



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1719 OF 1999

PLAZA TRUST LIMITED.....PLAINTIFF

VERSUS

HARDROCK CAFÉ LIMITED.....1ST DEFENDANT

EDWIN OCHIENG YINDA.....2ND DEFENDANT

JOSHUA KULEI.....3RD DEFENDANT

RULING

1. The plaintiff/ applicant has filed a Notice of Motion dated the 14th of October 2016. The Notice of Motion is brought under Section 99 of the Civil Procedure Act Cap. 21 of the Laws of Kenya. The applicant seeks the following orders;

i. That the court be pleased to enter in its judgment issued on the 30th of September 2015 the compound interest as prayed in the amended plaint.

ii. That cost of the application be awarded to the Plaintiff.

2. The applicant contends in brief that by a re-amended pliant dated the 28th of September 2007 the plaintiff prayed for interest compounded at 24% per annum from the date of filing suit until payment in full. That compound interest was a contractual term under the lease agreement dated the 25th of August 1993. That by a judgment dated the 30th of September 2015 the court awarded interest to the plaintiff at 19% per year from the date of filing suit in respect of the sum of Kshs. 2,426,505. 9 and from 29th June 2016 in respect of the sum of Kshs. 3,669,032.90 until payment in full. That the court inadvertently omitted to specify that the interest was to be compounded as prayed for in the re-amended plaint. That the said omission was an accidental slip or omission by the court and justifies a correction of the judgment issued. That the decree is yet to be perfected.

3. The application was opposed by the defendant respondents. The respondent filed a Notice of Preliminary Objection and a replying affidavit by Mr. Edwin Yinda a director of the 1st defendant/ respondent. He deposes that the plaintiff seeks to re write an unambiguous judgment which judgment was delivered by the court, which judgment is clear very clearly written and leaves no doubt or room for further interpretation. That the present application is an afterthought is an abuse of the court process and should not be entertained. That the court was moved to review the judgment by the application dated the

19/11/2015, and if the plaintiff thought there was an error then the said ought to have been brought up in the said application. That the defendants have suffered immense damage and loss over this the matter. That despite the court's judgment they 1st and 3rd defendant have paid a sum of Kshs. 6,095,583.90 as awarded as they thought it is wise not to escalate any further litigation in the matter as the matter has been in court for close to 20 years. That they abandoned the intended appeal and having counted their losses they decided to move on. That the court did not award compound interest in any of its judgments. That the issue of compound interest can only form a ground of appeal if the plaintiff is aggrieved by the said judgment and that the same cannot form even a ground for review as there was no error or mistake apparent on the face of the judgment. That though the application s brought under section 99 of the CPA it is clearly an application for review filed a second time after the ruling delivered on the 26th of June 2016. That the plaintiff is conducting piecemeal litigation in full breach of Article 159 (2) (b) of the Constitution of Kenya. That litigation must come to an end. That the court cannot enter judgment twice in the matter after having reviewed its judgment.

4. In the respondents notice of preliminary objection apart from stating what I have summarized from the replying affidavit, the respondent has raised the following issue; that the application is in breach of the provisions of Order 45 rule 6 of the Civil Procedure rules, that “ **No application to review an order made on an application for review of a decree or order passed or made on review shall be entertained.**” ; that that the provisions of section 99 of the CPA are meant to correct arithmetical errors/ mistakes, accidental slips and or omissions and lastly that the court has no jurisdiction to entertain the matter.

5. I have considered the parties submissions, cases cited and the provision of law that the applicant has relied on. Section 99 of the CPA provides that, “ **Clerical or arithmetical mistake 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.**

6. The word omission in the Black's law dictionary is defined as, “something **that has been left out or not included**”. An accidental slip in my view is like an error so apparent on the face of the record that would not require additional evidence. The Judgment that was delivered by this court on the 30th September 2015 awarded interest at **19%** per year as per the lease agreement for the sum of Kshs. 2, 426,505.90. Interest was defined in the lease agreement as follows; “**Interest**” means **interest calculated from day to day and compounded monthly at the rate of three per cent per year above the base rate published by Barclays Bank of Kenya Limited from time to time or, if no base rate is published, at the rate of nineteen per cent per year.** This court further stated that the plaintiff did not adduce evidence on base rate that was published in the period pending. This court made a definite finding on the interest it considered the plaintiff was entitled to. There was no accidental slip or omission on the part of the court. In the cases cited the errors in the judgment were noticed by the Court and corrected under the provision of law. Having made a finding on the interest this court cannot revisit the issue again as being sought by the applicant. If the applicant is dissatisfied with the interest awarded it is at liberty to appeal. I therefore decline to grant the prayer sought by the applicant to enter judgment on compound interest at **24%**. The application is dismissed. Each party to bear their own costs.

Dated, signed and delivered this **23rd** day of **February** 2017.

R. E. OUGO

JUDGE

In the presence of;

Mr. Kahora h/b for Mr. Gachuhi

For the Applicant

Mr. Nyamogo h/b for For Mr.Owino Opiyo

For the Respondent

MS. Charity

Court Clerk