



REPUBLIC OF KENYA



**Rayat Trading Co. Bank Limited v Bank of Baroda & another (Civil Case 14 of 2011)  
[2025] KEHC 10661 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10661 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 14 OF 2011**

**F GIKONYO, J  
JULY 3, 2025**

**BETWEEN**

**RAYAT TRADING CO. BANK LIMITED ..... PLAINTIFF**

**AND**

**BANK OF BARODA ..... 1<sup>ST</sup> DEFENDANT**

**TETEZI HOUSE LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Slip Rule**

1. The 2<sup>nd</sup> defendant filed the notice of motion dated 24<sup>th</sup> September 2024, under Order 22 Rule 22 of the [Civil Procedure Rules](#), seeking clarification, rectification or amendment of order (b) of the judgment herein.
2. The application is also anchored on Sections 1A, 1B, 3A, 99 & 100 of the [Civil Procedure Act](#) and Article 159(2)(d) of the [Constitution](#).
3. The application is based on the grounds set out in the application, the supporting affidavit sworn by the 2<sup>nd</sup> defendant's director, John Maina Mburu, on 24<sup>th</sup> September 2024 and written submissions dated 17<sup>th</sup> January 2025.
4. The grounds are that:-
  - a) On 16<sup>th</sup> February 2024, Justice Mabeya delivered judgment in this suit and the parties are in the process of extracting a decree arising from the same judgment.
  - b) In the body of the said judgment, the Court was clear that the applicant did not violate any law and was not liable for any damages payable to the plaintiff/respondent.



c) However, in issuing orders it decreed inter alia as follows: -

“(a) ...

(b) That the plaintiff is hereby awarded damages amounting to Kshs. 22 Million together with interest at court rates from the date of this judgment until payment in full.

(c) The plaintiff is awarded costs of the suit to be borne by the 1<sup>st</sup> defendant.

(d) ...”

d) From the court's orders above, it is clear which party (the 1<sup>st</sup> defendant) ought to bear the costs of the suit of the plaintiff but it is not clear who is to pay the damages of Kshs 22 Million awarded to the plaintiff. The order is open to interpretation and abuse.

e) The court omitted to mention the party liable to pay the Kshs. 22M to the plaintiff. The applicant is apprehensive that during execution, the plaintiff/ respondent may elect to execute against it due to the lack of clarity on who is responsible for the payment of the plaintiff's Kshs. 22M award.

f) To avoid any misapprehension, misinterpretation or misunderstanding of the court's Judgment, and in order to avoid any prejudice on the part of the applicant, there is need for the court to exercise its inherent power and clarifies the final orders of the court, particularly who is to pay the awarded damages of Kshs 22 Million.

g) The plaintiff is about to extract the decree and unless this application is certified urgent and interim orders granted in the first instance, the plaintiff/ respondent herein will proceed and extract the Decree and execute it against the 2<sup>nd</sup> defendant/applicant exposing it to substantial despite the plaintiff/ respondent's attachable assets being unknown and render this application nugatory.

## Response

5. In response, the 1<sup>st</sup> defendant filed grounds of opposition dated 29<sup>th</sup> January 2025, to the effect that the application flouts section 80 of the [Civil Procedure Act](#) and Order 45 of the [Civil Procedure Rules](#). This is because the applicant has already preferred an appeal through a notice of appeal dated 19<sup>th</sup> February 2024. Secondly, the application does not disclose the discovery of new and important evidence, mistake, or error apparent on the record. Thus, the application is grossly defective, misconceived, bad in law and devoid of merit

## Submissions

6. The application was canvassed through written submissions. The 2<sup>nd</sup> defendant filed written submissions dated 17<sup>th</sup> January 2025. It argued that the 1<sup>st</sup> defendant's grounds of opposition are misconceived. It asserted that the application is not a review application under section 80 of the [Civil Procedure Act](#) or order 45 of the [Civil Procedure Rules](#), but an application for rectification of errors/ mistakes arising from the judgment from any accidental slip or omission under Section 99 & 100 of the [Civil Procedure Act](#).



7. The 2<sup>nd</sup> defendant submitted that the court has inherent jurisdiction to correct any slip or omission in order 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.
8. The 2<sup>nd</sup> defendant relied on:-
  1. [Telkom Kenya Limited v John Ochanda \(Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited\)](#) [2014] KECA 600 (KLR)
  2. [Chandler v Alberta Association Of Architects](#) [1989] 2 SCR 848
  3. [Paper Machinery Ltd. v J.O. Rose Engineering Corp.](#), [1934] SCR 186
  4. [Leonard Mambo Kuria v Ann Wanjiru Mambo](#) [2017] KECA 782 (KLR)
  5. [Jersey Evening Post Limited v Ai Thani](#) [2002] JLR 542
9. The 1<sup>st</sup> defendant filed written submissions dated 18<sup>th</sup> March 2025. It contended that the nature of the amendment sought is not a clerical error under section 99 or 100 of the [Civil Procedure Act](#). It asserted that effecting the purported amendment would amount to changing the entire character and purport of the judgment, and would be going beyond correcting clerical and arithmetical mistakes, or errors arising from accidental slip or omission as is intended by said provisions.
10. The 1<sup>st</sup> defendant submitted that to change the entire character of the judgment that an appeal has been preferred against would be prejudicial. It contended that the court is now *functus officio* and must down its tools because the applicant is clearly suggesting its dissatisfaction with the judgment and is asking this court to sit on its own appeal.
11. The 1<sup>st</sup> defendant relied on:-
  1. [Fredrick Otieno Outa v Jared Odoyo Okello & 3 Others](#), SC Petition No. 6 of 2014; [2017] eKLR
  2. [Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others](#) (2010) eKLR

### **Analysis and Determination**

12. The issue before the court is; whether the rectification of the judgment sought by the 2<sup>nd</sup> defendant can be made under the slip rule.
13. The 2<sup>nd</sup> defendant's application has been brought under section 99 and 100 of the [civil procedure act](#)-commonly known as the slip rule. It seeks an amendment of order (b) of the judgment to indicate that the 1<sup>st</sup> defendant is to bear the damages awarded to the plaintiff. The reason given by the applicant is that, the court omitted to indicate that the 1<sup>st</sup> defendant was liable to pay the damages of Kshs. 22 Million to the plaintiff. It is apprehensive that the omission will lead to misinterpretation and abuse of the order which will prejudice them.
14. The 1<sup>st</sup> defendant has opposed the application stating that it offends section 80 of the [civil procedure act](#) and order 45 rule 1 on review because the 2<sup>nd</sup> defendant has filed a notice of appeal. It also argued that the court is *functus officio*.
15. The 2<sup>nd</sup> defendant insisted that its application is grounded on sections 99 and 100 of the [Civil Procedure Act](#).



16. The court agrees with the applicant that the application before the court is not a typical review application under section 80 of the [Civil Procedure Act](#) and order 45 of the [Civil Procedure Rules](#). It is an application under the slip rule.
17. I should add, however, that the power in the slip rule lies in and is the bosom of inherent jurisdiction albeit exercised in limited circumstances stated in section 99 of the [Civil Procedure Act](#); it is not also limited by the doctrine of *functus officio*.

### Slip rule

18. Sections 99 of the [Civil Procedure Act](#) provides as follows:-

“ 99. Amendment of judgments, decrees or orders  
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.”

19. In [Republic v Attorney General & 15 others Ex-Parte Kenya Seed Company Limited & 5 others](#) [2010] KECA 23 (KLR) the Court of Appeal observed as follows:-

“ 27. The starting point is the construction of section 99 of the [CPA](#) which we must now reproduce:

99. 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 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.”

20. From the above, the slip rule is intended to correct minor errors or accidental omissions to give effect to the court’s intention at the time when judgment was given.
21. To my mind, the slip rule, which is in the inherent power of the court is distinguishable from the court’s power to review its own decision, under section 80 of the *Civil Procedure Act* as read with order 45 of the *Civil Procedure Rules*.
22. The scope of a review is broader, entailing the consideration of the parameters which include error apparent on the face of the record, or discovery of a new and important matter or any other sufficient reason. Moreover, a review involves a reconsideration of the decision.
23. As such, the 1<sup>st</sup> defendant’s proposition that the application offends section 80 of the *Civil Procedure Act* as read with order 45 of the *Civil Procedure Rules* is not appropriate and it fails.
24. As clarified in *Republic v Attorney General & 15 others Ex-Parte Kenya Seed Company Limited & 5 others [supra]* the slip rule falls under the exceptions to the doctrine of *functus officio*, which limits the court’s jurisdiction to revisit or alter a decision it has made.
25. Therefore, the 1<sup>st</sup> defendant’s assertion that the court is *functus officio* is rejected.

### The Test

26. Moving on, the crux of the matter is whether the proposed amendment is a clerical mistake or an accidental omission under sections 99 and 100 of the *Civil Procedure Act*.
27. According to the 2<sup>nd</sup> defendant, the court accidentally omitted to indicate in order (b) of the judgment that the 1<sup>st</sup> defendant was liable to pay damages of Kshs. 22 Million.
28. I find it necessary to reproduce the disposition in the judgment, thus:-

“(a) A declaration that the sale of the land parcel known as 209/4460 was unlawful and irregular.



- (b) That the plaintiff is hereby awarded damages amounting to Kshs. 22 Million together with interest at court rate from the date of the judgment until payment in full.
- (c) The plaintiff is awarded costs of the suit to be borne by 1<sup>st</sup> defendant.
- (d) The 1<sup>st</sup> defendant's counterclaim is hereby dismissed with costs."

29. The 2<sup>nd</sup> defendant pointed to paragraphs 33 and 36 of the judgment to assert that the court found no liability on its part. Para. 36 is reproduced below:-

"36. From the foregoing, it is evident that the plaintiff's equity of redemption was extinguished once the property was sold to the 2<sup>nd</sup> defendant. The plaintiff and the 2<sup>nd</sup> defendant had no contract therefore the plaintiff could not sustain a claim against the 2<sup>nd</sup> defendant. The plaintiff is not the legal owner of the suit property and the only remedy available is damages. The amount suffered according to the plaintiff is Kshs. 44,104,000/=. Considering the value of the property was Kshs. 40M and the amount due on the loan was Kshs. 18M. The damages awarded will be Kshs. 22 million."

30. From my reading of the above and the judgment as a whole, it is my considered view that the intention of the court was not to attach liability for payment of the Kshs. 22 Million in damages to the 2<sup>nd</sup> defendant.

31. The 2<sup>nd</sup> defendant urged the court to amend the order (b) in the decree to read as follows: -

"That the Plaintiff is hereby awarded damages amounting to Kshs. 22 Million together with interest at court rates from the date of this judgment until payment in full to be borne by the 1<sup>st</sup> Defendant."

32. I am satisfied with the clarification that liability for the payment of the damages assessed by the court attaches to the 1<sup>st</sup> defendant and not the 2<sup>nd</sup> defendant is sufficient for purposes of the slip rule. This gives effect to the intention of the court at the time when the judgment was given.

### **Disposal**

33. In conclusion, I find that the 2<sup>nd</sup> defendant's application dated 24<sup>th</sup> September 2024 is merited.

34. Accordingly, the order (b) in the decree is amended to include: -

"....to be borne by the 1<sup>st</sup> Defendant."

35. There shall be no orders as to costs as the application was to amend an accidental omission and to clarify the record.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3<sup>RD</sup> DAY OF JULY, 2025**

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**F. GIKONYO M.**  
**JUDGE**



In the presence of: -

Oketch for 1<sup>st</sup> defendant

Moriasi for Plaintiff

Muhuyu for 2<sup>nd</sup> defendant

Kinyua C/A

