



liquidated demand which in nature is a debt, a specific sum of money owed by the defendant to the plaintiff and payable under a contract, such a sum is either ascertained or is capable of being ascertained. The respondent relied on the case of ***Begumisa George Vs East African Development Bank HCMA NO. 451 Of 2010*** where it was held that;

5            “A claim under O.36 should not include interest, except where the document sued upon includes an agreement on interest”.

In reply the plaintiff/respondent submitted that O.36 of CPR does not apply to the suit anymore once the parties agreed that judgement be entered on the principle sum of USD 19,099 and that the aspect of interest be decided by the court. That the suit at that point  
10 became an ordinary suit with the aspect of interest being set down for hearing through submission of the parties. That the court has discretion to award interest as prayed in the plaint.

The plaintiff/respondent relied on the case of ***Solomon Baganja and Mabel Nansubuga Vs Henley Property Developers Ltd HCCS No.47 of 2012.***

15 In that case court directed that once partial judgement is entered by consent of the parties and the parties failed to agree on the other issues inclusive of interest and costs, the court granted conditional leave for the issue of Interests, damages and costs to be tried as if it was an ordinary plaint.

The plaintiff/respondent further averred that interest should be awarded so as to bring the  
20 plaintiff/respondent to the position it would have been if the wrong complained of had not taken place. That due consideration should be given to the nature of the plaintiffs transport business which requires regular cash flows to maintain its trucks by servicing them regularly and ensure timely payments of wages as a way to enhance effective service delivery and eventually culminate in more business and profits.

## 25 **RULING**

I have considered the applicants/defendants objection, the provisions of O.36, the authorities cited and submission of both Counsel.

The gist of the applicant/ defendant’s objection to the interest prayed for by the plaintiff is that the interest asked for by the plaintiff does not fall under 0.36 of CPR because it is not  
30 backed by a contract. The defendant/ applicant relies on the case of ***Begumisa George Vs East African Development Bank HCMA NO. 451 OF 2010.*** Where court reviewed certain authorities; it said;

“Regarding the 1<sup>st</sup> issue, the point of attack was to do with the interest sought as one of the prayers in the plaint. I reviewed the authorities cited by Mr. Guma, i.e. the decisions in **Arjabu Kasule Vs F. T. Kawesa [1957] EA 611** and **E. M. Cornwell & Co. Ltd. Vs Shantaguari Dahyabhai Desai (1941) 6 ULR 103**. It is true that they reflect the position that a claim under O.36 should not include interest, except where the document sued upon includes an agreement on interest. However, the decision in **Arjabu Kasule** discusses the question further. Relying on the decision in **Uganda Transport Co. Ltd. Vs Count de la Pasture (3) (1954), 21 EACA 163**, it was held that:

“... where a plaint endorsed for summary procedure contains claims correctly endorsed and other claims, the court may, by O.33 rule 3 to rule 7 and 10, deal with the claims correctly specially endorsed as if no other claim had been included therein and allow the action to proceed as respects the residue of the claim, the court having no power under O.33 to strike out any part of the claim but being unable to give summary judgment for any relief not within the scope of O.33 rule 2 aforesaid.”

A summary procedure is basically a quick way for the plaintiff who demands a liquidated sum to obtain a judgement where there is no evident defence.

It’s already settled law that summary procedure is valid as long as the defendant is denied leave to appear and defend the suit. But where a suit starts as a summary suit and leave to defend is granted, the suit becomes an ordinary suit. (**Hanani Moezali Vs Moez Ramani HCCS number 416 of 2001**)

Thus in the case of **Solomon Baganja and Mabel Nansubuga Vs Henley Property Developers Ltd HCCS No. 47 of 2012** where partial judgement was entered by consent of the parties and the parties failed to agree on the issues of interests and general damages, court granted leave for the issues of interest, damages and costs to be tried. Court directed that the question of general damages and interests together with costs would be tried.

Similarly in the case relied on of **Begumisa George Vs East African Development Bank HCMA NO. 451 of 2010** on the issue of interest, court concluded that it was a triable issue and gave leave for the defendant to defend the suit in an ordinary trial.

This therefore means that interest that does not fall under the summary procedure and cannot be recovered under O.36 can none the less be considered by court in the ordinary way. In the instant case, the parties agreed for a judgement to be entered on the principle sum. The

applicant having been given the leave to appear and defend, he objected to the interest being claimed by the plaintiff who is now the respondent.

Under the circumstances therefore, once the defendant is given leave to defend the suit or object to interest, the suit ceases to be a summary suit and is now an ordinary suit. The parties were asked to file their submissions on interest and costs. Therefore the applicant/defendants objection to the grant of interests does not stand since the suit is no longer a summary suit.

It was the plaintiff's case that interest should be awarded so as to bring the plaintiff to the position it would have been if the wrong complained of had not taken place. That due consideration should be given to the nature of the plaintiffs business.

In the case of ***DFCU Bank (U) Ltd Vs Ms Ndibazza & Anor (Civil Suit No. 80 of 2012)*** court held that,

*“Because the award of interest on money of which the Plaintiff has been deprived is compensatory, when interest is awarded it fulfils the same purpose as an award of general damages which is to put the innocent party as far as possible in a position ‘as if the contract had been performed’.”*

*Where money is due and owing to another but withheld and made unavailable to the plaintiff and award of interest compensates the deprivation. Interest may be awarded as compensation for keeping the plaintiff out of his money at the discretion of the court under Section 26 (2) of the Civil Procedure Act which provides that:*

*“Where the 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 prior to 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.”*

The plaintiff/ respondent has been deprived the use of its money for one year since 24/11/2016. The plaintiff would have had better use of its money. Under the circumstances therefore, the plaintiff is awarded interest of 20% from the date of default till payment in full.

Under Section 27 of the Civil Procedure Act, costs follow the event. The plaintiff's suit succeeds with costs as against the defendant/ applicant.

I so order

5 **B. Kainamura**  
**Judge**  
**13.8.2018**