

**IN THE COURT OF
APPEAL AT KISUMU**

**(CORAM: OMONDI, KIMARU & JOEL NGUGI,
JJA)**

**CIVIL APPEAL (APPLICATION) NO. 168 OF
2011 BETWEEN**

DAKIANGA DISTRIBUTORS (K) LIMITED.....APPLICANT

AND

KENYA SEED CO. LIMITED.....RESPONDENT

(Being an appeal to review the Judgment of this Court
(Maraga,
Anzangalala & Sankale, JJA) dated 24th February, 2015

in

HCCC No. 146 of 2005)

RULING OF THE

COURT

1. By notice of Motion made under **section 80** of the **Civil Procedure Rules, Order 45 Rules 1 & 2** of the **Civil Procedure Rules 2010** and **Rule 44(2)** and **45(1)** of the **Court of Appeal Rules**, the applicant (Kenya Seed Company Ltd) prayed for the Court to grant the following Order:

“The Judgment and orders of this Honourable Court delivered on 24th

February, 2015 by Honourable David Maraga, Honourable Festus Azangalala and Honourable Sankale ole Kantai be reviewed to provide a further order clarifying that:

(a) The award on the item on interests as awarded by the trial Court is still binding

and is applicable to the principal sum of Kshs.11,104,180/- awarded by this Honourable Court.”

2. The application is supported by the grounds on the face of the application and the supporting affidavit of **Andrew Gathu Mmbongori**, the advocate for the applicant.
3. The application is opposed. **Kennedy Bosire Gichana**, the advocate for the respondent, swore a replying affidavit in opposition to the application. In it, he annexed an affidavit sworn earlier by **Charles Nyamumbo Mageto**, the Managing Director and Proprietor of the respondent. The respondent swore that the applicant is not entitled to the order that it is seeking.
4. During plenary hearing of the application, **Mr. Mmbongori**, learned counsel appeared for the applicant, whilst, **Mr. Gichana**, learned counsel appeared for the respondent. They both argued their clients' respective opposing positions.
5. The issue for determination by this Court is, really, whether the Court committed a clerical error in its judgment of 24th February 2015 that requires intervention by this Court to correct in the interest of justice. **Rule 37(1)** of the **Court**

of

Appeal Rules 2022 provides that:

“A clerical or arithmetical mistake of the Court on any error arising from an accidental slip or omission may, at any time, whether before or after the Judgment has been embodied in an order, be corrected by the Court, either of its own motion or on the application of any interested person so as to give effect to the intention of the Court when Judgment was given.”

6. It is not disputed that the Judgment was entered in favour of the applicant as against the respondent on 31st March, 2011 for the sum of Kshs.8,776,580 plus interests and costs. This Judgment was entered in the applicant’s favour by the High Court sitting at Kisii in **Kisii HC Civil Case No. 146 of 2005.**

7. The respondent was aggrieved by this decision. It lodged an appeal to this Court. The applicant filed a cross-appeal seeking that Judgment to be entered against the respondent for the higher sum of Kshs.11,104,180/- instead of the sum of Kshs.8,776,580/ that was adjudged by the trial Court. In its Judgment delivered on 24th February, 2015, this Court dismissed the appeal and allowed the cross-appeal as prayed. The Court ordered the respondent to pay the enhanced sum of Kshs.11,104,180. Unfortunately, this Court did not include the order that the said amount be paid with

interests as ordered by

the High Court. This was an obvious error and omission

rectifiable under **Rule 37(1)** of this **Court's Rules**. It was not, and it could not have been, the intention of this Court to deprive the applicant a right that had accrued to it by virtue of a Judgment of the Court.

8. In the premises, therefore, the Judgment rendered by this Court on 24th February, 2015 is amended to read as follows: the sum of Kshs.11,104,180 shall be paid by the respondent to the applicant plus interests from the date of entry of Judgment until payment in full.

9. The applicant shall have the costs of the application.

Dated and delivered at Kisumu this 13th day of March, 2026.

H.A. OMONDI

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**. JUDGE OF
APPEAL**

L. KIMARU

.....
JUDGE OF APPEAL

JOEL NGUGI

.....
JUDGE OF APPEAL

**I certify that this is
a true copy of original.**

Signed

DEPUTY REGISTRAR