

Nigeria

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Award of interest

Claims relating to interests constantly feature in suits filed before courts in Nigeria and have been the subject of several appeals over the years. While the courts have established precedents with regard to post-judgment interests owing mostly to the various rules of courts permitting such awards subject to court discretions, the practice relating to award of prejudgment interests remains uncertain.

Save for a few isolated cases (*Nigeria General Superintendence Co. Ltd v Nigerian Ports Authority* (1990) 1 NWLR (Pt. 129) 741 and *Adeyemi v Lan & Baker (Nig) Ltd* (2000) 7 NWLR (Pt. 663) 33), Nigerian courts have relied mostly on the common law holding in *London Chatham & Dover*

Railway v S.E. Railway Co. [1893] AC 429 to hold that interest may be claimed only as of right where it is contemplated by agreement between parties, under mercantile custom, statute, or under a principle of equity such as breach of fiduciary relationship

(see, for example, *Ekwunife v Wayne (West Africa) Ltd* (1989) 5 NWLR (Pt. 122) 422.

Recently in *A.G. Ferrero & Co. Ltd v Henkel Chemicals (Nigeria) Ltd* (2011) All FWLR (Pt 587) P.647, the Supreme Court was again faced with the challenge of deciding whether a party was entitled to award of prejudgment interest on money paid later than the due date, even when such interest was not specifically made a part of the agreement of the parties. It held that such award of interest was impossible unless stipulated under the agreement of parties, supported by mercantile custom, statute or claimed under a principle of equity such as breach of fiduciary relationship. By this decision, the Supreme Court reiterated Nigeria's adherence to the common law principle enunciated in the *London Chatham & Dover Railway* case.

Instructive in this regard, however, is the fact that courts in other jurisdictions are moving away from application of the common law principle in *London Chatham*

& Dover Railway which prohibits award of interest on debts in the absence of agreement. Recently in *Sempra Metals Ltd v HM Commissioners of Inland Revenue* [2007] UKHL 34, the English House of Lords described the principle enunciated in that common law case as "unimpressive and unreflective of everyday life in the 21st century where interest payments for the use of money are calculated on a compound interest basis with no money available commercially on simple interest terms".

The House of Lords in *Sempra Metals* held that interest on losses caused by late payment of debt will be awarded subject to the principles governing all claims for damages for breach of contract, where a party successfully pleads and proves his actual interest losses. The House of Lords further held that because common law does not assume that delay in payment of a debt will of itself cause damages, an unparticularised and unproved claim for damages will not suffice. Thus, to that extent only, the House of Lords retained the decision in *London Chatham & Dover Railway*.

It is noteworthy that earlier on in the *Ekwunife* case mentioned above, the Nigerian Supreme Court had held that adjudication on a claimant's right to interest should be based on evidence placed before a trial court, which evidence should also establish the proper rate of interest and the date from which it should begin to run. The decision in that case was distinguished by the court in *A.G. Ferrero*. It is submitted, however, that a careful review of the earlier case ought to have revealed that "evidence" need not only be by way of an actual interest clause in an agreement, but can include a showing of actual interest losses.

Should the issue come before the Supreme Court again, it is hoped that the court will review its decision in *A.G. Ferrero*. Until then, parties would more appropriately avoid the effect of the Supreme Court decision in that case by specifically making provisions for payment of interest in their contractual agreements. It is instructive to note, however, that where parties are unregulated by any contractual provision, a claimant may rely on the decision in *Adeyemi v Lan Baker* to claim interest.

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