



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL SUIT NO. 20 OF 2013
KERICHO TECHNICAL INSTITUTE.....PLAINTIFF
VERSUS
1. FINMAX COMMUNITY BASED GROUP
2. CHAIRMAN
3. TREASURER
4. SECRETARY.....DEFENDANTS

RULING

1. The Plaintiff filed this suit against the Defendants seeking the following:-

1. An order for the payment of the outstanding fees of KShs. 11,261,901.28/=
2. Compounded interest at 12% from the date of filing the plaint.
3. Costs of this suit.
4. Any other order that this court may deem fit to give.

2. Upon hearing the case, judgment was entered in favour of the Plaintiff in terms of prayers i and iii above. The Plaintiff has now filed the notice of motion dated 1st April, 2015 lamenting that there was a slip by omitting prayer (ii) and are of the opinion that the slip ought to be corrected.

3. The Defendants opposed the application on grounds that the this court is functus officio of this matter and that the orders sought are not within the purview of section 99 and 100 of the Civil Procedure Rules. It was urged that the Plaintiff should seek an appeal of the decision instead.

4. I have carefully considered the grounds set out on the face of the motion plus the facts deponed in the supporting affidavit. I have further taken into account the facts deponed in the replying affidavit and the grounds set out on the preliminary objection together with the rival oral submissions.

5. Under the provision of Section 99 of the Civil Procedure Act, the court is given the discretion to correct clerical or arithmetical mistakes in judgements, decrees or orders or errors arising therein from any

accidental slips or omission by amending the judgments, decrees or orders by applying the 'slip rule'. In this matter it is pointed out that this court accidentally omitted to grant prayer 2 i.e. compound interest at 12% per annum from the date of filing the plaint. I have perused the judgement and it is apparent on the face of it that this court merely mentioned that prayer at the introductory part of the judgement but in the end it did not determine whether it was granting the prayer or refusing it. In my view this was an accidental slip which can competently be corrected under Section 99 of the Civil Procedure Act. It is not correct to state that the court is funtus officio because the court did not determine it either way. This court meant to grant the plaintiff the aforesaid prayer. Consequently the motion is hereby allowed as prayed. The judgment is hereby ordered amended to reflect that prayer 2 is allowed. I think a fair order in the circumstances is to direct that each party meets its own costs of the motion.

Dated, Signed and Delivered in open court this 22nd day of April, 2015.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendants