



**Five Star Agencies Limited v National Land Commission (Civil Case 445 of 2014) [2022] KEELC 14745 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14745 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL CASE 445 OF 2014  
OA ANGOTE, J  
NOVEMBER 10, 2022**

**BETWEEN**

**FIVE STAR AGENCIES LIMITED ..... APPELLANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Appellants' Notice of Motion application dated August 2, 2021 brought pursuant to the provisions of Section 99 of the [Civil Procedure Act](#) and Order 21 Rule3 (3) of the [Civil Procedure Rules](#) seeking the following reliefs;
  - i. That this Honourable Court be pleased to amend order number 4 in the Judgment dated the November 24, 2014 and order number 4 in the Decree ensuing therefrom issued on the December 16, 2014 so as to read;  
The said compensation and award of Kshs 413,192,500/= shall be paid to the Appellant by the Respondent with interest at court rates from the date of this judgment until payment in full.  
In place of;  
The said compensation award of Kshs 413,192,500/= shall be paid to the Appellant by the Respondent with interests at court rates from the date of this judgment until date of possession by the Respondent of the portion of land parcel known as LR 209/9727(IR 37790) in Nairobi measuring 0.4281 of a hectare.
  - ii. That the costs of and incidental to this motion be provided for.



2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Abdulsalam Shariff, the Managing Director of the Appellant, who deponed that vide its decision of December 23, 2013, the Respondent awarded the Appellant the sum of Kshs 87,804,225/= as compensation for the compulsory acquisition of the parcel of land known as LR 209/9727(IR 37790) in Nairobi measuring 0.4282 of a Hectare(hereinafter the suit property).
3. According to the Appellant, aggrieved by the Award, it filed an Appeal before this court seeking enhancement of the award; that before the determination of the Appeal, Kenya National Highways Authority on whose behalf the Respondent acquired the land, took possession of the aforesaid portion for purposes of construction of the Nairobi Southern by-pass and that by a Judgment delivered on November 24, 2014, this Court set aside the Respondent's award of Kshs 87,804,225/= and awarded the Appellant a sum of Kshs 413, 195,500.
4. According to the Appellant, Section 117(1) of the Land Act, 2012 provides that the National Land Commission shall pay interest on the amount awarded from the time of taking possession till the date of payment; that at the time of the delivery of the Judgment, the Respondent had already taken possession of the land hence the award of interest pursuant to the terms of Section 117(1) of the Land Act, 2012 will result in a denial of interest rightfully accrued to the Appellant.
5. It was deponed that as the intention of the Judge was to award interest on the compensation award, Order No 4 in the Judgment dated November 24, 2014 ought to be corrected so as to give effect to the intention of the Judge and that a correction of the error is desirable so as to enable parties know the decretal sum due and owing.
6. The application was not opposed.
7. The Appellant filed written submission on November 10, 2021 in which Counsel submitted that the present Motion is brought pursuant to the provisions of Section 99 of the Civil Procedure Act which gives the court jurisdiction to correct clerical and arithmetic errors.
8. Reliance was placed on the case of Republic v Attorney General & 15 others ex-parte Kenya Seed Company Limited & 5 Others [2010] eKLR where the Court of Appeal discussed the doctrine of the "slip rule" as codified by Section 99 of the Civil Procedure Rules.
9. It was submitted that Section 117 (1) of the Land Act provides that the Respondent shall pay interest on the amount awarded from the time of taking possession until payment in full and that as a result of the fact that possession had taken place prior to the decision of the court, it follows that the phrase "from the date of judgement until date of possession" will have the effect of denying the Appellant interest.
10. According to the Appellant, as expressed by the Court in Royal Media Services & Another v Jakoyo Midiwo[2018]eKLR, where damages have been assessed by the Court, the rights thereto do not arise until they are assessed and therefore interest is only given from the date of Judgment; that the delay in filing the present application was occasioned by the long grace period granted to the Respondent to pay the decretal sum and that it was only in July, 2021 when the Appellant decided to commence execution proceedings that it discovered the error.

### **Analysis & determination**

11. Having considered the application, the sole issue for determination is whether Judgment can be amended under the "slip rule." The present application is premised on Section 99 of the Civil Procedure Act which allows amendment of judgments, decrees or orders.



12. Section 99 of the *Civil Procedure Act* provides as follows:

“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.”

13. Order 23 Rule 3(3) of the *Civil Procedure Rules* provides as follows:

“(3) A judgment once signed shall not afterwards be altered or added to save as provided by section 99 of the *Act* or on review.”

14. The Court of Appeal in the case *Leonard Mambo Kuria v Ann Wanjiru Mambo (2017) eKLR* extensively discussed the import of Section 99 and 100 of the *Civil Procedure Act* as follows:

“The application of these two sections [Sections 99 and 100 of the *Civil Procedure Act*, cap 21] has been considered before in several decisions. They vest a general power to the courts to correct or amend their records. As such they are an exception to the doctrine of ‘functus officio’-- the principle that once a decision has been given, it is (subject to any right of appeal) final and conclusive. It cannot be revoked or varied by the decision-maker. As the court stated in the case of *Jersey Evening Post Limited v Ai Thani [2002] JLR 542 at 550:-*

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available”.

Section 100 states as follows:-

“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 proceeding.”

The purpose of amendment is to “determine the real question or issue raised by or depending on the proceeding “and it can be done “at any time” which must mean from the time the suit is filed to final disposition.

Section 99 on the other hand, provides:-

“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.”

It is the relevant one in this matter as it relates to ‘judgments, decrees or orders’. This Court examined the mechanics of its application in the case of *Republic v Attorney General & 15 others, ex parte Kenya Seed Company Limited & 5 others [2010] eKLR*, stating:-

“27. It is a codification of the common law doctrine dubbed ‘the Slip Rule’, the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which



would otherwise become functus officio upon issuing a judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

28. Some of the applications of the rule are fairly obvious and common place and are easily discernible like clerical errors, arithmetical mistakes, calculations of interest, wrong figures or dates. Each case will, of course, depend on its own facts, but the rule will also apply where the correction of the slip is to give effect to the actual intention of the Judge and/or ensure that the judgment/order does not have a consequence which the Judge intended to avoid adjudicating on.

The Australian Civil Procedure has provisions in pari materia with section 99. As was stated in the case of *Newmont Yandal Operations Pty Ltd v The J Aron Corp & The Goldman Sachs Group Inc* [2007] 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended.

29. Nearer home the predecessor of this Court in *Lakhamshi Brothers Ltd v R Raja & Sons* [1966] EA 313 endorsed that application of the rule, that is, to give effect to the intention of the court when it gave its judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted. Spry JA in Raniga Case (supra) also stated as follows:

A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when 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.

30. What is certainly not permissible in the application of section 99, is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order”.

15. What is apparent from the foregoing is that the application of Section 99 otherwise known as the “slip rule” applies to give effect to the intention of the court at the time when 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.
16. In the present case, the Appellant asserts that order 4 of the Judgment dated November 24, 2014 constitutes an error liable to be corrected pursuant to the provisions of Section 99 of the Civil Procedure Rules.
17. The aforesaid Order was to the effect that the said compensation award of Kshs 413,192,500/= shall be paid to the Appellant by the Respondent with interests at court rates from the date of this judgment until date of possession by the Respondent of the portion of land parcel known as LR 209/9727(I.R 37790) in Nairobi measuring 0.4281 of a hectare.



18. The law with respect to compensation on compulsorily acquired land is found in Section 117 of the Land Act, 2012 which provides that as follows:

“ 117.

(1) If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.”

19. In the present case, the Appellant being dissatisfied with the award by the Respondent filed an appeal thereto. The Appeal was successful and the award enhanced. Under the impugned Order 4, the Court granted the Appellant interest on the enhanced sum from the date of judgment till the date of possession.

20. Having considered the Judgment and the Appellant’s submissions, it is apparent that at the time of the determination of the suit, the Court was unaware that possession of the suit property had already taken place. This position can be seen from the opening paragraph of the Judgment where the court stated as follows: The Appellant has appealed against the decision of the Respondent on compensation payable for a portion of the said land which it intends to compulsorily acquire measuring 0.4281 of a hectare.

21. The Court having enhanced the compensation, its award on interest was predicated on Section 117 of the Land Act, 2012. The land having already been taken, the prevailing situation meant that the Orders of the Court were incapable of enforcement.

22. As stated by the Court of Appeal in Leonard Mambo Kuria v Ann Wanjiru Mambo ( supra) A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when 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.”

23. The court is convinced that the import of Order 4 in the Judgment of November 24, 2014 was to give interest on the enhanced compensation award, in accordance with section 117 of the Act. This intention can only be actuated by the amendment sought by the Appellant.

24. For those reasons, the application dated August 2, 2021 is allowed as prayed but with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 10TH DAY OF NOVEMBER, 2022.**

**O A Angote**

**Judge**

**In the presence of;**

**Mr Ngethe for Appellant**

**No appearance for Respondent**

**Court Assistant - June**

