



Kiarie & 2 others v Administrator of the Estate of John Wallace Mathare (Deceased) & 2 others (Civil Application 4 of 2020) [2020] KESC 32 (KLR) (11 August 2020) (Order)

Charles Karathe Kiarie & 2 others v Administrator of the Estate of John Wallace Mathare (Deceased) & 2 others [2020] eKLR

Neutral citation: [2020] KESC 32 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL APPLICATION 4 OF 2020
DK MARAGA, CJ, PM MWILU, DCJ & V-P, MK
IBRAHIM, NS NDUNGU & I LENAOLA, SCJJ
AUGUST 11, 2020**

BETWEEN

**CHARLES KARATHE KIARIE 1ST APPLICANT
THOMAS WANYOIKE WAINAINA 2ND APPLICANT
KALANG ENTERPRISES 3RD APPLICANT**

AND

**THE ADMINISTRATOR OF THE ESTATE OF JOHN WALLACE MATHARE
(DECEASED) 1ST RESPONDENT
THE ADMINISTRATOR OF THE ESTATE OF DENNIS WAWERU RIMUI
(DECEASED) 2ND RESPONDENT
THE ADMINISTRATOR OF THE ESTATE OF JOYCE WANJA
GITAU 3RD RESPONDENT**

((Being an application for Extension of Time and Review of the Ruling of a single Judge of the Supreme Court (S.C. Wanjala, SCJ) delivered on 17th December, 2019))

Power of the Supreme Court to correct any apparent errors in its judgments, rulings and orders
In the instant application the court had made some errors while delivering its ruling. The court held that section 21(4) of the Supreme Court Act clothed the court with general powers to correct any apparent errors in its judgments, rulings and/or orders.

Reported by Sharon Sang and Kakai Toili



Civil Practice and Procedure - correction errors apparent in judgments or rulings or orders - general powers of the Supreme Court to correct errors that were apparent after the delivery of a judgment or ruling or order of the court - where there were errors apparent in a Supreme Court ruling dated August 4, 2020- circumstances under which the Supreme Court could correct errors that were apparent in its judgments or rulings or orders - Supreme Court Act, No 7 of 2011, section 21.

Brief facts

On August 4, 2020, the court delivered a ruling dismissing the application, allowing a preliminary objection by the 1st and 2nd respondents. In the ruling at paragraph [1], it was erroneously indicated that the supporting affidavit was sworn on May 30, 2017. Further, at paragraph [10], the court indicated that the preliminary objection had been filed on June 20, 2020 which was an error as it was filed on June 11, 2020. In the final orders at paragraph [21], order (a) was to the effect that the application dated May 30, 2017 was dismissed. That was an inadvertent error as the application subject of the court's ruling was dated February 27, 2020.

Issues

Whether the Supreme Court had the general powers to correct any apparent errors in its judgments, rulings and/or orders.

Relevant provisions of the Law

Supreme Court Act, No 7 of 2011

Section 21 – General powers

(4) Within fourteen days of delivery of its judgment, ruling or order, 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.

Held

1. Section 21(4) of the Supreme Court Act clothed the court with general powers to correct any apparent errors in its judgments, rulings and/or orders.

Application dismissed.

Orders

- i. Paragraph [1] of the ruling dated August 4, 2020 was corrected by deleting the date “May 30, 2017” and inserting therein the date “February 27, 2020.”
- ii. Paragraph [10] of the ruling dated August 4, 2020 was corrected by deleting the date “June 20, 2020” and inserting therein the date “June 11, 2020”,
- iii. Paragraph [21] of the ruling dated August 4, 2020 was corrected by deleting order (a) that read “The Application dated May 30, 2017 is hereby dismissed” and inserting a new order (a) thus: The Application dated 27th February 2020 is hereby dismissed”.
- iv. The Ruling dated August 4, 2020 was accordingly amended, and the order would constitute part of the ruling of the court.

Citations

Statutes

None referred to

Advocates

None mentioned



ORDER

1. On 4th August 2020, this Court delivered a Ruling dismissing this application, allowing a Preliminary Objection by the 1st and 2nd Respondents. The application was supported by the affidavit of the Charles Karathe Kiarie sworn on 27th February 2020. In the Ruling at paragraph [1] we erroneously indicated that the supporting affidavit was sworn on “30th May 2017”. Further, at paragraph [10], we indicated that the Preliminary Objection had been filed on “20th of June 2020” which was an error as the same was filed on 11th of June 2020. Lastly, in the final orders at paragraph [21], order (a) is to the effect that “[T]he application dated 30th May 2017 is hereby dismissed”. This is an inadvertent error as the application subject of our Ruling was dated 27th February, 2020.
2. Section 21(4) of the Supreme Court Act clothes this Court with general powers to correct any apparent errors in its Judgements, Rulings and/or Orders as follows:

General Powers.

21.

- (1) ...
- 2) ...
- (3) ...
- (4) Within fourteen days of delivery of its judgment, ruling or order, 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.

3. As a result, we hereby Order as follows:
 - i) Paragraph [1] is corrected by deleting the date “30th May, 2017” and inserting therein the date “27th February 2020”;
 - ii) Paragraph [10] is corrected by deleting the date “20th of June 2020” and inserting therein the date “11th of June 2020”; and lastly,
 - iii) Paragraph [21] is corrected by deleting order (a) that reads “The Application dated 30th May 2017 is hereby dismissed” and inserting a new order (a) thus:

“The Application dated 27th February 2020 is hereby dismissed”.

4. This Ruling is accordingly amended, and this Order shall constitute part of the Ruling of the Court.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF AUGUST, 2020.

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME

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M. K. IBRAHIM

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

