



**Meya Agri Traders Limited v Eco Bank Kenya Limited (Civil Application
20 of 2020) [2023] KECA 1426 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1426 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 20 OF 2020
K M'INOTI, F SICHALE & FA OCHIENG, JJA
NOVEMBER 24, 2023**

BETWEEN

MEYA AGRI TRADERS LIMITED APPLICANT

AND

ECO BANK KENYA LIMITED RESPONDENT

*(Being an application for correction of an error in the judgment of the Court of Appeal at
Nairobi (Okwengu, Kiage & Sichale, JJ.A.) dated 5th June, 2020 in Civil Appeal No 108 of 2016)*

RULING

1. The application before us is dated June 26, 2020. It was brought under rule 35 of the [Court of Appeal Rules, 2010](#). The applicant prays for orders that: this Court be pleased to correct the accidental slip or omission in its judgment dated June 5, 2020 by awarding interest on the sum of Kes 10,566,700/- granted; and that there be no costs on this application.
2. The application is premised on the following grounds:
 - “a) In the judgment dated June 5, 2020 the appeal was decided in favour of the applicant. However, the judgment was silent on interest.
 - b. The applicant had prayed for interest at bank rates or court rates in their plaint.
 - c. The failure to award interest was an accidental slip or omission that this court may correct at any time.
 - d. The High Court awarded interest on the two awards it made.”



3. The application was further supported by the affidavit of Daniel Munywoki Ngunia, the managing director of the applicant in which he stated as follows:

- “ a) The applicant sued the respondent for a liquidated sum of Kes 13,250,921.97, general damages for libel, breach of contract, costs and interest at bank rates or court rates.
- b. The High Court awarded the applicant a liquidated sum of Kes 1,595,721.97 with interest at 19%, general damages for libel at Kes 1,500,000/- with interest at court rates, and costs.
- c. Aggrieved, the applicant appealed to this Court. The Court awarded the applicant Kes 10,566,700/- with costs. The judgment was silent on the issue of interest.
- d. This Court sitting on appeal has a duty to grant that which the High Court should have granted had it properly directed its mind on the evidence, the law and the pleadings before it.
- e. The failure to award interest was an accidental slip or omission.
- f. Efforts by the parties to resolve the issue through correspondence have proved futile.
- g. The prayer is for the court to correct the accidental slip or omission and award interest on the sum of Kes 10,566,700/-.”

4. In response, the respondent filed the following grounds of opposition:

- “ a) The memorandum of appeal dated May 5, 2016 was limited to the award of the principal sum of Kes 10,566,700/- and Kes 80,000/- on dishonoured cheques.
- b. The appeal did not raise any claim for interest. Parties are bound by their pleadings, and the applicant was bound by the prayers sought in the memorandum of appeal.
- c. The application has been overtaken by events, the decree was settled *vide* a consent dated February 9, 2023.
- d. The application is bad in law, incompetent and an abuse of the court process.”

5. In a replying affidavit sworn by John Wambugu, the legal counsel to the respondent, stated as follows:

- “ a) The respondent was served with a proclamation notice for Kes 14,601,040.97 and warrants of attachment in execution of the decree dated January 21, 2021 on January 22, 2021.
- b. This led to negotiations and the parties agreed to an amount of Kes 17,456,735.97. The respondent paid Kes 14,505,319/- on February 4, 2021 as part payment of the negotiated amount. The outstanding amount with interest was Kes 3,126,666.97.
- c. The parties executed a consent dated February 9, 2021 to that effect, and the said consent was adopted as an order of the court on May 17, 2021.



- d. It was later realized that only Kes 3,000,000/- had been deposited in the fixed account as opposed to the agreed amount of Kes 3,095,721/-. The amount payable was thus Kes 3,089,983.97.
 - e. A refund cheque of Kes 90,352.05 was sent by the applicant's counsel, as the amount had not been accounted for.
 - f. On February 14, 2022 parties confirmed settlement of the matter.
 - g. The applicant waived its claim on interest when they executed the mutually binding consent.
 - h. The applicant's application is an attempt to steal a match against the respondent by seeking to unfairly gain an advantage.
 - i. It is in the interest of justice that the application is dismissed with costs.”
6. At the hearing of the application on September 19, 2023, Mr. Mutonyi, learned counsel, appeared for the applicant whereas Mr. Muiruri, learned counsel, appeared for the respondent. Counsel relied on their respective written submissions.
 7. The applicant was of the view that the court substituted the dismissal of the claim for the principal sum, with an order granting it as prayed. The principal sum had been prayed for with interest in the plaint and therefore, the applicant expressed the view that the failure by the Court to award the same was an accidental slip or omission.
 8. Citing the case of *Lakhamshi Brothers Limited v R. Raja & Sons* [1966] EA 313, the applicant pointed out that this Court has inherent jurisdiction to give effect to the intention of the Court when it delivered its judgment, or to clearly give effect to what would have been the intention of the Court had the matter not inadvertently been omitted.
 9. The applicant was of the view that the intention of the judgment was to compensate the applicant for the loss it suffered due to the negligence of the respondent. Since the applicant was prevented from using the principal sum, they prayed that they be compensated by way of interest. To buttress this submission, the applicant relied on the decision in the case of *William Musembi & 13 others v Moi Educational Centre Co Limited & 3 others* [2022] KESC 19 KLR.
 10. Relying on the cases of *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR and *Monica Wangu Wamwere & 5 others v Attorney General* [2023] KESC 26, the applicant submitted that this Court had jurisdiction to correct an accidental slip.
 11. The respondent was of the view that the applicant was not entitled to the interest prayed for, as they had only prayed for the award of the principal loss and dishonoured cheques in their memorandum of appeal. The respondent relied on the cases of *Nguruman Limited v Shompole Group Ranch & another* [2014] eKLR and *Musiara Limited v William Ole Ntimama* [2004] eKLR in support of this submission.
 12. The respondent was of the view that the applicant had not shown the existence of any clerical or arithmetical errors in the judgment, or how the court had made an omission in failing to award interest; the court having pronounced itself with finality on the specific orders sought by the applicant in the memorandum of appeal.
 13. Citing the case of *Sanitam Services (EA) Limited v Rentokill (K) Limited & another* [2019] eKLR, the respondent was of the view that the court did not make an error in failing to award interest that



would warrant rectification in order to give effect to that intention. Be that as it may, the intention of the court in this matter was to award the principal claim and the bank charges that the High Court had failed to award.

14. The respondent submitted that rectification of a judgment where no error or omission has been proved by the applicant would defeat the clear intentions of rule 35, and would not in any way give effect to the intention of the court, at the time judgment was delivered.
15. The respondent further submitted that by executing the consent dated February 9, 2021; and having obtained the full realization of the decree, the applicant waived its claim on interest. The respondent was of the view that the present application had been overtaken by events following the settlement of the amounts set out in the consent.
16. We have carefully perused the application, the affidavits by both parties, submissions by counsel, the authorities cited and the law. The issue for determination is whether the slip rule was applicable in the circumstances of this case.
17. Rule 35 of the [Court of Appeal Rules, 2010](#) is the present rule 37 of the [Court of Appeal Rules, 2022](#) and it provides as follows:

- “(1) A clerical or arithmetical mistake in any judgment of the court or any error arising therein 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.
2. An order of the Court may be corrected by the Court at any time, either of its own motion or on the application of any interested person—
 - a. if it does not correspond with the judgment it purports to embody; or
 - b. where the judgment has been corrected under sub-rule (1), if it does not correspond with the judgment as so corrected.”

18. The Supreme Court in the case of [Fredrick Otieno Outa v Jared Odoyo Okello & 3 others](#), (*supra*), held that:

- “(85) This section as quoted, embodies what is ordinarily referred to as the “slip rule”. By its nature, the slip rule permits a court of law to correct errors that are apparent on the face of the judgment, ruling, or order of the court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the court. By the same token, such errors must be of such nature that their correction would not change the substance of the judgment or alter the clear intention of the court. In other words, the Slip rule does not confer upon a court, any jurisdiction or powers to sit on appeal over its own judgment, or, to extensively review such judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior courts demonstrates, this is the true import of the slip rule.”



19. In the result, the jurisdiction of the court under the slip rule is circumscribed and limited to correction of errors arising from accidental slip or omission, so as to give effect to the manifest intention of the court, when it made its decision. The rule does not allow the court to sit in judgment of the merits of its previous decisions. In the case of *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] eKLR, this Court stated thus:

“ Besides the residual power to reopen a decided case, it must be pointed out that under rule 35

(1) of the *Court of Appeal Rules*, (commonly referred to as the slip rule), the court has power to correct any clerical or arithmetical mistake in its judgment or any error arising therein from an accidental slip or omission. The court may undertake that correction of its own motion or on the application of any interested person, and at any time whether before or after the judgment has been embodied in an order. The slip rule does not allow the court to sit in judgment on its own previous judgment... Its purpose is to effect correction so as to give effect to the intention of the court when it gave its judgment.”

20. Similarly, in *Sanitam Services (E.A.) Limited v Rentokil (K) Limited & another*, (*supra*), this court stated:

“ As we have stated, the Supreme Court while considering a slip rule under a provision of the *Supreme Court Act* found that the slip rule did not confer upon any court jurisdiction or powers to sit on appeal over its own judgment or to extensively review such judgment as to substantially alter it. The *Court of Appeal Rules*, particularly rule 35 thereof allows for correction of errors in the same manner and in a similar situation as the said provision of the *Supreme Court Act*. The slip rule does not allow or permit a court to give an order which alters the judgment or orders made earlier. It is for purposes of correcting clerical errors and giving effect to the judgment of the court. The total effect of the 2nd ruling was to take away rights that had been granted to the appellant in the ruling delivered on May 28, 2017.”

21. The purpose of the slip rule is to effect correction so as to give effect to the intention of the court when it gave its judgment. In *Raniga v Jivraj & others* [1965] EA 700 the court stated that:

“ A court will, of course, only apply the slip rule where it is 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.”

22. In the application before us, the applicant seeks to give meaning to the intention of the court when it allowed the applicant’s appeal as prayed but was silent on the issue of interest. Determining this issue requires that the court to interpret its own judgment and determine whether or not to award interest. It is common ground that the applicant had been awarded interest on both sums before the High Court. It is also common ground that the applicant did not raise any ground of appeal with regard to interest before this court.

23. Additionally, it is not in dispute that the appellate court was silent on the issue of interest. From the foregoing, it is evident that the applicant is calling upon this court to sit in an appeal from its own decision. The issue of interest cannot be determined without going into the merits of the appeal. It cannot be said that the issue was overlooked by the court either, as the same was not an issue before the appellate court and the court cannot be faulted for not determining it. The question that the applicant



wants this court to answer is whether or not it was entitled to interest; this is a question that cannot be answered within the jurisdiction of this court on the slip rule.

24. It follows therefore that the slip rule is not applicable in this case. There was no clerical or arithmetic error or any other error of that nature that would justify invocation of the slip rule. To our minds, granting this application will not give effect to the manifest intention of the court, as expressed in the judgment in question.

25. In the result, we find that the appeal lacks merit and it is dismissed with costs to the respondent.

Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 24TH DAY OF NOVEMBER, 2023.

K. M'INOTI

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JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

F. OCHIENG

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

