



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngethe v World Wide Information Consultancy Services Services (WWICS) Africa Limited  
(Civil Appeal 565 of 2019) [2024] KEHC 501 (KLR) (Civ) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 501 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 565 OF 2019**

**DAS MAJANJA, J**

**JANUARY 31, 2024**

**BETWEEN**

**NICHOLAS MBURU NGETHE ..... APPELLANT**

**AND**

**WORLD WIDE INFORMATION CONSULTANCY SERVICES SERVICES  
(WWICS) AFRICA LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. E. Wanjala, SRM dated 5th  
September 2019 at the Magistrates Court at Nairobi, Milimani in Civil Case No. 8439 of 2017)*

**JUDGMENT**

**Introduction and Background**

1. The Subordinate Court entered judgment for the Appellant against the Respondent for the sum of Kshs. 112,520.00 but disallowed the claim of USD 900 thus precipitating this appeal.
2. In his Complaint, the Appellant claimed that the Respondent had touted itself as providing for services relating to emigration to Canada, assistance in settlement, placement and assistance in finding temporary/transitional jobs to members of the public and that it was also acting in collaboration with or under the guise of another entity known as Global Strategy Business Consultancy Services allegedly based in West Wing -3, Dubai Airport Free Zone in the UAE. Under a contract of engagement dated 28.11.2011, the Appellant paid Kshs. 112,520.00 on 26.11.2011 to the Respondent and a further USD 900 to Global Strategic Business Consultancy on behalf of the Respondent on 07.12.2011. That despite receiving the payment, the Respondent did not take any steps or actions to immigrate, settle, place or secure employment for the Appellant and that the only logical conclusion to be made of this conduct was that the Respondent was fraudulent and that these monies were solicited and paid by the Appellant owing to the fraudulent misrepresentation in the contract dated 28.11.2011. The Appellant



- filed suit to recover Kshs. 112,520.00 and USD 900 from the Respondent together with interest from the dates of payment in 2011.
3. As proof that the Respondent received the Kshs. 112,520.00 and USD 900, the Respondent issued a receipt number 116611286 on 28.11.2011 under file number C11-873110 and receipt number 216611156 on 08.12.2011 under file number C11- 873110. Further, that the receipt for the sum of USD 900 was issued by Global Strategic Business Consultancy although the said sums were paid to the Respondent.
  4. In its statement of defence, the Respondent denied the Appellant's claims. It stated that if there was a contract as alleged, then it is the Appellant who failed to comply with his obligations under it thus frustrating or defeating it. Further, the Respondent pleaded that if at all there was a contract then the Appellant's claim had expired since it had been brought outside the statutory limitation period and as such the claim ought to be struck out.
  5. At the hearing, the Appellant (PW 1) testified on his own behalf. The Respondent did not call any witnesses. In the judgment rendered on 05.09.2019, the trial court stated that the issue for determination was whether the Appellant had established that the Respondent is indebted to him. It found that since the Respondent had not challenged the Appellant's testimony that it did not render the services as agreed, the Respondent was therefore liable to refund Kshs. 112,520.00. With respect to the USD 900, the trial court held that it was apparent the amount was paid to Global Strategic Business Consultancy who were not parties to the suit hence the claim failed.
  6. The Appellant's appeal is grounded on his memorandum of appeal dated 30.09.2019 and as amended on 19.11.2019. The appeal has been canvassed by way of written submissions. I do not propose to rehash the parties' positions which are clearly set out in the respective positions I have summarized above. I will only make relevant references to in my analysis and determination below.

### **Analysis and Determination**

7. In determining this appeal, I am cognizant of the role of the first appellate court which is to re-evaluate and re-assess the evidence before the court of first instance. At the same time, keeping in mind the fact that the trial court interacted first hand with the parties (see *Selle v. Associated Motor Boat Co.* [1968] EA 123).
8. The Appellant is aggrieved by the findings of the trial court's in respect of the USD 900 claim. He contends that the judgment is untenable for contradicting the law of evidence and the evidence tendered by the Appellant that the sum of USD 900 was received and receipted by the Respondent. It also avers that the findings on interest payment on the sum of Kshs. 112,520.00 is unjust and untenable in law, as the Appellant's monies were obtained through fraudulent misrepresentation.
9. In dismissing the Appellant's claim of USD 900, the trial magistrate held that this sum was paid to Global Strategic Business Consultancy who were not parties to the suit. From the evidence on record, I agree with the trial court that the USD 900 was paid to and receipted by the said Global Strategic Business Consultancy. The Appellant contends that the two entities are one and the same based by their shared domain names and similarities of the receipts issued and contract numbers. The Appellant had the burden of proving a legal link between the two entities in order for the trial court to reach the conclusion that the two entities were one and the same (see *Samex Trading Agencies v Block Hotels Ltd NRB HCCC No. 155 of 2003* [2008] eKLR).
10. The Appellant relied on the case of *Gospel Assembly Church Academy of Music & another v Munene Ngoto* [2005] eKLR in order to support his case that the two entities were the same in light of the



aforementioned similarities. This case can be distinguished from the present case as the question in that case was whether, “Gospel Assembly Church” and “Gospel Assembly Church Academy of Music” related to the same entity and whether the receipt so issued was done by the said entity on its behalf by its agent. The court found that the receipt issued was conclusive that it was issued by the same entity and that the question of the names, “Gospel Assembly Church” and “Gospel Assembly Church Academy of Music” was a “red herring” since there was evidence as to the office the respondent went to and the receipt spoke for itself. In this case, there was no dispute as to the names of the Respondent and Global Strategic Business Consultancy and there is no evidence that the Respondent issued the receipt and contracted the Appellant on behalf of Global Strategic Business Consultancy. There was no evidence of agency between the two entities. The Appellant entered into two separate contracts with the Respondent and Global Strategic Business Consultancy. A reading of the contract with Global Strategic Business Consultancy refers to it as, “the company” in various clauses which is indicative that it is an entity registered as a company, at least on a prima facie basis. The Appellant did not tender any proof that the said Global Strategic Business Consultancy was non-existent. In any case, the Appellant knew that it was contracting with a company. I find that this ground by the Appellant lacks merit.

11. On the ground that the trial magistrate ought to have awarded interest on the Kshs. 112,250.00 awarded from the date of payment rather than from the date of filing suit, the Appellant relies on *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited* [1970] EA 469 to submit that the court stated that a judge had power to award interest from a date prior to judgment.
12. The power and discretion to award interest is embedded in section 26(1) of the [Civil Procedure Act](#) which provides 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. [Emphasis mine]
13. Section 26(1) above empowers the court award interest from the date of filing suit upto the date of judgment, from the date of judgment upto the date of payment of the sum adjudged or from such earlier date as the court may fix. The application of these principles has been settled by our courts. In [Prem Lata v Peter Musa Mbiyu](#) [1965] EA 592 it was held that in personal injury cases, interest on general damages should not be awarded for the period between the date of filing suit and judgment and that interest should normally be awarded on special damages if the amount claimed has been actually expended or incurred at the date of filing the suit. Award on interest on decretal sum on a date prior to judgment is a matter of substantive law (see [Shariff Salim & another v Malundu Kikava](#) [1989] eKLR and [Highway Furniture Mart Ltd v Permanent Secretary Office of the President and Another](#) [2006] eKLR). Instances where substantive law provides for payment of interest prior to filing of suit include where the contract provides for payment of interest upon default or where interest is payable by trade custom and usage. Needless, the circumstances or facts upon which such interest is claimed must be pleaded and proved (see [Alba Petroleum Ltd v Total Marketing Kenya Ltd](#) [2019] eKLR and [Kenya Commercial Bank Ltd v Thomas Wandera Oyalo](#) [2005] eKLR).
14. Ultimately, the discretion to award interest must be exercised judicially and an appellate court will not interfere with the discretionary decision of a trial court unless it is satisfied that the court in exercising the discretion has misdirected itself in some matter and as a result has arrived at a wrong decision, or



unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of the discretion and that as a result there has been an injustice (see *Mbogo v Shah* [1968] EA 93 and *United India Insurance Co. Ltd and Others v East African Underwriters (Kenya) Ltd* NRB CA Civil Appeal No. 36 of 1983 [1985] eKLR).

15. The trial magistrate awarded the interest from a date prior to the judgment which was the date of filing suit. This is provided for by the law under section 26(1) of the *Civil Procedure Act* and is backed by pronouncements of superior court authorities on how to award interest. I find that this discretion was exercised judicially and I find no reason for the court to interfere.

### **Disposition**

16. The Appellant's appeal lacks merit. It is dismissed. The Appellant shall pay the Respondent costs of the appeal assessed at Kshs. 20,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**D. S. MAJANJA**

**JUDGE**

Instructed by Koki Mbulu and Company Advocates for the Plaintiff.

Mr Osoro instructed by D. B. Osoro and Company Advocates for the Respondent.

