



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS APPLICATION NO. 1 OF 2020

LEOPARD ROCK MIC LIMITED.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF MERU.....RESPONDENT

RULING

1. For determination is the applicants notice of motion dated 11/05/2020 seeking orders that the court does invoke its powers under the provisions of section 99 and its overriding objectives and inherent powers to amend and correct the ruling delivered on 22/01/2021 at paragraphs 34 (b) (1). The object of the sought rectification is to properly identify the application that was allowed and the correct award, in terms of the arbitral award for purposes of enforcement.

2. Even though served in good time as shown by the affidavit of service filed in court on the 17/06/2021, the respondent not only failed to file a response thereto but also never attended court at the hearing despite assertion by Mr. Wanyama that he had spoken to his colleague twice and the said colleague, Mr. Kibanga, had promised to log into the platform. The matter then proceeded at 11.48 after it became apparent that there was going to be no appearance by Mr. Kibanga for the respondent/judgment debtor.

3. As drafted and filed the determination of the application merely demands a perusal of the record and in particular the award sought to be enforced, the application seeking enforcement and its flipside, that seeking setting aside, as juxtaposed against the ruling dated 22/01/2021.

4. I have done so, and it is not in doubt that the decree holder's application filed in court on the 07/01/2020 was indeed dated 6/01/2020 and not 6/02/2020. Indeed, in the entire file there is no application dated 06/02/2020 which could have availed itself to be considered and allowed by the court. The reference to an application not in the file and not claimed by anybody is thus clearly an anomaly resulting from accidental or just typographical slip and amenable to correction by the court on being moved by a party, as has been done here, or even by court, *suo sponte*, when discovered.

5. The second limb of the request for correction is the full tenure of the award that was recognized for enforcement by the subject ruling. In the award filed by both sides, the arbitral tribunal under the heading "**OPERATIVE AWARD**" delivered itself as follows

“ 525. For the reasons given above, I now award and direct that the claimant has on a balance of probabilities proved its case against the respondent and is entitled to

a. The sum of Kshs. 329, 881,985.00 being the cost of facilities built by the tenant on the lease property.

b. Kshs. 7,436,500.00 being the cost of assorted movable assets

c. Simple interest on (a) and (b) above at 14% p.a from 8th March 2019 till payment in full;

d. Costs of the reference.

6. However, in the ruling having concluded its analysis and discussion on the dispute, the court alluded to an aggregate award of 339,070,485 and made no reference to the award on interest. Having re-read the file and the ruling and conducted arithmetic calculations, I do confirm that the aggregate total of the costs of improvements and movable is Kshs. 337,070,485 and not 339,070,485/=.

7. The sum in the ruling being Kshs. 339,070,485 inflates the award by Kshs. 2,000,000 and I attribute same to arithmetical error that ought to be correct in the interests of justice.

8. On the award on interest, it is an integral part of the arbitral award, a chosen dispute resolution by the parties to which the courts only

role is to enforce and not to tinker with.

9. Having determined that the award was due for enforcement, the court had no choice but to enforce the award in full by ordering the whole award as made to be enforced. That being the mandate of the court that there was never an advertence to the award on interest can only be viewed and determined to a clerical error which attracts the courts power donated by not only section 99 but also section 1A, 1B 3 and 3A of the Civil Procedure Act.

10. When the court would invoke its powers under section 99 of the Act is not a new area because that provision is as old as the Act itself and one of the provisions which has never been amended since the Act was enacted. I have found guiding light by the East Africa Court of appeal in

“Vallabhdas Karsandas Raniga Vs. Mansukhlal Jivraj and Others [1965] EA 780, held:

“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.”

11. Being so guided, I find the application to well merited and I do grant it in as prayed.

12. I award the costs thereto to the applicant/deGREE holder.

Dated, signed and delivered at Meru virtually by Microsoft teams this 18th day of June 2021

Patrick J O Otieno

Judge

In presence of

Mr. Wanyama for applicant/DH

Mr. Mogire for the respondent/JD

Patrick J O Otieno

Judge