



REPUBLIC OF KENYA



**Wambugu v Sava Industries Limited (Civil Appeal 523 of 2012)  
[2024] KEHC 9304 (KLR) (Civ) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 9304 (KLR)

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

**CIVIL**

**CIVIL APPEAL 523 OF 2012**

**AB MWAMUYE, J**

**JUNE 27, 2024**

**BETWEEN**

**JOSEPH MWANIKI WAMBUGU ..... APPELLANT**

**AND**

**SAVA INDUSTRIES LIMITED ..... RESPONDENT**

*(Being an Appeal against the Ruling & Decree of the Hon. A.O. Muchelule (CM, As He Then Was) given on 21st May, 2009 in Milimani CMCC No. 755 of 2007)*

**JUDGMENT**

1. The Appellant's Memorandum of Appeal dated 12<sup>th</sup> October, 2012 challenges the decision of the Hon. A.O. Muchelule (CM, as he then was) on the following grounds:
  - i. That the Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant was entitled to interest and costs on the principal amount from the date of filing suit until each part thereof/instalment was paid;
  - ii. That the Learned Magistrate erred in law and in fact by failing to state the date from which the interest would be calculated from; and
  - iii. That the Learned Trial Judge erred in law and in fact by failing to indicate the principal amount as Kes. 2,585,953.00 as prayed in the Complaint, and hence the amount of interest and costs available to the Appellant were lowered.
2. The Appellant filed a Record of Appeal dated 15<sup>th</sup> January, 2013 as well as the Appellant's Written Submissions dated 8<sup>th</sup> April, 2024. On its part, the Respondent filed the Respondent's Written Submissions dated 8<sup>th</sup> May, 2024.



3. Both Parties agree that the Complaint dated 5<sup>th</sup> February, 2007 sought the payment by the Respondent to the Appellant of a principal sum of KShs.2,585,953.00, together with costs and interest to run from the date of the filing of the suit until the date of payment in full. It is also agreed that during the pendency of the suit the sum of KShs.1,817,925.00 was paid, which left a balance of KShs.810,028.00 at the time of judgment.
4. The points of departure between the Parties are clear. On interest and costs, the Appellant takes the position that the Appellant was entitled to interest and costs on the principal sum from the date of the filing of the suit because the Respondent only made payment in instalments after the filing of the suit and the filing of its Defence. The Appellant relied on Section 26 of the [Civil Procedure Act](#) in support of his position.
5. On the other hand, the Respondent contends that it would be unfair to hold the Respondent liable to pay interest on sums already settled. The Respondent also argues that the judgment of the Trial Court was a default judgment and as such the Appellant was not put through a rigorous trial process necessitating interference by this Court with the Trial Court's findings on costs. The Respondent further observes that as per Section 27 of the [Civil Procedure Act](#) the question of costs is at the discretion of the court.
6. An appellate court, such as this one, can only interfere with the trial court's discretion to award and fix the rates of interest if it is satisfied that the lower court did not exercise that discretion judiciously; either by applying an erroneous legal principle or by making a manifestly unjust decision. The Superior Courts have long established that where a claim is for a liquidated sum, unless there is good cause, the interest should be calculated from the date of filing the suit.
7. In the present case, the claim was undoubtedly for a liquidated sum. The Trial Court, therefore, erred in not stating explicitly that interest was to be calculated from the date of the filing the suit, and to be computed at court rates.
8. However, it would be unjust for the Respondent to be condemned to pay interest on the entire principal sum that was outstanding at the date of filing of the suit. To do this would remove any incentive for a defendant to make partial payments during the pendency of the suit. On the other hand, it would also be unjust for a court to only take the unpaid sum as stated in the judgment and subject that sum alone to interest from the date of filing of the suit. A just and equitable solution that neither unfairly burdens or rewards either party would be for a trial court to award interest on a reducing balance from the date of filing of the suit to the date of judgment. That is what the Trial Court in this matter ought to have done.
9. Turning now to costs, there can be no question that the Trial Court exercised its discretion and properly awarded the Appellant costs. However, the Trial Court was silent on the base amount that would be used in calculating those costs. Having found as I have at Paragraph 8 above, it can only follow that costs should be based on the Complaint sum being KShs.2,585,953.00.
10. Consequently, I make the following orders varying the Ruling and Decree of the Trial Court:
  - a. Interest shall be computed from the date of filing of the suit, being 7<sup>th</sup> February 2007, on a reducing balance, until the date of payment in full; and
  - b. The costs awarded by the Trial Court shall be computed using the Complaint Sum of KShs.2,585,953.00.
11. With respect to costs of the Appeal, the same are awarded to the Appellant.



**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE, 2024.**

**BAHATI MWAMUYE**

**JUDGE**

In the presence of:

Ms. Mwangi Counsel for the Appellant

Counsel for the Respondent absent

Mr. Guyo, Court Assistant

