

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Admiralty Claim 2 of 2008

DOMINADOR BALON AND 9 OTHERSPLAINTIFF

VERSUS

THE OWNERS OF THE MOTOR SHIP "ROYAL STAR"...DEFENDANTS

R U L I N G

The Claimants herein, took out an application without Notice dated 7th November 2008 in which they prayed for the judgment given in this claim on 28th July 2008 pursuant to the application dated 23/7/2008 to be amended to provide for judgment in the sum of USD39,256.00. They also prayed for costs of the application. The application sets out the grounds it is based. The same is supported by the affidavit of Mr. Kinyua Kamundi sworn on 10th November 2008.

When the application came up for hearing, Mr. Khagram, learned advocate for the claimant in claim No. 11 of 2008 and for the Cautioner in caution No. 8 of 2008 with Mr. Kinyua Kamundi learned advocate for the claimants in this application recorded a consent to amend the application without notice dated 7.11.2008. This court approved the consent whose effect is to have the application without notice to reflect the additional sum of USD24,994.4 plus costs of USD1,100.

Mr. Kinyua learned advocate urged this court to allow the application amended as prayed. He relied on the grounds set out on the face of the application and the facts he deponed in his affidavit sworn on 10th November 2008. Mr. Khagram did not object to the application because he felt this court had the discretion to grant the orders prayed.

I have considered the grounds set out on the face of the application without notice and the facts deponed in the affidavit of Mr. Kinyua Kamundi. I have also examined the relevant procedure stated in the English Civil Procedure. I have referred to Vol.1 of the English Civil Procedure Rules, [2001] Edition Part 40 para 40.12. It is apparent from aforesaid provisions that this court has a wide discretion to correct an accidental slip or omission in a judgment or order upon receiving an application without notice. In a nutshell the slip rule is applicable in admiralty matters too just like in ordinary Civil Matters where the court retains the inherent power to vary its own orders to make the meaning and intention of the court clear. When an application without notice is made, the applicant must describe the error and proceed to set out the correction or amendment required. The applicants in this claim have pointed out the mistake. It is said that the judgment was entered for the claimants in respect of repatriation expenses and wages up to 30.6.2008 instead of up to 30.9.2008. The mistake was only detected when the claimants started complaining of underpayment. It was discovered that a mistake was made in the judgment. After a careful consideration of the arguments put forward by learned counsels and after taking into account the material placed before me I am convinced the application has merit. I grant the orders sought in the application without notice dated 7.11.2008 as amended by the consent order recorded and approved by this court on 17.11.2008.

Dated and delivered at Mombasa this 13th day of March 2009.

J.K. SERGON

JUDGE

In open court in the presence of Miss Ileli h/b Khagram for the claimant.

N/A for defendant