



**Kirika & another v Standard Chartered Bank Kenya Limited & another
(Cause 338 of 2022) [2022] KEELRC 12791 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12791 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 338 OF 2022
MA ONYANGO, J
OCTOBER 5, 2022
(FORMALLY HIGH COURT CIVIL SUIT NO. 91 OF 2003)**

BETWEEN

ALLAN NGURE KIRIKA 1ST CLAIMANT

MICHAEL MUTHOKA KIBAI 2ND CLAIMANT

AND

STANDARD CHARTERED BANK KENYA LIMITED 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The suit herein was heard by Hon Lady Justice R N Nambuye (retired Court of Appeal judge) who prepared and signed the judgment on May 13, 2022. The judgment was delivered by myself on her ladyship's behalf on May 19, 2022.
2. By letter dated May 30, 2022, Lubulellah & Associates sought an urgent mention before me for purposes of correction of errors on the judgment. In the letter the said firm states that: –

“ {Note page 33 (paragraph 88ii) the award of Kshs 3.5 million was erroneously typed in the final order as Ksh 2.5 million same for Ksh 600,000/= award on page 37 – paragraph 88x) which is erroneously typed in the final order as Ksh 150.000/=)”
3. The case was mentioned on July 28, 2022 when Mr Eugene Lubulellah appeared for the plaintiffs while Mr Otieno held brief for Mr Obura for the defendant's.
4. Mr Lubulellah informed the court that he sought the mention of the case for purposes of rectification of the judgment at paragraph 88(ii) page 33 where there is an award of Kshs 3.5 million which in the final orders at the end of the judgment is typed as Kshs 2.5 million.



5. Counsel further pointed out that at paragraph 88(x) the award of Kshs 600,000 appears in the final orders as Kshs 150,000.
6. He prayed that this court invokes its powers under section 98 and 99 of the *Civil Procedure Act* and its inherent jurisdiction to correct the clerical mistakes/errors apparent on the face of the record.
7. Mr Otieno for the defendants submitted that the final figures of Kshs 2.5 million and Kshs 150,000/- are correct and that the court should find as such.
8. I have keenly perused the judgment. Paragraphs 88(ii) and 88(x) of the judgment read as follows:

(ii) Damages for malicious, falsehood and malicious prosecution

I have already ruled in the plaintiffs favour that there was no basis for their prosecution. In the case High Court and Court of Appeal cases of Emmanuel Kuria Wa Gathoni v Commissioner of Police and another [2017] eKLR, Jaston Ongule Onyango v Attorney General & another [2015] eKLR and Lucas Omoto Wamari v Attorney General & another [2017] eKLR in light of the above. I award Kshs3,500,000.00 for each plaintiff.

- (x) Invasion of liberty based on unwarranted searches this was borne out by the evidence. I allow Kshs 600,000.00.”

9. Paragraph 89 of the judgment reads as follows -

- (1) The plaintiffs suit against the defendants is allowed.
- (2) The 1st plaintiff is entitled to reliefs as hereunder:
 - i. General damages for wrongful confinement and/or imprisonment Kshs 300,000.00.
 - ii. Damages for malice, falsehoods and malicious prosecution Kshs 2,500,000.00.
 - iii. Aggravated damages Kshs 500,000.00.
 - iv. Damages for breach of contract declined for reasons given in the assessment.
 - v. Special damages Kshs 500,000.00.
 - vi. Damages for injury to professional reputation is declined for reasons given in the judgment.
 - vii. On curtailment of liberty Kshs 300,000.00.
 - viii. Damages for loss of an otherwise prosperous bank career Kshs 1,500,000.00.
 - ix. Invasion of liberty Kshs 150,000.00.
- (3) The 2nd plaintiff is entitled to reliefs as hereunder:
 - i. General damages for wrongful confinement and/or imprisonment Kshs 300,000.00.



- ii. Damages for malice, falsehoods and malicious prosecution Kshs 2,500,000.00.
- iii. Aggravated damages Kshs 500,000.00.
- iv. Damages for breach of contract declined for reasons given in the assessment.
- v. Special damages Kshs 500,000.00.
- vi. Damages for injury to professional reputation is declined for reasons given in the judgment.
- vii. On curtailment of liberty Kshs 300,000.00.
- viii. Damages for loss of an otherwise prosperous bank career Kshs 1,500,000.00.
- ix. Invasion of liberty Kshs 150,000.00.

(4) Since plaintiffs have substantially succeeded in their claim against the defendants, they will have costs and interests on special damages at court rates from the date of filing of the suit.

(5) On general damages they will have costs and interests at court.

10. It is evident from a perusal of the above excerpts of the judgment that there are clerical errors apparent on the face of the record as the final orders are at variance with the findings in paragraph 88(ii) and (x) of the judgment.

11. Sections 99 and 100 of the *Civil Procedure Act* give courts powers to make corrections of arithmetical errors in judgments and orders. The said sections provide as follows: –

99. Amendment of judgments, decrees or orders

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.

100. General power to amend

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. Further, rule 34 of the *Employment and Labour Relations Court (Procedure) Rules* provides as follows –

34. Correction of errors

The court shall, either at the request of the parties or on its own motion, cause any clerical mistake, incidental error or omission to be rectified and shall notify the parties of such rectification.



13. The Court of Appeal in the case *Leonard Mambo Kuria v Ann Wanjiru Mambo* [2017] eKLR extensively discussed section 99 and 100 of the *Civil Procedure Act*. The appellate court observed thus:

“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 v 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”.

14. In the case of *Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others* [2010] eKLR the court held as follows:-

“27. 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.

28. 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.

29. 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.

30. 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”.

15. Having perused the judgment and specifically the findings and conclusions at paragraph 88 and the final orders at paragraph 89 of the judgment, I am satisfied that there was a clerical error in paragraph 89(2)(ii) and (ix) and 89(3)(ii) and (ix). I therefore invoke the inherent powers of this court under sections 99 and 100 of the *Civil Procedure Act* and rule 34 of the *Employment and Labour Relations Court (Procedure) Rules* and correct the said paragraphs of the judgment to read as follows:

89.

(2)

(ii) Damages for malice, falsehoods and malicious prosecution Kshs 3,500,000.00.

ix. Invasion of liberty Kshs 600,000.00.

89.

(3)

(ii) Damages for malice, falsehoods and malicious prosecution Kshs 3,500,000.00.

ix. Invasion of liberty Kshs 600,000.00.

16. The rest of the judgment remains undisturbed. There shall be no orders for costs.

DATED AND SIGNED AT NAIROBI ON THIS 5TH DAY OF OCTOBER 2022

MAUREEN ONYANGO

JUDGE

