



**Kenya Vision 2030 Delivery Board v Commission on Administrative Justice & 2 others
(Petition (Application) 42 of 2019) [2024] KESC 67 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KESC 67 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 42 OF 2019
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
NOVEMBER 8, 2024**

BETWEEN

KENYA VISION 2030 DELIVERY BOARD APPELLANT

AND

THE COMMISSION ON ADMINISTRATIVE JUSTICE 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

ENG JUDAH ABEKAH 3RD RESPONDENT

(Being an application for Review of the Judgment of the Supreme Court (Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki & Lenaola, SCJJ) delivered on 24th March 2021 in SC Petition No 49 of 2019)

Failure to award costs can be corrected under the slip rule provided in section 21(4) of the Supreme Court Act

The applicant invoked section 21(4) of the Supreme Court Act and requested the court to clarify the issue of costs in the proceedings before the Court of Appeal. The court noted that section 21(4) of the Supreme Court Act embodied the “slip rule” and that by its nature, the slip rule permitted a court of law to correct errors that were apparent on the face of the judgment, ruling, or order of the court. The court found that failure to award or decline to award costs fell within the parameters of the error(s) contemplated under section 21(4) of the Supreme Court Act.

Reported by Kakai Toili

Civil Practice and Procedure – judgments – correction of errors in judgments – slip rule - whether failure to award or decline to award costs was an error that could be corrected under the slip rule as provided for under section 21(4) of the Supreme Court Act - Supreme Court Act (cap 9B), section 21(4).

Brief facts

By a judgment dated March 24, 2021, the court made among other orders that costs of the appeal to abide the appeal. The applicant thereafter invoked section 21(4) of the Supreme Court Act and requested the court to clarify the issue of costs in the proceedings before the Court of Appeal. The applicant in the instant application



sought for among other orders that the court clarifies the order made in its judgment of March 24, 2021 regarding the appellant’s costs in the proceedings before the Court of Appeal and hat costs of the application be provided for.

Issues

Whether failure to award or decline to award costs was an error that could be corrected under the slip rule as provided for under section 21(4) of the Supreme Court Act.

Relevant provisions of the Law

Supreme Court Act (cap 9B)

Section 21 - General powers

(4) The Court may, on its own motion or on application by any party with notice to the other or others, correct any oversight or clerical error of computation or other error apparent on such judgement, ruling or order and such correction shall constitute part of the judgement, ruling or order of the Court.

Held

1. Section 21(4) of the Supreme Court Act embodied what was ordinarily referred to as the “slip rule”. By its nature, the slip rule permitted a court of law to correct errors that were apparent on the face of the judgment, ruling, or order of the court. Such errors must be so obvious that their correction could not 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 did 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. Failure to award or decline to award costs fell within the parameters of the error(s) contemplated under section 21(4) of the Supreme Court Act.
2. In any proceedings, the Supreme Court may make any ancillary or interlocutory orders, including any orders as to costs as it thought fit to award. Nothing in the Supreme Court Rules 2020 shall be deemed to limit or otherwise affect the inherent power of the court to make such orders or give directions as may be necessary for the ends of justice or to prevent abuse of the process of the court.
3. The Court of Appeal awarded costs to the 1st respondent and the 3rd respondent, as the cross- appellant, but did not condemn any specific party to bear the costs. If anything, both the 1st and 3rd respondents were awarded costs and there would be no reason to condemn one to bear the costs of the appeal to the exclusion of the other.

Application allowed.

Orders

- i. *The judgment dated March 24, 2021 was hereby reviewed, and in particular, the applicant was awarded the costs of the proceedings at the Court of Appeal in Civil Appeal No. 141 of 2015.*
- ii. *No order as to costs in regard to the instant motion.*

Citations

Cases

Kenya

1. *Outa v Okello & 3 others* (Petition 6 of 2014; [2017] KESC 25 (KLR)) — (Followed)
2. *Rai & 3 others v Rai & 4 others* (Petition 4 of 2012; [2014] KESC 31 (KLR))— (Followed)
3. *Trattoria Limited v Maina & 3 others* (Petition (Application) 26 (E029) of 2022; [2024] KESC 54 (KLR)) — (Followed)

Statutes

Kenya

1. Civil Procedure Act (cap 21) section 27(1) — (Interpreted)
2. Supreme Court Act (cap 9B) sections 3A, 21(2)(4) — (Interpreted)



3. Supreme Court Rules, 2020 (cap 9B Sub Leg) rules 3(5); 28(5) — (Interpreted)

Advocates

Ms Oyare Elvis for the 1st appellant/applicant

RULING

Representation

Ms Oyare Elvis for the 1st appellant/applicant (Hamilton Harrison & Mathews Advocates)

N/A for the 1st, 2nd and 3rd respondents

1. Cognizant that by a Judgment dated March 24, 2021, this court made the following orders:
 1. The Petition of Appeal dated November 6, 2019 and filed on November 7, 2019 be and is hereby allowed.
 2. The Judgment of the court of Appeal sitting at Nairobi dated September 27, 2019 is hereby quashed and set aside.
 3. For the avoidance of doubt, the Judgment of the High Court delivered on February 26, 2016, be and is hereby upheld.
 4. Costs of this Appeal to abide the appeal.
2. Further cognizant that the appellant/applicant wrote to the court on April 1, 2021 and May 13, 2021 invoked section 21(4) of the *Supreme Court Act*, No 9B of the Laws of Kenya, and requested the court to clarify the issue of costs in the proceedings before the court of Appeal; and
3. Upon Perusing the notice of motion dated November 23, 2022 and filed on July 9, 2024 pursuant to sections 3A and 21(4) of the *Supreme Court Act*, by the appellant/applicant seeking the following orders:
 - a. the court be pleased to clarify the order made in its judgment of March 24, 2021 regarding the appellant's costs in the proceedings before the court of Appeal being Nairobi Civil Appeal No 141 of 2015 and who should pay the costs.
 - b. That costs of this application be provided for.
4. Taking into account the grounds on the face of the application, the affidavit in support sworn by Queenton Ochieng, the appellant/applicant' counsel, and the undated written submissions wherein they submit that by a Judgment delivered on March 24, 2021, this court allowed the appeal and set aside the Judgment of the court of Appeal; that, while the costs of the appeal were awarded to the appellant/applicant, the court did not make any pronouncement on the costs before the court of Appeal; that it is therefore necessary and in the interests of justice to clarify the said issue; that, the rule of thumb is that costs follow the event as laid out in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, SC Petition No 4 of 2012; [2014] eKLR; that, viewing as the appellant/applicant was the successful party in the appeal, it urged the court to exercise its discretion in its favour and award the costs at the court of Appeal to the appellant/applicant; that further, the costs should be borne by the 1st respondent, the Commission on Administrative Justice; and
5. Appreciating that despite service of the application and submissions, the respondents have not responded to the application;



6. And we now opine as follows:

i. section 21(4) of the [Supreme Court Act](#) provides as follows:

the court may, on its own motion or on application by any party with notice to the other or others, correct any oversight or clerical error of computation or other error apparent on such judgment, ruling or order and such correction shall constitute part of the judgment, ruling or order of the court.

ii. Rule 28(5) of the [Supreme Court Rules, 2020](#) provides as follows:

(5) the court may review any of its decisions in any circumstance which the court considers meritorious, exceptional, and in the public interest, either on the court's own motion, or upon application by a party.

iii. The question then before this court is whether failure to pronounce itself on the question of costs for proceedings before the court of Appeal is a matter that can be resolved under the slip rule. In [Fredrick Outa v Jared Odongo Okello & 3 others](#), SC Petition No 6 of 2014; [2017] KESC 25 (KLR) we had the following to say about section 21(4) of the [Supreme Court Act](#):

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.

iv. In [Trattoria Limited v Joaninah Wanjiku Maina & 3 others](#), SC Petition (Application) 26 (E029) of 2022; [2024] KESC 54 (KLR), faced with a similar question on costs, we invoked our jurisdiction under the 'slip rule'. To that end, failure to award or decline to award costs, falls within the parameters of the error(s) contemplated under section 21(4) of the [Supreme Court Act](#). In that regard, we must find that the appellant/applicant's application has merit.

v. In the [Jasbir Singh Rai](#) case, we held in paragraph 8 that this court is not bound to adhere to the principle that costs follow the event, but has an open-mandate to exercise its discretion to ensure that the ends of justice are met, quite similar to section 27(1) of the [Civil Procedure Act](#), cap 21 of the Laws of Kenya. In stating so, relied on section 21(2) of the [Supreme Court Act](#) which reads:

In any proceedings, the Supreme Court may make any ancillary or interlocutory orders, including any orders as to costs as it thinks fit to award.

We also relied on rule 3(5) of the [Supreme Court Rules 2020](#) which reads as follows:

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the court to make such orders or give directions as may be necessary for the ends of justice or to prevent abuse of the process of the court.



- vi. We agree with the appellant/applicant that the rule of thumb is that costs follow the event and as the appellant/applicant was the successful party in this case, we find no reason not to award costs for the proceedings at the court of Appeal.
- vii. Contrary to the appellant/applicant's proposition, the Court of Appeal awarded costs to the 1st respondent and the 3rd respondent, as the cross- appellant, but did not condemn any specific party to bear the costs. If anything, both the 1st and 3rd respondents were awarded costs and there would be no reason to condemn one to bear the costs of the appeal to the exclusion of the other.
- viii. Consequently, and for the reasons stated above, we make the following orders:
 - a. The notice of motion dated November 23, 2022 and filed on July 9, 2024, is hereby allowed.
 - b. The Judgment dated March 24, 2021 is hereby reviewed, and in particular, the appellant/applicant is awarded the costs of the proceedings at the court of Appeal in Civil Appeal No 141 of 2015.
 - c. There having been no opposition by the respondents, we make no order as to costs in regard to this Motion.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

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P.M MWILU

DEPUTY CHIEF JUSTICE & VICE- PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

