**Highway Furniture Mart Limited v The Permanent Secretary and another**

**Division:** Court of Appeal of Kenya at Nyeri

**Date of judgment:** 9 June 2006

**Case Number:** 52/05

**Before:** Omolo, O’kubasu and Githinji JJA

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Civil practice and procedure – Decree – When court may vary terms of decree.*

*[2] Civil practice and procedure – Interest on decretal sum – Justification for such interest – When*

*interest antecedent to filing suit may be granted.*

**Editor’s Summary**

The appellant was aggrieved by part of the ruling of the Superior Court wherein the Superior Court, having dismissed the application by the Attorney General for review of judgment, nevertheless invoked its inherent jurisdiction under section 3A of the Civil Procedure Act *suo moto* and set aside the decree dated 13 January 1999 and all subsequent decrees and ordered that the decree be redrawn and approved by the Deputy Registrar in accordance with the judgment of December 16, 1998. The judgment of court had been in the sum of KShs 9 296 132, together with costs and interest “as prayed in the plaint”. The appellant had prayed for, among other things, “interest thereon at court rate from the date hereof until payment in full”. The decree as drafted showed that judgment for KShs 9 296 132 was entered together with interest at 36% per annum from 12 October 1990 until date of judgment on 16 December 1998 and 14% from 17 February 1998 till payment in full. It was this decree that the judge set aside *suo moto* or *moto* and which occasioned the current appeal.

**Held** – By Order VII, rule 6 of the Civil Procedure Rules, the plaint should state specifically the relief which the plaintiff claims. The justification for an award of interest on the principal sum is, generally speaking, to compensate a plaintiff for the deprivation of any money, or specific goods through the wrong act of a defendant. *Later v Mbiyu* [1965] EA 592 followed. Interest antecedent to the suit 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. A decree should agree with the judgment. A decree which is not in conformity with the judgment is liable to be reversed and set aside for a party to the suit cannot suffer because of the errors committed by the court. Appeal dismissed.

**Cases referred in the judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Gulam Husein v French Somaliland Shipping Company Limited* [1959] EA 25

*Later v Mbiyu* [1965] EA 592 – **F**

*Lwanga v Centenary Rural Development Bank* [1999] 1 EA 175

*New Types Enterprises Limited v Kenya Achand Insurance Company Limited* [1988] KLR 380

***India***

*Bengal Magpur Railway Company v Ruttanji Ramji* 1938 AIR PC 67