



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANICOMMERCIAL COURTS)**

**Civil Case 951 of 2000**

**SAMUEL KARUGA KOINANGE ..... PLAINTIFF  
VERSUS  
BULLION BANK LIMITED .....DEFENDANT  
RULING**

1. By way of restating a brief background of this matter, the Plaintiff filed a suit against the Defendant and, by a judgment of Ochieng J, delivered on 21<sup>st</sup> November 2006 the Plaintiff was awarded a sum of Kshs.11,830,000/- from which the Judge deducted a sum of Kshs. 7,408,894.00 which had been refunded to the Plaintiff by the Defendant. The Judge also awarded the Plaintiff general to the tune of Kshs. 3,421,106.00 with interest from 28<sup>th</sup> July 2000 until full payment.
2. Sometimes in January 2010, it is contended by the Plaintiff/Applicant that while closing their client files in this matter, it was found there was miscalculation of the correct decretal amount. Thus the Plaintiff filed a notice of motion dated 12<sup>th</sup> March 2010, under **Section 99** of the **Civil Procedure Act** as well as **Order 44** of the **Civil Procedure Rules**. The Applicant is seeking for an order that the judgment of 21<sup>st</sup> November 2006 be reviewed and the amount of general damages awarded be corrected to read Ksh **4,421,106.00** instead of **Ksh 3,421,106**. The decree should be corrected to reflect the correct amount which was ordered by the court. According to counsel for the applicant, there is an obvious arithmetic mistake in the judgment of 21<sup>st</sup> November 2006. That is an error apparent on the face of the record which has been discovered and should be corrected in the interest of justice.
3. This application was opposed; Miss Ogembo learned counsel for the Defendant relied on the affidavit of Brian Asin sworn on 5<sup>th</sup> July 2010. This objection is based on the grounds that the Defendant has undergone substantial changes since the judgment was delivered. There has been two subsequent mergers which has altered the legal character of the defendant. Counsel urged the court to take judicial notice that the accounts of the Defendant were closed, furthermore a merger required that parties conduct an exercise of due diligence and discloser of assets and liabilities. It is therefore too late in the day to expect the defendant to pay the decretal sum. It was however conceded that there was an error in the judgment but the Plaintiff should have been diligent when extracting the order so that it could have been corrected when the decretal sum was paid. The Plaintiff is faulted for coming to court too late as that delay will prejudice the Defendant.
4. Under the provisions of Section 99 of the Civil Procedure Act it is provided:  
  
***“Clerical or arithmetical mistakes in judgment, 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. The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.”***
5. The answer as to whether there is an arithmetic error as regards the sum of Kshs. 3,421,106.00 instead of Kshs. 4,421,106/- was provided by the Respondent when it was conceded there was an error. The only issue that was raised is regarding delay in bringing this application. The Plaintiff gives an explanation that the error was not noticed until when he was closing the file in January this year that is when the error was noticed. The Defendant also must have approved the decree and did not notice the discrepancy of 1 million. This is an error arising from an accidental slip which can be corrected under the civil procedure rules.
6. In **Halsbury’s laws of England 4<sup>th</sup> Ed Vol. 26 p. 596** the learned authors have posited an opinion which is on all fours with **Section 99** of the **Civil Procedure Act**.

***“The court has inherent jurisdiction to vary or clarify an order so as to carry out the court’s meaning or make the language plain or amend it where a party has been wrongly named or described unless this would change the substance of the judgment. The court will treat as a nullity and set aside, of its own motion if necessary judgment entered against a person who was in fact dead or a non-existent company leading up to the judgment or order which is so serious that the judgment ought to be treated as a nullity the court will set it aside....”***

7. On the issue of the judicial notice of mergers that the defendant has gone through since judgment, I agree with Mr. Gitau learned counsel for the Plaintiff that, the mergers are an internal matter which do not affect the Plaintiff. The mergers were not brought to public attention therefore the court cannot take its judicial notice. The application by the Plaintiff is merited; the judgment contains an arithmetic mistake which I hereby correct so as to give effect to the meaning and intention of the judgment of this court. The application is allowed as prayed. Costs of this application to the Defendant.

**RULING READ AND SIGNED ON THE 1<sup>st</sup> OCTOBER 2010.**

**M. K. KOOME  
JUDGE**