



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 192 OF 2015

PEERAJ GENERAL TRADING & CONTRACTING

COMPANY LIMITED, KENYA.....1ST PLAINTIFF

PEERAJ GENERAL TRADING COMPANY, LLC, UAE.....2ND PLAINTIFF

VERSUS

MUMIAS SUGAR COMPANY LIMITED.....DEFENDANT

RULING

[1] The Notice of Motion dated **25 January 2018** was filed on even dated by the Plaintiffs pursuant to **Section 99** of the **Civil Procedure Act, Chapter 21** of the **Laws of Kenya and Order 51 Rule 1** of the **Civil Procedure Rules, 2010**, for orders that the Court be pleased to correct the error arising from the accidental slip, omission or otherwise in the decree herein; and that consequent upon the aforesaid prayer being granted, the Court be pleased to correct the Decree issued on **1 December, 2017** by striking from it orders numbers 5, 6 and 7; and to direct the Deputy Registrar to immediately effect the said corrections and issue a fresh decree that is in compliance with the rulings of the Court herein. It was also prayed that the costs of the application be borne by the Defendant.

[2] The application was premised on the grounds that the Decree issued on **1 December 2017** has erroneously misrepresented the true position of the Court's Ruling rendered on **29 September, 2017** on the Plaintiff's application for leave to execute the Decree and Judgment of **2 September 2016** before taxation of costs and the Defendant's Motion for stay of execution pending appeal. It was averred that whereas by the Court's Ruling of **29 September 2017** the Defendant's application for stay of execution pending appeal was dismissed; and the Plaintiff's application for leave to execute the Decree before the taxation of costs was allowed, the Decree as extracted neither reflects that position nor the draft Decree that had been exchanged between the parties; and therefore that it would only be just and expedient for the error to be corrected by wholly deleting the additional orders as per numbers 5, 6 and 7 of the said Decree. These grounds were further expounded in the Supporting Affidavit of **Mr. Elias Masika, Advocate**, to which he annexed copies of the Decree, the Ruling dated **29 September 2017** and pertinent correspondence exchanged between Counsel for the parties.

[3] The application is unopposed and having carefully considered the grounds set out therein, the averments in the Supporting Affidavit as well as the written submissions filed herein on behalf of the Plaintiff and the proceedings herein, it is manifest that the Ruling dated **2 September 2016** was in respect of two applications, namely: the Plaintiff's Notice of Motion dated **29 May 2015** for Judgment on Admission; and the Defendant's application dated **3 June 2015** for striking out of the Plaintiff's Plaint including the Verifying Affidavit. At paragraph 15 of the Ruling, the Court found the Defendant's application dated **3 June 2015** to be without merit and dismissed the same with costs. On the other hand, the Plaintiff's application dated **29 May 2015** was partially successful, and the Court ordered thus in respect thereof:

"...In the result, I would grant the application to the extent of entering judgment on admission in favour of the Plaintiff/Applicant against the Defendant/Respondent, in the sum of USD 3,330,520.28 only together with the costs of this application. The rest of the claim will have to proceed to trial if not agreed on by the parties..."

[4] The record further shows that the Ruling dated **29 September 2017** was in respect of 3 applications namely:

[a] The Defendant's Notice of Motion dated **17 September 2016** for stay of execution of the Ruling dated **2 September 2016** pending the hearing and determination of the Defendant's intended appeal to the Court of Appeal;

[b] The Plaintiffs' application dated **22 November 2016** for leave to execute the Judgment and Decree issued pursuant to the Court

Ruling of 2 September 2016 in the sum of USD 3,330,520.28 before taxation;

[c] The Defendant's Notice of Motion dated 12 January 2017 for leave to appeal against the Court's Ruling dated 2 September 2016 and for stay of the said Ruling.

[5] At paragraph 19 of the Ruling dated 29 September 2017 the Court found the Defendant's Notice of Motion dated 17 September 2016 to be devoid of any merits. The same was accordingly dismissed with costs. At paragraph 28 of the said Ruling, the court allowed the Plaintiffs' Notice of Motion dated 22 November 2016 and granted the orders sought in that application. Similarly, the Defendant's application dated 12 January 2017 was allowed and leave granted to the Defendant to appeal the Ruling of 2 September 2016.

[6] A Decree was thereafter extracted for execution by the Plaintiff on 1 September 2017 in the following terms:

1. THAT the Defendant's Notice of Motion dated 17th September, 2016 is devoid of merit and the same be and is hereby dismissed with costs.

2. THAT the Plaintiff be granted leave to execute the decree issued by this Honourable Court on 2nd September, 2016 before taxation of the costs.

3. THAT the judgment and decree of this Court issued pursuant to its ruling delivered on 2nd September, 2016 in the sum of USD 3,330,520.28 be and is hereby executed forthwith by the Plaintiffs as against the Defendant except as to so much thereof that related to the costs of the application; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

4. THAT the costs of this application be in the cause.

5. THAT time be and is hereby enlarged to grant leave to the Defendant/Applicant to appeal against this Court's Ruling dated 2nd September 2016.

6. THAT a stay of execution of this Court's Ruling dated 2nd September 2016 be and is hereby granted pending the hearing and determination of the Applicant's intended appeal of this Court's Ruling dated 2nd September 2016 to the Court of Appeal.

7. That costs of the application be provided for.

[7] It is therefore evident that Orders 5, 6 and 7 are not in accord with the Ruling of the Court dated 29 September 2017. That Ruling was explicit, at paragraph 19 thereof as to the dismissal of the Defendant's application for stay of execution; and that, whereas the Court allowed the Defendant's application dated 12 January 2017 and granted leave to the Defendant to appeal the Ruling of 2 September 2017, no mention was made of enlargement of time. In the same vein, the Ruling is manifest that the application dated 17 September 2016 was dismissed with costs; while the costs of the application dated 22 September 2016 as well as the application dated 12 January 2017 were ordered to be in the cause. There is therefore a clear case of obvious errors in the Decree dated 1 December 2017 in that it neither accords fully with the Ruling of 29 September 2017, but also includes extraneous matters that do not properly comprise a Preliminary Decree for purposes of Section 94 of the Civil Procedure Act.

[8] In respect of such errors, Section 99 of the Civil Procedure Act provides that:

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties."

[9] And in the case of Vallabhdas Karsandas Raniga vs. Mansukhalal Jivraj & others (1965) EA 700, the East African Court of Appeal held that:

"A slip order will only be made where the court is fully satisfied that it is giving effect to the intentions of the court at the time when the judgment was given, or in the case of a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention."

[10] Being convinced, as I am, that indeed there is an error in the Decree as drawn and issued, arising from an accidental slip on the part of the Deputy Registrar, I would allow the Plaintiff's application and order that:

[a] That the Deputy Registrar be and is hereby directed to correct the error explicit in paragraphs 5, 6 and 7 of the Decree issued herein on 1 December 2017 by striking out Orders Numbers 5, 6 and 7 thereof;

[b] That a fresh Decree be issued forthwith reflecting the said corrections and in accord with the Rulings delivered herein on 2 September 2016 and 29 September 2017.

[c] That costs of the application shall be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2018

OLGA SEWE

JUDGE