



**AWARD OF INTEREST ON DAMAGES FOR CONTRACTUAL  
BREACH BY THE REPUBLIC OF GHANA**

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# INTRODUCTION

*“The award of interest is a matter of discretion for the court, and the court will consider the circumstances of the case including the terms of the contract, the nature of the breach, and the losses suffered by the claimant...”*

The **Constitution of Ghana under Article 293** allows a person who has a claim against the Government of Ghana to enforce same as of right by proceedings taken against the Government for that purpose without the grant of a fiat. Accordingly, the laws of Ghana allow that the State is liable in contract in the same way that a private person of full age and capacity would be liable. Under contract, the liability of the State extends to claims arising out of any express or implied contract with the State; claims for liquidated or unliquidated damages in cases not arising in tort and claims for the recovery of taxes or duties wrongly paid or over-paid. Usually, a court would award damages against the Republic where the Plaintiff is able to prove that the State has breached its obligations under a contract and that the breach is such that the innocent party is entitled to receive damages that can fairly and reasonably be said to arise naturally from the breach itself or such as may reasonably be supposed to have been in contemplation of both parties at the time they made the contract as the being the probable result of the breach. Where damages are awarded, usually courts have the discretion to award interest on the damages award.

## Award of Interest for Contractual Breach

Usually, a Plaintiff in a breach of contract suit would be able to recover interest on the damages awarded by the Court. **The Courts Act, 1993 (Act 459), section 82(5)(c)** provides that *“the sum for which a judgment is registered shall carry interest.”*

Interest is usually recoverable where there is an express agreement by the parties to pay it. In such an instance, the court will respect the agreement between the parties that specify interest rates applicable to the damages awarded. Courts will view themselves as duty bound to give effect to the intentions of the parties. Also, where there is no contractual agreement on the rate of interest to be awarded but there is an implied agreement to pay it resulting from a course of dealing between the parties, then that implied intention would be upheld by the court in awarding interest on damages. In the absence of an express agreement or an implied agreement the courts will, based on discretion, award interest and by so doing consider the circumstances of the case including the nature of the breach and the losses suffered by the Plaintiff. The main goal for the award of interest on damages for breach of contract is to compensate the claimants for the loss of use of money or funds that were owed to them as a result of the contractual breach.

Thus, in the case of **Royal Dutch Airlines (KLM) v Farmex Ltd (No. 2) [1989-1990] 2 GLR 682**, the Supreme Court in justifying the need to award interest on damages for breach of contract stated that *“the plaintiffs being businessmen, if the money had been paid to them they would have been enabled to trade with it and would have ploughed back their profits from the date of judgment in the High Court. As the money had been kept since that date, it was only equitable that the defendant be called upon to disgorge whatever profits that would have accrued at the Plaintiff’s expense. The trial judge was therefore right in holding that the plaintiffs were entitled to interest on the damages at the prevailing bank rate...”*

## Prohibition against award of compound interest against the Republic of Ghana

Flowing from the above discussion, it is clear that the position of the law and the jurisprudence of the superior courts regarding the award of interest on damages for breach of contract applies to suits involving the Republic of Ghana in as much as it does to private contracting parties. The question remains whether the courts are at liberty to award, in deserving cases, compound interest against the Republic of Ghana as against simple interest? The laws of Ghana in no clear terms denounces and expresses reservation against the award of compound interest in transactions involving the State. In the case of *Royal Dutch Airlines (KLM) v Farmex Ltd (No. 2)* (*supra*), the Supreme Court gave a clear indication of the general abhorrence by the courts in awarding compound interest when it stated that “*the trial judge was therefore right in holding that the plaintiffs were entitled to interest on the damages at the prevailing bank rate and at simple interest...*”

**The Contracts (Amendment) Act, 2023 (Act 1114)** which amends the **Contracts Act, 1960 (Act 25)** provides at **section 17(3)** that “*where a person specified under subsection (2) enters into a contract or transaction on behalf of the Republic, the payment of interest on any sum of money due under the contract or transaction shall be calculated at simple interest.*” **Section 17(4)** further provides that “*a person shall not enter into a contract or a transaction on behalf of the Republic in which the payment of interest on a sum of money due under to a party to the contract or transaction is calculated at compound interest.*” **Section 17(5) of Act 1114** provides that “*a contract entered into contrary to subsection (4) is null and void.*” Finally, **section 17(6) of Act 1114** states that “*a person who wilfully enters into a contract contrary to this section commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than ten thousand penalty units or to a term of imprisonment of not less than ten years and not more than fifteen years or to both.*”

Furthermore, in the **Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52)**, **rule 1** provides that “*if the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a party in the action, that interest shall be calculated (a) at the bank rate prevailing at the time the order is made and (b) at simple interest.*” It further provides that “*but where an enactment, instrument or agreement between the parties specifies a rate of interest which is to be calculated in a particular manner the court shall award that rate of interest calculated in that manner.*” Obviously, the latter portion of this provision in CI 52 would be subservient to **section 17 of Act 1114** such that any agreement by a party and the Republic for the State to pay compound interest to the other party would be null and void. Every post judgment interest, according to **rule 2 of CI 52**, “*shall bear interest at the statutory interest rate from the date of delivery of the judgment up to the date of final payment.*”

## Conclusion

In conclusion, the laws of Ghana provide clear guidance on the award of interest on damages for contractual breach by the Republic of Ghana. As mandated by the laws and relevant case law, the Republic of Ghana is liable to pay interest on damages awarded against it for breach of contract. Notably, this interest is to be calculated from the date of judgment until the date of payment. This conclusion is further supported by the principle that simple interest is the standard approach in Ghanaian law for calculating interest on judgments. The distinction between simple and compound interest is crucial as it directly affects the total amount payable by the Republic to the claimant. Simple interest ensures that the Republic’s liability is calculated fairly and transparently without the compounding effect that could lead to significantly higher amounts owed over time.



The implications of this conclusion are significant for both the Republic of Ghana and claimants in contractual disputes. For the Republic of Ghana, it underscores the importance of adhering to contractual obligations to avoid unnecessary financial liabilities. For claimants, it provides clarity on the calculation of interest, enabling them to better assess the potential outcomes of their claims. Ultimately, the mandate for simple interest on damages for breach of contract by the Republic of Ghana reflects a balanced approach ensuring that claimants are fairly compensated for their losses while also considering the fiscal responsibilities of the State. As Ghana's legal system continues to evolve, this principle will remain a cornerstone in the resolution of contractual disputes involving the State, promoting fairness, transparency and predictability in the application of law.

God bless!



#### ABOUT THE AUTHOR

REGINALD NII ODOI is a Barrister and Solicitor of Ghana who obtained his Master of Laws (LLM) Degree from Harvard Law School in Cambridge, USA. He is also a proud alumnus of Kwame Nkrumah University of Science and Technology (KNUST) where he graduated with First Class Honors and notably served as the President of the Law Students' Union and the Legal Affairs Commissioner of the SRC, amongst others. He was called to the Ghana Bar in 2016. His research areas include Comparative Constitutional Law; Corporate & Commercial Law; International Investment Law and Arbitration and International Law. His goal is to contribute to re-envisioning the way effective lawyering could be done in today's world.