



REPUBLIC OF KENYA



KENYA LAW
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**African Reit Limited & 2 others v Muli & 9 others (Civil Case E147 of 2022)
[2025] KEHC 18556 (KLR) (Commercial and Tax) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E147 OF 2022
F GIKONYO, J
DECEMBER 4, 2025**

BETWEEN

**AFRICAN REIT LIMITED 1ST PLAINTIFF
STANDARD CHARTERED NOMINEES AC NO 9532 2ND PLAINTIFF
LIMURU TEA (PLC) 3RD PLAINTIFF**

AND

**DORCAS MULI 1ST DEFENDANT
GERRIDINA JOHANNA MARIA TEN DEN 2ND DEFENDANT
SARAH MBWAYA 3RD DEFENDANT
SAMSON KORIR 4TH DEFENDANT
PHILIP KIPLANGAT SIGEY 5TH DEFENDANT
FELGONA OMOLLO 6TH DEFENDANT
DR RICHARD KORIR 7TH DEFENDANT
FELIX MUTAI 8TH DEFENDANT
UNILEVER TEA KENYA LTD 9TH DEFENDANT
CAPITAL MARKETS AUTHORITY 10TH DEFENDANT**



RULING

1. The slip rule is being invoked herein: whether the omission to award costs to the 1st to 9th defendants in the ruling of 24.3.2023 was a clerical mistake that ought to be rectified pursuant to section 99 of the *Civil Procedure Act*.

Background

2. Through the ruling of 24.3.2023, the court struck out the suit for want of jurisdiction as the first port of call in addressing the dispute would be the Capital Markets Authority. The 1st to 9th defendants were the successful parties as their application dated 7.5.2022 seeking to strike out the suit was allowed.

The 9th Defendant's Application

3. From this backdrop, the 9th defendant/ applicant filed the notice of motion dated 20.2.2025 seeking correction of the omission in the last sentence of paragraph 25 of the ruling dated 24.3.2023 to include an order for costs in favour of the 1st to 9th defendants.
4. The application is brought under sections 3A, 27 (1) and 99 of the Civil Procedure Rules. It is supported by the affidavit sworn by Esther Kiyenje-Opiyo, the 9th defendant's advocate.
5. It was deposed that on 24.3.2023, the court (Hon. Chepkwony' J.) delivered via Microsoft Teams, a ruling on 1st and 2nd plaintiff's application dated 24.4.2022 and the 1st to 9th defendants' application dated 7.5.2022.
6. The advocate stated that she attended court on the date of the delivery of the ruling and that while reading the ruling, the learned judge stated that the suit was dismissed with costs. That, however, on receipt of the typed decision, there was no order for costs in favour of the 1st to 9th defendants.
7. The applicant submitted that it is in the interest of justice that the court corrects the omission in the ruling. It argued that the correction of the omission would not change the substance of the judgment or alter the clear intention of the court.
8. The applicant relied on: -
 1. Fredrick Otieno Outa v Jared Odoyo Okello and 3 others [2017] eKLR
 2. Robert Mwaniki Ndwiga v Agatha Kaugi Riungu [2018] KEHC 6770 (KLR)

Response

9. The plaintiffs/ respondents opposed the application through a replying affidavit sworn by the 1st plaintiff's managing director, Wainaina Kenyanjui on 13.3.2025.
10. The managing director stated that he was present in court on 24.3.2023 during delivery of the subject ruling and the judge did not award costs to any party. He also stated that his advocates perused the court file and that there was no award of costs in the handwritten notes.
11. The respondents faulted the applicant for filing and withdrawing a similar application that was dated 2.2.2024. He highlighted that the said application came up for directions on various dates being 14.5.2024, 25.6.2024, 16.10.2024 and 27.1.2025. That on each date, the applicant's counsel sought more time to amend their application and annex transcripts of the court proceedings. That



on 27.1.2025, the court gave the applicants the last adjournment considering that they had taken an inordinately long time to comply. That on 20.2.2025, the applicant filed a notice of withdrawal.

12. The respondents submitted that the application does not meet the threshold set out under section 99 of the *Civil Procedure Act*. That the applicant's true intention is to appeal the decision. That an order of costs and to whom payable is a substantive relief and not merely a clerical or arithmetical mistake arising from accidental slip or omission that needs to be corrected.
13. The respondents further argued that the application is vexatious and a clear abuse of the court process designed to keep parties embroiled in endless litigation. They urged the court to dismiss the application with costs.
14. The respondents relied on: -
 1. Republic v Attorney General & 15 others, Ex-parte Kenya Seed Company Limited & 5 others [2010] eKLR
 2. Chesire v Gioche (Civil Appeal 50 of 2016) [2023] KEHC 24745 (KLR) (6 November 2023) (Ruling)
 3. Munywoki v Kaloki & another (Civil Miscellaneous Application 23 of 2008) [2024] KEMC 27 (KLR) (10 July 2024) (Ruling)
 4. Outa v Okello & 3 others (Petition 6 of 2014) [2017] KESC 25 (KLR) (24 February 2017) (Ruling)
 5. Rai & 3 others v Rai & 4 others (Petition 4 of 2012) [2014] KESC 31 (KLR) (4 March 2014) (Ruling)

Analysis and Determination

15. The issues before the court are: -
 1. Whether the application is merited.
 2. Whether the plaintiffs are entitled to the costs for the withdrawn application of 2.2.2024.
16. Before looking into the merits of the application, the respondent argued that the application has been brought with inordinate delay. The application is dated 20.2.2025 and the subject of the application is the ruling dated 24.3.2023.
17. The applicant had earlier filed a similar application dated 2.2.2024. There were delays in the hearing of the application as the applicant's advocate applied for the court's transcripts.
18. Eventually, on 27.1.2025, the court directed the applicant to withdraw that application and file a fresh application.
19. The applicant had requested leave to amend the application.
20. Overall, the court finds that although there was inordinate delay in filing the application, the delay was satisfactorily explained. Thus, the court will proceed to consider the application on the merits.

Was the omission of costs award a clerical mistake?

21. The applicant has brought the subject application under section 99 of the *Civil Procedure Act*. The section provides that "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.”

22. The application is based on the applicant’s advocate’s position that she heard the court state that the costs were awarded to the 1st to 9th defendants during the delivery of the ruling.
23. However, the 1st managing director of the 1st respondent stated that he was present in court on 24.3.2023 during delivery of the subject ruling and the judge did not award costs to any party.
24. I have read the subject ruling and the proceedings of 24.3.2023. The court did not address the issue of costs.
25. The applicant did not produce the transcripts for the day’s proceedings.
26. Therefore, this court cannot ascertain the claims by the 1st to 9th defendants that costs were awarded to them.
27. In *Vallabhdas Karsandas Raniga v Mansukhlal Jivraj and others* [1965] 1 EA 700, cited in *Munywoki v Kaloki & another* [supra] the Court of Appeal observed that: -

“ 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. In the present case, we feel no doubt that if the facts had been before the Court when judgment was given on the appeal, the Court would, on Application or indeed of its own motion, have made the order for refund now sought, which was, in our opinion, necessarily consequential on the decision on the main issues.”

28. The court appreciates the respondents’ submission that, where the intention of a court must be determined before amending a ruling or judgment, courts have previously advised parties to make an application for review under section 80 of the *Civil Procedure Act* as opposed to invoking the slip rule under section 99.
29. However, the applicant insisted that the instant application does not seek any review of the orders made by the court but merely seeks correction of the omission in the ruling.
30. Nonetheless, from the foregoing, the court finds that the applicant has not demonstrated that the nature of the amendment sought is of a matter resulting from a clerical error under section 99 or 100 of the *Civil Procedure Act*.

Costs of the application of 2.2.2024

31. Costs of an action or proceedings are the discretion of the court which is guided by the now established principle that costs follow the event unless the court or judge shall for good reason otherwise order. (Section 27 of the *Civil Procedure Act*.)
32. Given the circumstances of the application and the time it has taken, the court finds that the respondents are entitled to the costs of the application dated 2.2.2024.

Disposal

33. In the upshot, the court makes the following orders: -
 1. The application dated 20.2.2025 is dismissed with costs to the plaintiffs/ respondents.



2. The plaintiffs/ respondents are awarded the costs of the application dated 2.2.2024.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 4TH DAY OF DECEMBER, 2025**

.....

F. GIKONYO M

JUDGE

In the presence of: -

Mwenda for Plaintiff

Bett for Ms. Opiyo for 9th defendant

CA Kinyua

