



**Vishva Builders Limited v Moi University (Civil Case  
51 of 1999) [2024] KEHC 1891 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 1891 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL CASE 51 OF 1999  
JRA WANANDA, J  
MARCH 1, 2024**

**BETWEEN**

**VISHVA BUILDERS LIMITED ..... PLAINTIFF**

**AND**

**MOI UNIVERSITY ..... DEFENDANT**

**RULING**

1. Section 99 of the [Civil Procedure Act](#) provides as follows:

“Clerical or arithmetical mistake in judgments, decrees or orders, or errors arising therein from any accumulated slip or omission, may at anytime be corrected by the court either of its own motion or on the application of any of the parties.”

2. The above power of the Court is commonly known as the “slip rule”. In applying the same, the Supreme Court in the case of [Fredrick Otieno Outa v Jared Odoyo Okello and 3 others](#) [2017] eKLR, guided as follows:

“By its nature, the slip rule permits a court of law to correct errors that are apparent on the face of the judgment, ruling or order of the court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the judgment or decision of the court. By the same token, such errors must be of such nature that their correction would not change the substance of the judgment or alter the clear intention of the court. In other words, the slip rule does not confer upon a court any jurisdiction or powers to sit on appeal over its own judgment, or, to extensively review such judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior court demonstrates, this is the true import of the slip rule.”



3. I delivered a 61-page Judgment in this matter on 2/02/2024 in which I ruled in favour of the Plaintiff. In my final orders, I preannounced myself as follows:

“ 179. The upshot of the findings above is that the claim herein succeeds in its entirety and I enter Judgment in favour of the Plaintiff in the following terms:

- i) Kshs 185,305,011.30.
- ii) Interest thereon at prevailing bank rates with effect from the date of filing this suit until payment in full”

4. It is not in dispute, and I did so recite in my Judgment, that the Plaintiff’s claim as contained in the Further Amended Plaint dated 18/02/2011, was crafted as follows:

- “i) Kshs 185,305,011.30
- ii) Interest thereon at prevailing bank rates with effect the date of filing this suit until payment in full.
- iii) Costs of this suit.”

5. It will therefore be quickly noted that although in the Judgment, I ruled that the Plaintiff’s “claim succeeds in its entirety”, the prayer (iii) above, namely, “costs of the suit” never found its way into as an awarded order the final reliefs listed in the final orders in the Judgment.

6. Noting the above scenario, the Plaintiff has swiftly moved the Court vide the Notice of Motion dated 20/02/2024 whereof it seeks orders as follows:

“ 2. The Judgment delivered herein on 2<sup>nd</sup> February 2024 be and is hereby corrected and amended to include an award of costs of the suit to the Plaintiff.”

7. The grounds of the Application are that the Plaintiff’s claim was set out in the Further Amended Plaint and included a prayer for costs, costs of the suit was one of the issues submitted for trial, that Judgment was entered in favour of the Plaintiff as prayed but the issue of costs was not addressed in the ultimate orders made, that costs follow the event and an award in that regard follows the success of the Plaintiff’s claim, and that the omission of the award of costs is a clerical mistake in the Judgment which can be corrected by the Court. The Application is supported by the Affidavit sworn by the Plaintiff’s Counsel, Mr. Nelson Havi.

8. The Defendant opposed the Application vide the Replying Affidavit filed on 26/02/2024 and sworn by one Petronila C. Chepkwony who described herself as the Senior Legal Officer of the Defendant. She deponed that the Application is an afterthought, that the Court delivered its Judgment having considered what was presented, that there is therefore no error or omission that would warrant a correction of the Decree under Section 99 aforesaid, that the Plaintiff wants this Court to reevaluate the issue of whether or not costs ought to be awarded and which is now outside the mandate of the Court, that an award of costs is discretionary and the Court having properly exercised its mind and made a determination not to award costs, the issue of failure to award costs cannot be construed to amount to an error capable of being rectified and that granting the same would amount to this Court sitting on its own appeal.

9. At the hearing of this matter, Ms. Odwa, Counsel for the Defendant insisted on verbally addressing and/or arguing her case. I permitted her to do so. In her oral Submissions, she reiterated the matters



already set out in the Replying Affidavit and added that the omission to award costs is not a clerical error curable under Section 99 of the *Civil Procedure Act*, that what is being sought is a re-evaluation of substantive matters, that the Plaintiff's recourse is to appeal, that there is no error on the face of the record, and that this Court is now functus officio. She referred to her List of Authorities and cited the case of *Thomas Owen Ondiek & Another v National Bank of Kenya Ltd & Another* [2021] eKLR and the case of *Diamond Trust Kenya Limited v Motorways Kenya Limited & Another* [2015] eKLR.

## Determination

10. I will right away, without any hesitation, declare that this Court, in its Judgment of 2/02/2024, fully intended to award the principal amount sought, interest thereon and "costs of this suit". The omission to award costs was nothing but a simple inadvertent slip and/or clerical error. This is evident from the Court's express use, as cited above, of the phrase that the Plaintiff's "claim succeeds in its entirety". Since ordinarily costs follow the event, had I intended to deny costs to the Plaintiff despite being the successful party, then obviously, and as the law requires, I would have expressly stated as much in the body of the Judgment and would have given reasons for such denial. This is because it is trite law that a court ought to record or give reasons for denying costs to a successful party. Nowhere in the Judgment is there any indication that I intended or had any reason to deny costs to the successful party in this matter – the Plaintiff.
11. In fidelity to the guide given by the Supreme Court in the case of *Fredrick Otieno Outa v Jared Odoyo Okello* (*supra*), I am clear in my mind that in this instant case, the "slip rule" permits me to correct the error since the same is apparent on the face of the Judgment of 2/02/2024. The error is so obvious that its correction cannot generate any honest controversy regarding the decision of the Court. Further, the error is of such nature that its correction would not change the substance of the Judgment or alter the clear intention of the Court.
12. I am satisfied that contrary to the protests by the Defendant's Counsel, invoking "slip rule" herein does not and cannot be interpreted to amount to usurping of jurisdiction or sitting on appeal over this Court's own Judgment. The correction does not also amount to review of the Judgment as to substantially alter it. I am therefore satisfied that the correction is in fact a demonstration of the true import of the "slip rule".
13. I am fortified by the East African Court of Appeal decision in the case of *Vallabhdas Karsandas Raniga v. Mansukhlal Jivraj and Others* [1965] EA 780, where it was stated as follows:

"Section 3(2) of the Appellate Jurisdiction Act confers on the Court of Appeal the same jurisdiction to amend judgments, decrees and orders that the High Court has under section 99 of the *Civil Procedure Act*, making it unnecessary to look to the inherent powers of the court. The words "at any time" in section 99 clearly allow the power of amendment to be exercised after the issue of a formal order .... "Slip orders" are made to rectify omissions resulting from the failure of counsel to ask for costs and other matters to which their clients are entitled ..... A court will only apply the slip rules 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. In the present case, if the facts had been before the court when judgment was given on appeal, the court would, on application or indeed of its own motion, have made the order for refund, now sought, which was necessarily consequential on the decision on the main issues." [Emphasis mine]



14. Regarding the authorities relied upon by the Defendant, namely, the case of *Thomas Owen Ondiek & Another v National Bank of Kenya* (*supra*) and *Diamond Trust Kenya Limited v Motorways Kenya Limited* (*supra*), I find them easily distinguishable since in those cases, the Court was emphatic that the Judgments delivered correctly reflected the intentions of the Court and that there were no errors. In the second scenario, the Court held that the matters raised amounted to introducing new matters that had not been litigated upon in the case.
15. The situation in this instant case is the same as that well-captured by Nyamu J (as he then was) in the case of *Nedermar Technology BV Limited Kenya Anti-Corruption Commission & Another* [2009] eKLR which arose from similar facts as herein. It is like the Judge was determining the very Application herein. This is how he put it:
- “The primary purpose of the provision is akin to rectification, namely to allow the court to correct a formal order which by accident or error does not reflect the actual decision of the judge. It also authorizes the Court to make an order which it failed to make as a result of the accidental omission and counsel did not at the time ask for it. This would not constitute a variation or a new decision. In my view the rule ought to apply to all situations which when drawn to the Court’s attention immediately enlists remarks from the Court such as “Ghosh it should not have happened” and situations where the Court upon detecting the error would be obligated to move on its own motion. In this case, had I noticed the error before any of the counsel did, I would certainly have promptly caused the Court to move on its own motion. There is no way the correction of the last sentence would result in a new decision on costs. It is still the same decision. I never intended to penalize a successful party by way of denying it of costs.” [Emphasis mine]
16. Noting that this matter had been in Court for 25 years before I eventually determined it and noting that the parties are already fatigued and further litigation may be the last thing they may want to hear about it, I tender my sincere apologies to them for the slip made by the Court and which has inevitably caused them to return to Court for further litigation. It is by reason thereof that I ensured that the Application is heard and determined within 8 days of its filing.

### Final Orders

17. In view of the foregoing, the Application herein succeeds and I make orders as follows:
- i. The Plaintiff’s Notice of Motion dated 20/02/2024 is allowed in terms of prayer No. 2 thereof.
  - ii. Accordingly, the Judgment delivered herein on 2/02/2024 is hereby corrected and amended to include an award of costs of the suit to the Plaintiff, to now be included at page 61 of the Judgment as Order No. (iii).
  - iii. I also note that Order No. (ii) at page 61 of the Judgment is incomplete insofar as the word “from” is missing between the words “with effect” and “the date of filing this suit”. Accordingly, the same is corrected and amended to read as follows:

“Interest thereon at prevailing bank rates with effect from the date of filing this suit until payment in full”.
  - iv. I give no order on costs in respect to the Application dated 20/02/2024 noting that the slip up was on the part of the Court.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 1<sup>ST</sup> DAY OF MARCH 2024**



**WANANDA J. R. ANURO**

**JUDGE**

