interfere with discretionary decisions of the trial court unless it is demonstrated that the trial court failed to consider a relevant factor or considered an irrelevant factor or applied the wrong principles of law or the same is openly or unreasonably wrong. It is also an established principle of the law that discretion should be exercised judiciously which in my understanding means that it should be in conformity with the law, respect the judicial authority of the courts and be applied in tandem with judicial and legal principles. In *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others* [2018] eKLR the court held that;

‘First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong.’
6. It is not entrenched in written law that interest awarded in liquidated claims must accrue from the time of filing suit. It is an area which has been developed as a legal principle which presupposes that the decree holder was denied their right to use the money or funds prior to the delivery of the judgement and should be compensated for that by award of interest.
7. In this matter, the honourable magistrate did not give reasons for departing from the established legal principles on the award of interest on successful liquidated claims. As much as a decision is discretionary, a judicial officer or a judge should give a justification for departing from what has been entrenched by judicial pronouncements especially where those pronouncements are made by courts superior to the trial court. Failing to do so, would in my view, be acting injudiciously and the decision is amenable to disturbance on appeal. In *Jane Oyuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters)* (2020) KEHC 618 (KLR), the trial Judge held that;

‘From the foregoing expositions of the law on this point it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the



date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement.’

8. I have also found guidance in *South Nyanza Sugar Company Limited v Oreko* (2022) KECA 570 (KLR) in which the Court of Appeal held that;

‘The objective for awarding interest is to ameliorate the loss suffered by a party who has been kept out of use of money that would otherwise be due to him. Although, by dint of the words of Section 26, the grant of interest is discretionary, it is a discretion to be exercised judiciously. One way of proper exercise of this discretion is to make an award that is in consonance with the underlying objective for which an order of interest is made. The indubitable outcome is that interest on special damages will be from the date of filing of suit as the money would have been due to the claimant at the very least on that date. General damages, which is the product of an assessment process by the court, is due on the date when the assessment is made which is in the judgment date.’

10. In conformity to the above, it is my finding that the trial court erred in awarding interest from the time of judgment. I therefore hereby allow this appeal and issue the following specific orders;

1. The part of the judgment in the Chief Magistrate’s Court at Milimani Commercial Courts civil case number 9367 of 2018 awarding interest on the principal sum from the time of delivery of the judgment is hereby set aside and subsisted for an order that interest on the principal sum shall be calculated at court rates from the time of filing the suit in the lower court until payment in full.
2. Each party shall bear their own costs of this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mrs. Maina for the appellant and in absence for the respondent.

