

**REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. 693 OF 2016**

**ANTHONY ADHIAMBO ODUNDO
HOLDER/APPLICANT**

- **PLAINTIFF/DECREE-**

**KUKAM LIMITED
DEBTOR**

- **VS
1ST DEFENDANT /JUDGMENT-**

**METRA INVESTMENTS LIMITED
DEBTOR**

- **2ND DEFENDANT/ JUDGMENT-**

RULING

**(In respect of the Plaintiff/ Decree- Holder's application dated
3/9/2025)**

1. Before this Court for determination is the Plaintiff/ Judgment- Debtor's Notice of Motion application dated 3/9/2025. The application is brought under the provisions of Article 159 of the Constitution, Sections 1A,1B,3A, 99 and 100 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The Applicant prays for orders that;
 - a. Spent;
 - b. This Honourable Court be pleased to rectify and/or correct its Judgement of 15/4/2024 and the Decree emanating therefrom by rectifying disposal Order No.3 to read as follows; -

"I hereby award interest on the amount in (2) above at the rate of 12% per annum as per the mutually agreed terms of the Agreement under clause 11 (f) of the Sale Agreement dated 17/12/2008 and clause 9.2 of the Sale Agreement dated 8/5/2012"
 - c. The costs of this Application be provided for.
2. The motion was supported by the Applicant's supporting affidavit of the same date. The deponent states that judgement was delivered by Hon. (Lady) Justice Mogeni on 15/4/2024 in favour of the Plaintiff. He asserts that after the entry of the said judgement, he sought to execute the

decree arising therefrom by attaching and selling the defendants' movable assets. However, the Deputy Registrar declined to issue the warrants due to a clerical error on the face of the record. That Order 3 of the judgement erroneously refers to clause 1 (f) of the Sale Agreement dated 17/12/2008 instead of clause 11 (f), which relates to the award of interest.

3. The applicant asserts that it is imperative to correct the accidental slip to reflect the Court's true intention of the decision in the interest of justice. He argues that failure to do so will prevent him from enjoying the fruits of the Judgement after waiting for 14 years. Consequently, the court was urged to grant the orders sought.
4. The respondents did not oppose the application, hence it is uncontroverted. That said the court will determine, in any event, on its merits.

Analysis and Determination

5. Having read and considered the instant Application and the submissions thereto, I am of the considered view that the issue for determination is; Whether the Plaintiff's application is merited.
6. The substantive powers for review of a judgment or an order made by a court are provided for under Section 80 of the Civil Procedure Act, while Order 45 of the Civil Procedure Rules 2010 provides the procedural requirements. Section 80 of the Civil Procedure Act provides that: -
 - "Any person who considers himself aggrieved—
 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

7. The Plaintiff, by its application, seeks to rectify and/or correct the Judgment of 15/4/2024 and the Decree emanating therefrom by rectifying the disposal Order No.3, which erroneously refers to clause 1 (f) of the Sale Agreement dated 17/12/2008 instead of clause 11 (f) thereof, which relates to the award of interest.
8. Section 99 of the Civil Procedure Act can be invoked to correct clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therefrom from accidental slips or omissions.
9. As stated in **Steve Onyango -vs- Techspa General Supplies Ltd & 2 Others [2020] eKLR**, the court can either invoke the provisions of section 99 of the Civil Procedure Act on its own motion or upon application. Section 99 of the Civil Procedure Act 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.”
10. Having looked at the Sale Agreement and the Judgment of 15/4/2024, it is evident that the intention of the court was to award interest on the refund of all monies paid under the Agreement pursuant to Clause 11(f) thereof. I am therefore in agreement with the applicant that the purpose of the amendment sought is to determine the real question or issue raised by the proceeding, and such an amendment is invoked in Sections 99 and 100 of the Civil Procedure Act.
11. Section 100 of Civil Procedure Act 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.”

12. The above given provisions (Sections 99 & 100 of CPA) were extensively discussed in the case **Leonard Mambo Kuria v Ann Wanjiru Mambo (2017) eKLR** as follows:

“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”.

13. The Civil Procedure Rules provides under Order 21 Rule 3 (3) of the Civil Procedure Rules that: -

“A judgment once signed shall not afterwards be altered or added to save as provided by Section 99 of the Act or on review.”

14. **Final orders for disposal**

- a. Arising from the above, it is my finding that the orders sought in the application are for granting.
- b. The application is hereby allowed with no orders as to costs.

15. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 11TH DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr. Karuti for the Plaintiff
2. Mr. Mutunga for the Defendants
3. C/A - Ms. Yvette Njoroge