



**In re RWW (Minor) (Civil Appeal E227 & E229 of 2021 (Consolidated))
[2024] KEHC 10749 (KLR) (11 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E227 & E229 OF 2021 (CONSOLIDATED)
RC RUTTO, J
SEPTEMBER 11, 2024**

BETWEEN

PNK 1ST APPELLANT

RWW 2ND APPELLANT

AND

AWW RESPONDENT

(Being an appeal from the ruling and orders of the Hon. D.N. Musyoka S.P.M delivered on 16th November, 2021 in Kikuyu)

RULING

1. This court delivered a judgment in this matter on the 19th July 2024. The 1st Appellant/Applicant has moved this court by way of a Notice of Motion application dated 31st July 2024 under Order 45 Civil Procedure Code seeking the following orders –
 - a. That the court do correct the erroneous finding that counsel for the 1st appellant did not file submissions since the same were filed on 30th May 2024 and date stamped.
 - b. That the court do correct its final order in the conclusion paragraph 68(c) to read;

“ the order directing the 1st and 2nd appellants to pay kshs. 560,000 each is set aside”.
 - c. The court to make such orders or to the refund of the sums of kshs. 560,000 already paid by the 1st appellant to the respondent or may be just so as to avoid any further litigation in that regard.
2. This application is supported by the grounds on the face of it and the supporting affidavit of John Kiarie Njuguna. In sum they state that they filed their submissions and were directed to deliver a



physical hard copy which was received and date stamped hence it was an erroneous finding that they did not file submissions.

3. Further that based on paragraph 65 and 66 of the judgment, the court had set aside the orders for payment of arrears after having found them unjustified. This was however not reflected at the conclusion as contained in paragraph 68 (c).
4. It was the 1st appellant submission that he had fully paid the sum of kshs. 560,000 which was deducted from his salary and since the court found the payment unjustified it ought to direct a refund of the same.
5. This application was supported by the 2nd appellant who stated that there was an apparent error in the order contained at paragraph 68 (c).
6. On the other hand the respondent opposed the application and sought to rely on the replying affidavit sworn by Alice Wangui Waweru dated 8th August 2024.
7. Specifically, they opposed the prayer for a refund of the kshs. 560,000 on the basis that, evidence was tabled before the trial court to show how the kshs. 560,000 was calculated. That the kshs.560,000/- was the arrears of an order made in favour of the 2nd appellant who left the country as soon as the order was made, leaving the custody of the minor with the grandmother. In addition, she stated that the money had been spent on behalf of the minor.
8. Further, she confirmed that the 1st appellant's submissions were filed and that they had been served with the same. She agreed that the matter be remitted back to the trial court for review of the maintenance order. She urged the court to allow the order of kshs. 560,000 to stand.

Analysis and Determination

9. Sections 99 and 100 of the *Civil Procedure Act* gives the court the power to amend its record, commonly known as the Slip Rule. The Supreme Court in applying the same in the case of Fredrick Otieno Outa vs Jared Odoyo Okello and 3 others eKLR gave the following guidelines;

“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 Courts demonstrates, this is the true import of the Slip Rule.”

10. Guided by the above principle, I note that at paragraph 21 of the judgment, I stated that the 1st appellant did not file any submissions. However, the appellants herein have annexed to the application, the 1st appellant submissions which show that the said submissions were dated, stamped and received by the court on 30th May 2024. The respondents too confirm that indeed they were served with the 1st appellant's submission dated 28th May 2024 and date stamped by the court on 30th May 2024.
11. Notably both parties agree that the 1st appellant's submissions were filed. This court takes note that no party is challenging the veracity of the date stamp. I thus find that this is a matter where the court can exercise its discretion to amend the judgment under the Slip Rule and correct the error on the record.



12. Consequently, this being a court of record where the accuracy of the record is of importance, paragraph 21 of the judgment is amended by deleting and replacing it with the following new paragraph:

“To begin with, it is important to note that all parties filed their respective submissions. The 1st appellant submission were dated 28th May 2024 and date stamped by the court on 30th May 2024. The 2nd appellant submissions were dated 3rd June, 2024 and those of the respondent dated 28th May 2024. In this judgment the court did not refer to the 1st appellant submissions, since the same were not on file, and could not be accessed and/or found on the CTS.”

13. With regard to the omission of the “1st appellant” on paragraph 68 (c) of the judgment, I note that from the body and tenor of the judgment at paragraphs 65 – 66, the order in question was directed against both the 1st and the 2nd appellants. It therefore follows that this omission is an apparent error on the face of the record and its correction does not in any way change the tenor and object of the judgment.

14. Consequently, paragraph 68 (c) of the judgment is amended by inserting the words “1st and” so as to read “the order directing the 1st and 2nd appellant to pay kshs 560,000 is set aside”.

15. On the 3rd issue, that is whether this court made an order for the refund of the sum of kshs. 560,000 already paid by the 1st appellant to the respondent. Clearly, this order seeks to re-open the case by asking for an order that was never a subject of determination in the said judgment, it was not sought in their pleadings and was never granted by this court. It is noted that this prayer has been sought as a result of a consequential effect of the decision issued by the court.

16. Therefore, by granting such an order this court will be acting in contravention of the principles guiding the invocation of the Slip Rule. A grant of this order does not fall under the exceptional discretion under the Slip Rule. The same is hereby dismissed.

17. The upshot of the above is that this application partly succeeds as regards prayers 1 and 2 in the following terms;

a. Paragraph 21 is amended by deleting it and replacing it with the following paragraph:

21. “To begin with, it is important to note that all parties filed their respective submissions. The 1st appellant submission were dated 28th May 2024 and date stamped by the court on 30th May 2024. The 2nd appellant submissions were dated 3rd June, 2024 and those of the respondent dated 28th May 2024. In this judgment the court did not refer to the 1st appellant submissions, since the same were not on file, and could not be accessed and/or found on the CTS.”

b. Paragraph 68 (c) is amended to read “The order directing the 1st and 2nd appellant to pay kshs. 560,000 is set aside.”

c. Prayer 3 of the application is declined in its entirety.

It is so ordered.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 11TH DAY OF SEPTEMBER 2024.

For Appellants:



For Respondent:

Court Assistant: Peter Wabwire

