



Wamwere & 5 others v Attorney General (Petition (Application) 26 of 2019 & Petition 34 & 35 of 2019 (Consolidated)) [2023] KESC 26 (KLR) (21 April 2023) (Ruling)

Neutral citation: [2023] KESC 26 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 26 OF 2019 & PETITION 34 & 35 OF 2019 (CONSOLIDATED)
MK KOOME, CJ, PM MWILU, DCJ & VP, SC WANJALA, N NDUNGU & W OUKO, SCJJ
APRIL 21, 2023**

BETWEEN

**MONICA WANGU WAMWERE 1ST APPELLANT
PRISCILLA MWARA KIMANI 2ND APPELLANT
LUCY WATURI KIMANI 3RD APPELLANT
ESTHER GATHONI GICIMU 4TH APPELLANT
MICHAEL MAINA KAMAMI 5TH APPELLANT
KOIGI WAINAINA 6TH APPELLANT**

AND

ATTORNEY GENERAL RESPONDENT

(Being an application for review of the Judgment of the Supreme Court dated and delivered on 27th January, 2023 in Petition No. 26 of 2019 as consolidated with Petition Nos. 34 & 35 of 2019)

Scope of the Supreme Court’s jurisdiction to review its judgements to correct oversight or clerical errors.

The jurisdiction of the Supreme Court to correct oversight or clerical errors in its own judgements extended to reviewing a judgment in which it had awarded damages to include an award of interests on the damages.

Reported by John Ribia

Jurisdiction – jurisdiction of the Supreme Court – jurisdiction to correct oversight or clerical errors in its own judgements – where the Supreme Court had awarded damages to an appellant but omitted an award of interests on the damages - whether the jurisdiction of the Supreme Court to correct oversight or clerical errors in its own judgements extended to reviewing a judgment in which it had awarded damages to include an award of interests on the damages.



Brief facts

On January 27, 2023 the Supreme Court delivered a judgment holding that the applicants' freedom from inhuman treatment as protected under section 74(1) of the repealed were violated by the Government of Kenya and awarded each of the applicants' damages of Kshs 2,500,000. The court however, did not make an order on the payment of interest notwithstanding that the applicants had prayed for interest on the damages awarded in the consolidated appeal. Aggrieved the appellants filed the instant application for review in which they sought for the orders to be amended to include an award of interests on the damages.

The respondents did not file a response to the motion.

Issues

Whether the jurisdiction of the Supreme Court to correct oversight or clerical errors in its own judgements extended to reviewing a judgment in which it had awarded damages to include an award of interests on the damages which it had omitted.

Held

1. Under section 21(4) of the , the Supreme Court could on its 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 would constitute part of the judgment, ruling or order of the court.
2. The scope of the court's jurisdiction to review its judgment under section 21(4) of the which embodied the slip rule. 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 had to 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 had to be of such nature that their correction would not change the substance of the judgment or alter the clear intention of the court. 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.
3. The court awarded the applicants damages at Kshs. 2,500,000. There was no indication that the court intended to deny the applicants' interest on the damages awarded. The omission to award interest fell within the bounds of the error(s) contemplated under section 21(4) of the ; and review of the judgment in issue to award interest would not alter the substance thereof rather it would give effect to the court's intention. The judgment was reviewed to include an award of interest on the damages at court rates from January 27, 2023 until payment in full.

Application allowed.

Orders

- i. *The judgment dated January 27, 2023 was reviewed and in particular order (e) at paragraph 97 which was to read as follows:*

“e)The Government of Kenya shall pay damages assessed at Kshs 2,500,000.00/- to each of the appellants in this consolidated appeal. The appellants shall also have interest on the damages at court rates from the date of the judgment being January 27, 2023 until payment in full.”

- i. *No orders as to costs.*

Citations

Cases

1. Gacheru, Irene Wangari & 6 others v Attorney General (Constitutional Petition 376 of 2014; [2017] eKLR) — Mentioned
2. Kinuthia, Kennedy & 3 others v Attorney General (Petition 375 of 2014; [2017] KEHC 1998 (KLR)) — Mentioned



3. Musembi & 13 others (Suing on their own behalf and on behalf of 15 residents of Upendo City Cotton village at South C Ward, Nairobi) v Moi Educational Centre Co. Ltd & 3 others (Application EO19 of 2021; [2022] KESC 19 (KLR)) — Mentioned
4. Outa, Fredrick Otieno v Jared Odoyo Okello & 3 others (Petition 6 of 2017; [2017] KESC 25 (KLR)) — Explained

Statutes

1. Supreme Court Act, 2011 (Act No 7 of 2011) — Section 21(4) — Interpreted
2. Supreme Court Rules, 2020 (Act No 17 of 2011 sub leg) — Rule 31 — Interpreted
3. The Constitution of Kenya, 1963 (Independence Constitution repealed) — Section 74(1) — Interpreted

Advocates

Mr. Gitau Mwara for appellants

RULING

1. Considering that on January 27, 2023 this court delivered a judgment holding that the applicants' rights and freedom from inhuman treatment as protected under section 74(1) of the repealed Constitution were violated by the Government of Kenya and awarded each of the applicants damages of Kshs 2,500,000; the court however, did not make an order on the payment of interest notwithstanding that the applicants had prayed for interest on the damages awarded in the consolidated appeal; and
2. Noting that on February 14, 2023 the applicants filed a notice of motion dated February 6, 2023 under section 21(4) of the Supreme Court Act, 2011 and rule 31 of the Supreme Court Rules, 2020 seeking-
 - a. That the honourable court do amend its order (e) in its judgment delivered on January 27, 2023 and award the applicants interest on the award of Kshs 2,500,000 to each of the applicants at court rates from the date of filing the High Court petition on April 15, 2013 until payment in full.
 - b. The costs of this application be costs in the cause.
3. Upon considering the affidavit in support of the motion sworn by the applicants' advocate, James H Gitau Mwara, on February 6, 2023 and the applicants' submissions; to the effect that this court on January 27, 2023 entered judgment in the applicants' favour and awarded them damages of Kshs 2,500,000 each; that despite the applicants having prayed for interest on the damages awarded in the consolidated appeal, the judgment was silent on the same; that the court ought to consider reviewing its judgment and grant the applicants interest on the grounds that claimants in similar cases such as, Irene Wangari Gacheru & 6 others v Attorney General, HC Petition No 376 of 2014; [2017] eKLR and Kennedy Kinuthia & 3 Others v Attorney General, HC petition No 375 of 2014; [2017] eKLR, were granted interest on the damages awarded; that it is trite law and a rule of practice that costs and interest follow the event in a monetary judgment; that an award of interest would act as mitigation against all delays (either intentional or due to bureaucratic long drawn processes) by the government in payment of the assessed damages; and that the court has inherent powers to amend its judgment and award interest as sought; and
4. Noting that despite being served with the motion, the respondent has not filed any response thereto; and



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

“The court may, on its 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.”

6. Bearing in mind that the scope of the court’s jurisdiction to review its judgment under section 21(4) of the [Supreme Court Act](#) which embodies the “slip rule” is circumscribed as aptly appreciated in [Fredrick Otieno Outa v Jared Odoyo Okello & 3 others](#), SC Petition No 6 of 2014; [2017] eKLR -

“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.”

7. Appreciating that the court at paragraph 97 of its judgment and in particular, under limb (e) of its orders held as follows:

“e) The Government of Kenya shall pay damages assessed at Kshs 2,500,000.00/- to each of the appellants in this consolidated appeal.”

Further, from the reading of the judgment there is no indication that the court intended to deny the applicants interest on the damages awarded; and

8. Acknowledging that the omission to award interest falls within the bounds of the error(s) contemplated under section 21(4) of the [Supreme Court Act](#); and that review of the judgment in issue to award interest would not alter the substance thereof rather it would give effect to the court’s intention. See [Musembi & 13 others \(suing on their own behalf and on behalf of 15 residents of Upendo City Cotton village at South C Ward, Nairobi\) v Moi Educational Centre Co Ltd & 3 others](#), SC Application No E019 of 2021; [2022] KESC 19 (KLR).

9. We hereby pronounce that the motion has merit and invoke our jurisdiction under section 21(4) of the [Supreme Court Act](#) to review the judgment to include an award of interest on the damages at court rates from the date of the judgment of this court being; the January 27, 2023 until payment in full.

10. Consequently and for the reasons aforesaid we make the following orders:

- i. The notice of motion dated February 6, 2023 and filed on February 14, 2023 is hereby allowed.
- ii. Consequently, the judgment dated January 27, 2023 is hereby reviewed and in particular order (e) at paragraph 97 which shall now read as follows:
 - e) The Government of Kenya shall pay damages assessed at Kshs 2,500,000.00/- to each of the appellants in this consolidated appeal. The appellants shall also have interest on the damages at court rates from the date of the judgment being January 27, 2023 until payment in full.”



iii. There having been no opposition by the respondent, we make no orders as to costs in regard to this motion.

It is so ordered

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF APRIL, 2023.

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M. K. KOOME

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT OF KENYA

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P.M. MWILU

DEPUTY CHIEF JUSTICE & COURT VICE PRESIDENT 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

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W. OUKO

JUSTICE OF THE SUPREME COURT

Representation:

Mr. Gitau Mwara for the appellants (Gitau J. H. Mwara & Co. Advocates)

No appearance for the respondent

