



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMNAI COMMERCIAL COURTS**  
**CIVIL CASE 1140 OF 2000**

**MANCHESTER OUTFITTERS LTD. .... PLAINTIFF**

**VERSUS**

**KENYA ELECTRICITY GENERATING COMPANY LTD. ....DEFENDANT**

**R U L I N G**

The Notice of Motion herein, dated 11/12/03; under Section 99 of Cap.21, Laws of Kenya, Order 44 rule 1(1)(a) and Order 50, seeks orders that:-

- 1.)
- 2.) Already spent.
3. (a) this court do make specific finding or order on costs and  
interest pursuant to the judgment delivered on 23/9/03.

(b) Alternatively: this court do review its judgment herein and make a specific order or finding on costs of the suit and interest.

4. Costs of this application be in the cause.

The application is supported by an Affidavit by Elijah Mwangi Njeru, advocate, who conducted the suit for the Plaintiff/applicant herein, of even date, and on the grounds that:

- (a) there is an accidental slip in the judgment in that it does not make an order or direction on the issues of costs and interest.
- (b) The court has power and jurisdiction to amend/correct the mistake/accidental slip.
- (c) Costs follow the event and were claimed in the amended Plaintiff.
- (d) The absence of an order on costs and interest one way or the other shall prejudice the Plaintiff which has incurred costs in this suit.
- (e) There exists an error of omission apparent on the record.
- (f) There is sufficient cause for correction/review of the judgment and for decision on costs.

**(g) Defendant has applied for Stay pending appeal and the amount for consideration should include costs of the suit and interest on the judgment sum.**

In their grounds of opposition, the Defendant/respondent aver that:-

- 1. Section 99 of Cap.21 has no application as there is no clerical or arithmetical mistake in the judgment sought to be reviewed.**
- 2. there are no grounds upon which that judgment can be reviewed under Order 44.**
- 3. the applicant is guilty of delay.**
- 4. costs and interest are the discretion of the court – see S.26 and 27 of Cap.21.**
- 5. the Judge did not award any interest and did not determine any costs in the suit. To do so now amounts to rewriting his judgment once again.**
- 6. A final decree has already issued from the judgment.**

I have carefully gone through the pleadings, the submissions by both counsels – Mr. Mwangi and Mr. Gitonga – for the Plaintiff/applicant and Defendant/respondent, respectively. I have also gone through the massive authorities cited by the learned counsel and considering all those, I have reached the following findings and conclusions:-

**(a) The Statutory provisions under which this application is brought give this court power to review its decisions, even if not because of error or mistakes apparent on the face of the record “for any other sufficient reason”. See Order 44 rule 1 of the Civil Procedure Rules and the provisions of Section 99 of the Civil Procedure Act, Cap.21, Laws of Kenya. The same authority and power to carry out such corrections is found under Order 20 rule 3(3) of the Civil Procedure Rules.**

**(b) There was no intention not to award or order for interest and costs throughout the entire judgment. In any case interest and costs are prayed for in the Amended Plaintiff of the Plaintiff/applicant. Hence granting this, application is not granting any order or relief not prayed for by party concerned. To fail to grant this Order under the circumstances herein is unjust to the Plaintiff vis-à-vis the Defendant. It must always be remembered that injustice is treating equals as unequals and unequals as equals. Here the Plaintiff has won the case, and it cannot be treated – by denying it its expressly prayed for orders – in the same way as the Defendant.**

**(c) The prayer for interest and costs herein is not tantamount to rewriting this court’s judgment. It is a prayer to correct the said judgment for sufficient reason – namely an omission to grant an order/relief specifically prayed for in the Plaintiff.**

**(d) My position is supported by the authority in QUICK SERVICE STORES V. THAKRAR [1958] E.A. 357 at p.358.**

All in all therefore, this application succeeds, and the judgment of this court, dated 23/9/03, is amended by adding, at page 15 thereof, the following orders:

Defendant to pay the following to the Plaintiff:-

- (a) loss of profit in the sum of K.shs.2,708,566/=25 plus interest at the court rate from the date of filing of this suit till payment in full.**
- (b) Costs of this suit.**
- (c) Interest on (b) above at court rate from filing of this suit till payment in full.**

**(d) Costs of this application to be in the cause.**

**DATED** and delivered in Nairobi this 6th day of May, 2005.

**O.K. MUTUNGI**

**JUDGE**