



REPUBLIC OF KENYA



Directline Assurance Company Ltd & 4 others v Sureinvest Company Limited & 15 others (Civil Case E278 of 2019) [2024] KEHC 4514 (KLR) (Commercial and Tax) (1 March 2024) (Ruling)

Neutral citation: [2024] KEHC 4514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E278 OF 2019
DO CHEPKWONY, J
MARCH 1, 2024**

BETWEEN

**DIRECTLINE ASSURANCE COMPANY LTD 1ST PLAINTIFF
ROYAL MEDIA SERVICES LTD 2ND PLAINTIFF
ROYAL CREDIT LIMITED 3RD PLAINTIFF
SAMUEL KAMAU MACHARIA 4TH PLAINTIFF
PURITY GATHONI MACHARIA 5TH PLAINTIFF**

AND

**SUREINVEST COMPANY LIMITED 1ST DEFENDANT
STENNY INVESTMENT LIMITED 2ND DEFENDANT
TRIAD NETWORKS LIMITED 3RD DEFENDANT
AKM INVESTMENTS LIMITED 4TH DEFENDANT
INSURANCE REGULATORY AUTHORITY 5TH DEFENDANT
KEVIN DERMOT MCCOURT 6TH DEFENDANT
JANICE TERESA WANJIKU KIARIE 7TH DEFENDANT
GEOFFREY GORDON WERE RADIER 8TH DEFENDANT
JAMES KABERERE GACHOKA 9TH DEFENDANT
MAONGA NDONYE ASSOCIATES 10TH DEFENDANT
JANUS LIMITED 11TH DEFENDANT
WINNIE JUMBA T/A LIVINGSTONE ASSOCIATES 12TH DEFENDANT**



COMMISSIONER OF INSURANCE	13 TH DEFENDANT
JOHN KATIKU	14 TH DEFENDANT
RODGERS KINOTI M'ARIBA	15 TH DEFENDANT
MERCY KIANA MWANGI	16 TH DEFENDANT

RULING

1. This ruling determines a Notice of Motion application dated 16th June, 2022 filed by the 1st, 2nd, and 3rd Defendants and a Notice of Preliminary Objection dated 15th July, 2022 jointly filed by the Plaintiffs in response to the 1st, 2nd, and 3rd Defendant's application.
2. By the Notice of Motion, which is brought under Order 21 Rule 3(3), and Order 51 Rule 1 both of the *Civil Procedure Rules*, Sections 3A, 99 and 100 all of the *Civil Procedure Act*, the 1st, 2nd, and 3rd Defendants seek for the following orders:-
 - a. That the ruling of the Hon. S. Githogori -Deputy Registrar delivered herein on 18th November, 2021 ("the said ruling") be amended so as to rectify an error apparent in the said ruling.
 - b. That the said ruling be amended to read the bill of costs dated 23rd March, 2021 is filed on behalf of the 1st, 2nd, and 3rd Defendants.
 - c. That in the circumstances, the costs awarded by the court vide the ruling delivered on the 18th November, 2021 are awarded to the 1st, 2nd, and 3rd Defendants only.
 - d. That the costs of this application be provided for.
3. The Applicant's case in support of the application as adduced on the face of the application and in the affidavit sworn in support thereof by Joyce Wamucii Ndumia is that the case herein was withdrawn with costs to the Defendants and the firm of Kairu McCourt, Advocates represented the 1st, 2nd, and 3rd Defendants. The firm of M/S Archer & Wilcock Advocates on the other hand represented the 7th and 11th Defendants.
4. Thereafter, the 1st, 2nd and 3rd Defendants thereafter filed a bill of costs dated 23rd March 2021 through the said firm of Kairu McCourt but it was inadvertently indicated that the bill of costs had been filed on behalf of the 1st, 2nd, 3rd and the 11th Defendants. Owing to that mistake, the court's ruling on the bill of costs was indicated as being for the 1st, 2nd, 3rd, and 11th Defendants instead of the 1st, 2nd, and the 3rd Defendants.
5. The Applicant therefore calls for the said typographical error to be corrected, adding that it does not go to the substance of the ruling so as to prejudice the other parties. The court was further informed that the 11th Defendant together with the 7th Defendant had filed a separate bill of costs dated 7th October, 2021 hence to avoid confusion and frustrating the ends of justice, the error ought to be corrected.
6. The Plaintiffs responded to that application by filing a Notice of Preliminary Objection dated the 15th July, 2022 in which they challenged the court's jurisdiction to address the application for correction of the Taxing Officer's ruling. The main ground advanced is that taxation of costs is regulated by the *Advocates Act* and when a party seeks to appeal or review the decision, then the same ought to be done through a Taxation Reference under Regulation 11 of the *Advocates Remuneration Order*. As such, the Plaintiffs argue that the application at hand fails to adhere to the laid down procedure and timelines



- in Regulations 11 of the *Advocates Remuneration Order* and seeks the court to dismiss the application preliminarily.
7. The 11th Defendant's learned Senior Counsel, Janmohamed Zehrabanu of Archer and Wilcock Advocates swore an affidavit on the 25th July, 2022 supporting the request for the correction of the typographical error. She affirmed that the firm of Archer and Wilcock was indeed instructed by 7th and 11th Defendant to appear in this matter and after the case was withdrawn in favour of the Defendant's, she filed a bill of costs dated 7th October 2021 on behalf of the 7th and 11th Defendants. She agrees that the bill of costs by the 1st, 2nd, and 3rd Defendants was erroneously titled to include the 11th Defendant and that is a sufficient cause to correct the error on the face of the ruling given that the 11th Defendant has no claim whatsoever in the subject ruling.
 8. Parties were allowed to canvass the application by way of written submissions and as the record reflects, the 1st, 2nd and 3rd Defendants filed a set of submission dated 19th September, 2022 whilst the Plaintiffs filed submissions dated 22nd September, 2023.
 9. I have read through the said submissions and on the face of the 1st, 2nd, and 3rd Defendant's submissions, it can be summarized that it is their case that the instant application is brought under the court's inherent jurisdiction provided for under Sections 99 and 100 of the *Civil Procedure Act* which enshrines the "slip rule doctrine". It is argued that contrary to the challenge of this court's jurisdiction as taken in the Preliminary Objection, an application to correct an error under the slip rule need not to be filed as a reference under Regulation 11 of the Advocates Remuneration Order. That it can be brought as an application under Order 51 Rule 1 of the *Civil Procedure Rules*.
 10. The Plaintiff's on the other hand are adamant that taxation is reserved for a special jurisdiction and the resultant decision can only be interfered with by filing a reference under Rule 11 of the *Advocates Act*. Thus, there being no such application under Rule 11, the court cannot exercise its discretion to interfere with the Taxing Officer's ruling in this matter.

Analysis and Determination

11. I have considered the application dated 16th June, 2022 and the Notice of Preliminary Objection filed in response thereof as well as the submissions filed by the parties and the authorities they have relied on. In my view, the issues which stand out for determination are as follows:-
 - a. Whether the Notice of Preliminary Objection is merited: and if not,
 - b. Whether the court can exercise its discretion to correct the error apparent on the ruling delivered on 18th November 2021.
12. The Plaintiff's Notice of Preliminary Objection challenges this court's jurisdiction to address the 1st, 2nd, and 3rd Defendant's Notice of Motion application dated 16th June, 2022 on the grounds that it seeks review and rectification of a ruling by a Taxing Officer concerning a party and party bill of cost hence such order can only be challenged before a Judge by way of reference initiated under the provision of Paragraph 11(2) of the *Advocates Remuneration Order* but not a Notice of Motion application as the one at hand. To counter these submissions, the Applicants argued that the application merely seeks to correct a typographical error under the slip rule which does not touch on the substance of the application.
13. In my view, to begin with, since the Preliminary Objection at hand challenges this court's jurisdiction, it satisfies the general principle that the court should be satisfied that a Preliminary Objection as always should be on a pure point of law which if argued at a preliminary stage might dispose of the suit.



However, as regards its merits, I have considered both parties submissions on the same. On the one hand, Paragraph 11(2) of the *Advocates Remuneration Order* 2 provides that: -

“Where a party is aggrieved by the decision of a Taxing Officer, he is required to object in writing by requesting the Taxing Officer to give reasons for the items of taxation that he is objecting to and thereafter file reference to this court.”

14. The above provision provides for a procedure with which a party aggrieved by a decision of a Taxing Officer may challenge it either through appeal or review in form of reference. In the present case, it is apparent that the Applicant at hand seeks to correct the title of the ruling by the Taxing Officer so as to indicate that it only relates to the 1st, 2nd, and 3rd Defendants but not the 11th Defendants. That application neither intends to challenge the Taxing Master’s decision through an appeal nor does it intend to review the substance of the said decision. Arguably, it appears that all the parties have accepted the finality of the ruling.
15. Thus, in seeking to establish whether the alleged error can be corrected under the slip rule, as is averred by the Applicants, or whether the said error can only be established by either appeal or review brought under Paragraph 11(2) of the *Advocates Remuneration*, the germane question to ask is whether it was required of the Taxing Master to apply legal or judicial reasoning and or consideration in correcting the alleged error or whether in correcting the alleged error, the court would merely be steering the subject ruling to its logical or clerical perfection.
16. In view of the foregoing, none of the parties has challenged the facts that the instant suit was withdrawn with costs to the Defendants and at all material times, the 1st, 2nd, and 3rd Defendants were represented by the firm of Kairu McCourt whilst the 11th Defendant was represented by the firm of Archer and Wilcock Advocates. The Affidavit sworn by Zehrabanu JanMohamed in support of the application at hand confirms that the Bill of Costs filed by the firm of Kairu McCourt Advocates had no relation with the 11th Defendant so that the costs thereof ought to be for the benefit of the 1st, 2nd, and 3rd Defendants but not the 11th Defendant. The Learned Senior counsel further confirmed that the 11th Defendant had through her law firm filed a separate Bill of Costs.
17. In view of the above facts, it is my humble opinion that the correction of the heading of the Taxing Master’s decision dated the 18th November 2021 so as to indicate the same as relating to 1st, 2nd, and 3rd Defendants and not the 11th Defendant merely aids in steering the said ruling to its logical and clerical perfection. Such correction should not call for a mandatory invocation of the provisions of the Paragraph 11(2) of the *Advocates Remuneration Order* since it can be corrected by this court under its inherent jurisdiction vested under Sections 99 and 100 of the *Civil Procedure Act*. As such I find that the Notice of Preliminary Objection filed herein to be without merit and thus the same fails.
18. As to whether the court can correct the heading of the subject ruling by the Taxing Master under the slip rule, I must reiterate that the power to apply the Slip Rule is inherent in every Court and to refuse to acknowledge it is to refuse to acknowledge that, just as other human beings, Judicial Officers will from time to time commit clerical or arithmetical mistakes, accidental slips or omissions in the course of duty. A clerical error however does not necessarily mean a simple clerical or typographical error. It includes a mistake which can be considered a slip or a mistake which does not require legal and or judicial reasoning.
19. It is imperative to also point out that the slip rule does not confer upon a court any jurisdiction to sit on appeal over its own judgment or to extensively review such judgment as to substantially alter it. The much a court can do, is to recall the ruling/judgment in order to give effect to what clearly would



have been the intention of the court had the error not inadvertently been committed. In the case of *Lakhamshi Brothers Limited –vs- R. Raja & Sons* [1966]EA 313 at page 314 the court held 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.”

These are the circumstances in which this Court will exercise its jurisdiction and recall its Judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter”.

20. Things are not different in the circumstances of this case. In my view, the correction of the ruling dated 18th November, 2021 to indicate that it only relates to the 1st, 2nd and 3rd Defendants only would merely give effect to the manifest intention of the ruling and such correction would not in any way change the substance of the said ruling.
21. In the upshot, I find merit in the application dated 16th June, 2022 and proceed to allow it in terms of the prayers (1), (2) and (3) of the application.
22. Any other pending application to be fixed for directions before the Presiding Judge Milimani Commercial Division.
23. Each party shall bear its own costs.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 15TH DAY OF FEBRUARY, 2024.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF MARCH, 2024.

ALFRED MABEYA

JUDGE

