

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC NO. 141 OF 2018

OLOIPOI SOINE OLOIBOR OLGOS.....PLAINTIFF/APPLICANT

VERSUS

MATINTI NDORKO.....DEFENDANT/RESPONDENT

RULING

(In respect of the Notice of Motion application dated 2nd December 2025 seeking amendment of the decree issued on 23rd July 2025 pursuant to Section 99 of the Civil Procedure Act)

Introduction

1. This ruling pertains to the Notice of Motion dated 2nd December 2025, filed by the Plaintiff/Applicant, Oloipoi Soine Oloibor Olgos, through the firm of Naikuni, Ngaah & Miencha Company Advocates. The application is brought under the provisions of Sections 1A, 1B, and 99 of the Civil Procedure Act (Cap 21), and Order 51 Rule 1 of the Civil Procedure Rules 2010.
2. Through this application, the Applicant seeks the following substantive orders:
 - a. ***THAT the Court exercises its powers under the slip rule, pursuant to Section 99 of the Civil Procedure Act, to amend the Particulars of the Decree issued on 23rd July 2025.***
 - b. ***THAT the amendment includes the quantified monetary value and corresponding interest for the 35 head of cattle awarded under Order 4 of the said Decree.***

- c. THAT the Particulars of the Decree be amended to reflect a total Principal Amount of Kshs. 1,900,000.00 and a total Interest on the principal sum of Kshs. 21,743,956.16.*
- d. THAT the Court issues a fresh Amended Decree incorporating these amendments to reflect a total decretal sum of Kshs. 24,335,354.21, comprising the principal, interest, costs, and collection fees.*
- e. THAT the costs of the application be provided for.*
3. The application is premised on the grounds set out on the face of the Motion and is further supported by the Affidavit of Oloipoi Soime Oloibor Olgos, sworn on 2nd December 2025.
4. The Applicant's core contention is that while Order No. 4 of the Court's Judgment delivered by Hon. Justice M. N. Gicheru on 3rd November 2022 expressly ordered the refund of the consideration of 35 head of cattle and Kshs. 150,000/= with interest at court rates from 16th March 2004, the resultant "Particulars of the Decree" contained an accidental slip or omission. Specifically, the Applicant avers that the decree quantified the cash portion but failed to quantify the monetary value of the 35 heads of cattle.
5. Relying on a valuation from the County Directorate of Livestock Production, the Applicant asserts that the value of a mature cow in 2004 was Kshs. 50,000. Consequently, the Applicant calculates the principal sum of the 35 head of cattle awarded at Kshs. 1,750,000.00, which necessitates the proposed amendments to ensure the Decree is capable of execution and fully reflects the orders of the Court.

6. In response to the application, the Defendant/Respondent filed Grounds of Opposition through the firm of Agina & Associates Advocates. The Respondent vehemently opposes the Notice of Motion on several fronts.
7. Primarily, the Respondent contends that the Plaintiff's application is scandalous, frivolous, vexatious, and amounts to an abuse of the court process intended as an afterthought to reopen a concluded matter. In light of this, the Respondent argues that this Court is now *functus officio* and therefore lacks the authority to entertain the issues raised by the Applicant.
8. Furthermore, addressing the substantive claim regarding the calculation of the interest on the cattle, the Respondent relies heavily on the *in duplum* rule. The Respondent asserts that it is a tested principle of law that recoverable interest cannot surpass the principal amount. To buttress this legal position, the Respondent cites the High Court decisions in *Karanja vs Modyn Credit Ltd [2024] KEHC 10178* and *Jelangat v Mwananchi Credit Ltd [2023] KEHC 19922*.
9. Ultimately, the Respondent urges this Court to strike out the Applicant's Notice of Motion with costs, maintaining that it is incompetent, bad in law, and frivolous.

Directions

10. The application was canvassed by way of written submissions, which I have duly considered in the preparation of this ruling.

Issues for determination

11. I have carefully considered the Applicant's Notice of Motion dated 2nd December 2025, the supporting affidavit, the Respondent's Grounds of Opposition, and the written submissions filed on record. The primary issue falling for determination is whether the

Applicant has moved this Court through the correct legal procedure to seek the orders prayed for in the Notice of Motion.

Analysis and Determination

12. The Applicant moved this Court under Sections 1A, 1B, and 99 of the Civil Procedure Act (Cap 21). Section 99, universally recognized as the "slip rule," 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."

13. The fundamental question then is whether the failure to quantify the monetary value of the 35 heads of cattle in the judgment and subsequent decree constitutes an "accidental slip or omission" capable of correction under this section.

14. The mandate of Section 99 is strictly confined to correcting genuine mechanical mistakes, clerical anomalies, or mathematical miscalculations to ensure the decree accurately mirrors the judgment. It is not an avenue for the court to review its judgment on the merits, rewrite the substantive rights of the parties, or fill evidential gaps left open during the trial.

15. In the present application, the Applicant seeks to introduce a valuation letter from the County Government of Kajiado, dated 8th August 2025, to establish that the price of a cow in 2004 was Kshs. 50,000/=. The Applicant then proceeds to use this newly introduced figure to calculate the new principal sum and subsequent interest which he invites the court to adopt.

16. I align entirely with the Respondent's submission that this application is an afterthought and an attempt to reopen a concluded matter. Attempting to introduce fresh documentary evidence, which cannot be subjected to the rigors of cross-examination, years after pleadings have closed and judgment delivered is a fatal procedural misstep.

17. The court in the case of *Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR*, discussed the application of section 99 of the Civil Procedure Act (the slip rule) stating that:

*“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. 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. 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. 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”.

18. If the Applicant felt that the trial court erred in failing to quantify the value of the cattle, the appropriate recourse was to lodge an appeal against the judgment. Alternatively, if the valuation report is deemed newly discovered evidence that was unavailable during trial, the proper vehicle would be an application for review under Order 45 of the Civil Procedure Rules, subject to meeting the stringent threshold requirements therein.

19. By utilizing a Notice of Motion hinged under Section 99 to essentially conduct a post-judgment assessment of damages based on new evidence, the Applicant has moved this Court in the wrong way. The procedure adopted is fundamentally flawed and

incompetent. This Court is *functus officio* and lacks the jurisdiction to entertain or consider the substantive merits of the newly introduced valuation report or to adjust the decree on that basis.

20. Because the application is procedurally incompetent *ab initio*, the Court need not delve into the subsequent substantive arguments regarding the exact computation of interest or the mathematical anomalies present in the prevailing decree, if any.

21. In light of the foregoing analysis regarding the procedural impropriety of the application, I make the following orders:

A. The Applicant's Notice of Motion dated 2nd December 2025 is fundamentally defective, incompetent, and constitutes an abuse of the court process.

B. The application is hereby STRUCK OUT with costs to the Respondent.

Ordered accordingly.

Dated, Signed and Delivered Virtually this 23rd Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Ochieng' for the Plaintiff/Applicant

N/A by the Defendant/Respondent

Court Assistant: Peninah

M.D. MWANGI
JUDGE

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