



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 386 OF 2016

STEVE ONYANGO.....PLAINTIFF

VERSUS

TECHSPA GENERAL SUPPLIES LTD.....1ST DEFENDANT

WILLIAM KURIAH JOSIAH.....2ND DEFENDANT

JENNIFER NJERI KURIA.....3RD DEFENDANT

RULING

1. This court delivered a judgment in this matter, in favour of the plaintiff, on 28th April 2020. In paragraph (a) of that judgment it was stated:

“There shall be judgment for the plaintiff against all the defendants jointly and severally for Ksh 13 million with interest at 23% per day from 24th December 2015 until payment in full.” (Emphasis added).

2. The plaintiff has moved this court by Notice of Motion application dated 23rd July 2020 with the following prayer:

“That the said judgment be amended to read that the rate of interest for Ksh 13 million awarded to the plaintiff is at 23% per annum and not 23% per day as recorded in the judgment.”

3. The plaintiff by his application seeks the error of awarding interest accruing daily rather than annual to be corrected.

4. Section 99 of the Civil Procedure Act can be invoked to correct **“clerical or arithmetical mistake in judgments, decrees or orders, or errors arising therein from an accidental slip or omission.”** The court can either evoke the provisions of section on its own motion or an application.

5. The court of appeal in the case **Leonard Mambo Kuria v Ann Wanjiru Mambo (2017) eKLR** extensively discussed section 99 and 100 of the Civil Procedure Act. It is useful to consider what the court stated thus:

“The application of these two sections [Sections 99 and 100 of the Civil Procedure Act, CAP 21] has been considered before in several decisions. They vest a general power to the courts to correct or amend their records. As such they are an exception to the doctrine of ‘functus officio’-- the principle that once a decision has been given, it is (subject to any right of appeal) final and conclusive. It cannot be revoked or varied by the decision-maker. As the court stated in the case of Jersey Evening Post Limited vs. Ai Thani [2002] JLR 542 at 550:-

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.”

Section 100 states as follows:-

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

The purpose of amendment is to **“determine the real question or issue raised by or depending on the proceeding”** and it can be done **“at any time”** which must mean from the time the suit is filed to final disposition.

Section 99 on the other hand, provides:-

“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 the relevant one in this matter as it relates to ‘judgments, decrees or orders’. This Court examined the mechanics of its application in the case of Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR, stating:-

“27. 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”.

In either case, the court may proceed on its own motion or on application by any party. As for the procedure, none is provided for under the two sections and therefore, under Order 51 Rule 1 of the Civil Procedure Rules a ‘Notice of Motion’ is the prescribed procedure.”

6. I find merit in the application and the prayer shall be granted as sought. There shall however be no orders as to costs of the same.

CONCLUSION

7. In respect to the Notice of Motion dated 23rd July 2020 the following orders are granted:

a. This court’s judgment dated 28th April 2020 is amended under section 99 of the Civil Procedure Act in paragraph (a) to read:

“There shall be judgment for the plaintiff against all the defendants jointly and severally for Ksh 13 million with interest at 23% per annum from 24th December 2015 until payment in full.”

b. There shall be no costs to the Notice of Motion dated 23rd July 2020.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 7th day of OCTOBER 2020.

MARY KASANGO

JUDGE

Before Justice Mary Kasango

C/A Sophie

For the Plaintiff: Mr. Momanyi

For the Defendants: N/A

ORDER

This decision is hereby virtually delivered this 7th day of October, 2020.

MARY KASANGO

JUDGE