



**Kabiru v National Bank of Kenya Limited (Cause 595 of 2013)  
[2024] KEELRC 13270 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13270 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 595 OF 2013  
L NDOLO, J  
NOVEMBER 28, 2024**

**BETWEEN**

**JOHN MUTERU GATHUTHI KABIRU ..... CLAIMANT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the Notice of Motion dated 22<sup>nd</sup> July 2024, by which the Respondent seeks a declaration that interest is payable to it by the Claimant. The Respondent further asks the Court to determine the total amount, inclusive of interest payable to it, pursuant to reduction of the decretal sum in its favour, by the Court of Appeal, in Nairobi Civil Appeal No 60 of 2018: *National Bank of Kenya Limited v John Muteru Gathuthi Kabiru*.
2. The application is supported by an affidavit sworn by the Respondent's Legal Officer, Chrispus Maithya and is based on the following grounds:
  - a. This Court issued judgment in favour of the Claimant, awarding him the equivalent of twelve (12) months' salary as damages for wrongful and unfair termination, amounting to Kshs. 3,345,216;
  - b. The Claimant was further awarded the equivalent of three (3) months' salary in lieu of notice amounting to Kshs. 1,672,608;
  - c. Pursuant to the award issued in favour of the Claimant, the Respondent was directed to pay a cumulative amount of Kshs. 5,017,824 plus interest;
  - d. Pursuant to the said judgment, on 17<sup>th</sup> May 2017, the Respondent paid to the Claimant a total sum of Kshs. 8,363,040 which comprised of the sum awarded and interest in full. The



Respondent further proceeded to appeal the decision at the Court of Appeal, vide Nairobi Civil Appeal No 60 of 2018: National Bank of Kenya Limited v John Kabiru;

- e. Upon hearing and determination of Civil Appeal No 60 of 2018, the Court of Appeal partially allowed the Respondent's appeal, and reduced the award of maximum compensation issued to the Claimant to an equivalent of three (3) months' salary plus 3 months' salary as notice pay, cumulatively amounting to Kshs. 3,345,216;
  - f. In partially allowing the appeal, the Court of Appeal awarded the Respondent 25% of the costs of the appeal;
  - g. In these circumstances, the Respondent's claim is that the Claimant is indebted to it for overpayment of the decretal sum plus interest accrued during the period the Claimant has been indebted to the Respondent.
3. In his affidavit in support of the application, Chrispus Maithya depones that the Claimant is indebted to the Respondent to the tune of Kshs. 5,232,796.16 being outstanding overpayment on principal amount plus interest at court rates for 6 years.
  4. The Claimant opposes the application by his replying affidavit sworn on 7<sup>th</sup> October 2024. He depones that the Court of Appeal did not award the Respondent interest arising from the reduction of the award by the trial court.
  5. The Claimant points out that on 12<sup>th</sup> September 2022, the Respondent computed the money the Claimant was expected to refund being Kshs. 5,017,824. The Claimant states that the refund amount was inclusive of interest and adds that he had refunded to the Respondent Kshs. 4,000,000 leaving a balance of Kshs. 1,017,824.
  6. By its application, the Respondent asks the Court to declare that interest is due from the Claimant to the Respondent, on account of the difference in award between the judgment delivered by this Court (Wasilwa J) on 18<sup>th</sup> July 2016 and judgment delivered by the Court of Appeal in Nairobi Civil Appeal No 60 of 2018.
  7. The particulars are that Wasilwa J awarded the Claimant Kshs. 3,345,216 being 12 months' salary in compensation for unlawful and unfair termination of employment plus Kshs. 1,672,608 being 3 months' salary in lieu of notice.
  8. When the matter went on appeal, the Court of Appeal reduced the compensatory award to the equivalent of 3 months' salary but retained the 3 months' salary in lieu of notice, making a cumulative award of Kshs. 3,345,216. Additionally, the Court of Appeal awarded the Respondent 25% of the costs of the appeal.
  9. In the intervening period, the Respondent had paid to the Claimant Kshs. 8,363,040 comprising of principal sum and accrued interest. Pursuant to the judgment of the Court of Appeal, the parties took accounts and agreed that the Claimant would refund the sum of Kshs. 5,017,824 to the Respondent, out of which the Claimant has paid Kshs. 4,000,000.
  10. The Respondent appears to have changed course and now demands interest for the period between 18<sup>th</sup> July 2016 when Wasilwa J delivered her judgment and 22<sup>nd</sup> July 2022, when the Court of Appeal delivered its judgment.
  11. The Respondent relies on Section 26 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.
- (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum 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.

26. In their written submissions, the parties took divergent positions on the question whether the Respondent can legitimately claim interest for the period when the Claimant benefited from the enhanced award of 12 months' salary. The arguments by both parties on this issue are intellectually engaging. However, the more fundamental question is whether this Court is clothed with the jurisdiction to engage in this discourse.
26. In my considered view, the Respondent in bringing this application, is effectively inviting this Court to interpret and extrapolate the judgment by the Court of Appeal. It would be a great violation of the well-established principle of hierarchy of courts for me to venture on this path. The declaration sought by the Respondent can only be made by the Court of Appeal.
26. For the foregoing reasons, the Respondent's application dated 22<sup>nd</sup> July 2024 is declined with costs to the Claimant.
26. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ogembo for the Claimant

Mr. Kisia for the Respondent

