



**Kaaria v Directline Assurance Company limited (Civil Appeal
E030 of 2024) [2025] KEHC 10618 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL E030 OF 2024**

**RL KORIR, J
JUNE 30, 2025**

BETWEEN

DICKSON MWITI KAARIA APPELLANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

(Being an appeal arising the decree emanating from the Judgement delivered by Hon. Oscar Wakina Kinyua R.M. on 16th September 2024 in Chuka MCCC E131 of 2023.)

JUDGMENT

1. The Plaintiff obtained a Declaratory Judgement against his insurers Directline Assurance in Civil Suit No.131 of 2023. In the Declaratory Judgement, the Court held that the “Defendant was obliged and liable to honour the Decree arising in the accident suit.”
2. The court in the Declaratory suit declined to declare that interest at 14% p.a was awardable from 26th November, 2021 till date of payment stating that the same was not awardable as the trial court did not state that interest was awarded on the general damages and special damages.
3. The Judgement above triggered the present Appeal. In the Memorandum of Appeal dated 23rd September, 2024, the Plaintiff/Appellant listed the following grounds:-
 - i. The trial court erred in law and fact in finding that interest was only awarded on costs in (Chuka MCCC 32 of 2020) and the court in Chuka MCCC.32 of 2020 did not state as to whether the plaintiff was awarded interest on the general and special damages thus reviewing the decree arising in Chuka MCC32 of 2020 and or also sitting on appeal in a decision by a court of concurrent jurisdiction.



- ii. The trial court erred in law and in fact in finding that, the Appellant was seeking to impose terms, in the declaratory suit (Chuka MCCC E131 of 2023) that were not in the initial decree (Chuka MCCC 32 of 2020)
 - iii. The trial court erred in law in principle in awarding interest from the date of filing of the declaratory suit, when the suit was not of a monetary nature.
 - iv. The trial court erred in law and in finding that it cannot award interest at 14% p.a from 26th November 2021 till date of payment.
 - v. The trial court erred in law in failing to appreciate section 26 of the *Civil Procedure Act* Chapter 21 Laws of Kenya and also Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* C.A CAP 405 laws of Kenya
 - vi. The trial court erred in law in failing to appreciate what a decree is.
 - vii. The trial court erred in law in fact in failing to appreciate that the suit herein is in essence an execution process premised on statute, thus, the Appellant cannot simultaneously execute the decree in Chuka MCCC32 of 2020 and Chuka MCCC 131 of 2023 separately.
4. The court directed the parties to canvass the Appeal through written submissions.
 5. The Appellant filed submissions, dated 14th March 2025, while the Respondent failed to comply with the Court's Directions.
 6. The Appellant submitted that the court was in error to hold that interest was only awarded on costs. They urged that the court purported to impose terms in a decree already issued by a court of concurrent jurisdiction. The Appellant relied on the case of *Adrew Kuria Njuguna T/A Ongatet Enterprise & Another v Rose Wambui Kuria* (2012) eKLR where the Court stated that a decretal sum arises after a decree has been issued and is the total sum due under a decree and it encompasses the principal sum, the costs as well as interest.
 7. I discern the following two issues for my determination:-
 - i. Whether the trial Court in the Declaratory suit was in error to decline to grant interest on the decretal sum.
 - ii. Whether the Appellant should be granted interest on the decretal sum at 14% P.a.
 8. The law governing costs is found in Section 27 of the *Civil Procedure Act* which provides as follows:-
 27. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
 - (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.



9. Section 26 of the *Civil Procedure Act* provides for interest as follows:-

“26.

- (1) 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.
- (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

10. The trial court in the primary suit entered an interlocutory Judgement and the case proceeded to formal proof. It is stated in the proceedings of 16th September, 2024 availed in the Record of Appeal that “Judgement delivered in open court. Defendant never entered appearance.” The Judgement in question was however not included in the Record of Appeal, making it impossible for this court to know the actual wording of the said Judgement so as to juxtapose it with the Declaratory Judgement.

11. The Declaratory Judgement stated at paragraph 8 thus:-

“As thus I find that the Plaintiff deserved the orders/declaration to the effect that the Defendant is obliged and liable to honour the decree arising in the accident suit.”

12. The Court further stated:-

“9. However as to the prayer that the defendant is obliged to satisfy the decree together with interests at 14% p.a from 26th November 2021 till date of payment is in my view not awardable. Looking at the decree subject of the instant suit, the court in paragraph (c) of the decree clearly stated that “the plaintiff shall be entitled to costs of the suit together with interest at court’s rate from the date of Judgement. The court did state as to whether the plaintiff herein was awarded interests on the general damages and special damages. Interest was only awarded on costs. The trial court having not expressly stated the above, this court cannot impose terms not in initial decree. In my view, the defendant can only be compelled to satisfy the decree as was ordered in the primary suit. The interest being sort can be computed in the said decree with executing and ought not to be part of the decree herein. I thus allow the plaintiff’s claim as prayed in prayer (a) to the extent that I order that a declaration be and is hereby made that the defendant is obliged and liable to satisfy the decree arising from Chuka Court in MCCC 28 of 2018. As to



costs, it is trite that costs follow events. I thus award costs to the plaintiff with interests from the date of filing of the suit.”

13. In the Judgement above, the court was right to state that it could not award what had not been awarded by the court which tried the accident suit. This is primarily because the court in a Declaratory suit under subrogation suits ordinarily only determines who between the Insured and the Insurer was liable to satisfy a decree in the primary or accident suit. Such a court cannot be called upon to expand or reduce the award or decree as that would be the role of an appellate court.
14. In the impugned Declaratory judgment, the court went ahead to interpret the Judgement in the primary suit and stated that interest on general and special damages was not awardable as the same had not been awarded in the primary suit. The Appellant contends that by so doing, the court misinterpreted the decree as the decree encompassed the principal sum, costs and interest.
15. As already observed, the Judgment in the primary suit was not in the Record of Appeal. The law however gives wide discretion to the trial court on matters of interest. The applicable principles were aptly stated by Ngugi J (as he then was) in the *Wambui –v Anthony Kigamba Hato & 3 Others* [2018] eKLR which I quote extensively as follows:-

- “ 27. Our Superior Courts have, overtime, come up with several principles derived from this general rule in Section 26 of the *Civil Procedure Act* which have, over time acquired stable meanings. The following three principles this regard seem relevant for the appeal at hand.
28. 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. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.
29. Second, Under Section 26(1) of the *Civil Procedure Act*, the court has discretion to award and fix the rate of interest to cover two stages namely:-
 - a. The period from the date the suit is filed to the date when the court gives its judgment; and
 - b. The period from the date of the Judgement to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.
30. Third, when it comes to the period before the filing of the suit, Section 26 of the *Civil Procedure Act* has no application. Instead, interest prior to the date of the suit is a matter of substantive law and is only claimable where under an agreement there is stipulation for the rate of interest (contractual rate of interest) or where there is no stipulation, but interest is allowed by mercantile usage (which must be pleaded and proved) or where there is statutory right to interest or where an agreement to pay interest can be implied from the course of dealing between the parties. See *Gulambussein v French Somaliland Shipping Company Limited* [1959] EA 25; *Highway Furniture Mart Limited v*



The Permanent Secretary & Another EALR (2006) 2 EA 94; Mulla- The Code of Civil Procedure (16th Edition) Vol. 1 at p. 505.”

16. It follows therefore that it was not the duty of the court in the Declaratory suit to award or refuse to award interest. The proper forum for the Appellant was to seek an interpretation of the decree from the court that tried the suit or appeal the Judgement in the primary suit.
17. Where the court was silent on the award of interest the remedy for such silence is found in Section 26(2) of the *Civil Procedure Act*. In the case of *Madison Insurance Company Ltd v Mungot* [2022] KEHC 9800 (KLR), Mulwa J held that:-

“When the effective date of interest is not pleaded as is the case in this instant appeal, provisions of Section 26(1) and (2) come into play. However, when the court is silent on the effective date for interest to start accruing, Judge Kasango J. In *Directline Assurance Co. Ltd v Jeremiah Wachira Icharia* [2016] eKLR held that there is no discretion that can be exercise in silence.”
18. In the present Appeal, I have noted from the Judgement in the Declaratory suit that part of the decretal sum had already been paid by the date of Judgement which means that the same would not attract any interest.
19. In the final analysis, the Appeal partially succeeds. The Appellant is entitled to interest on costs as ordered by the trial court. As the Judgement was silent on interest on the unpaid aggregate sum, the Appellant is deemed by dint of Section 26(2) to have been awarded the same at the rate of 6% from date of Judgement till payment in full. The Appellant shall have costs of the Declaratory suit as ordered by the trial Court in that suit.
20. Having partially succeeded, the Appellant shall have half the costs of this Appeal.

Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF JUNE , 2025.

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr. Ogwen for the Appellant and N/A for the Respondent. Muriuki (Court Assistant).

