



Butali Sugar Mills Limited v West Kenya Sugar Company Limited & another (Commercial Suit 168 of 2007) [2024] KEHC 3282 (KLR) (Commercial and Tax) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT 168 OF 2007**

**A MABEYA, J
MARCH 21, 2024**

BETWEEN

BUTALI SUGAR MILLS LIMITED PLAINTIFF

AND

WEST KENYA SUGAR COMPANY LIMITED 1ST DEFENDANT

AGRICULTURE AND FOOD AUTHORITY 2ND DEFENDANT

RULING

1. Before Court for determination is the Motion dated 29/11/2023. It is expressed to be brought under sections 1A, 1B & 3A and 99 of the *Civil Procedure Act* (Chapter 21 Laws of Kenya, Order 51 rule 1 of the *Civil Procedure Rules 2010*.
2. The application seeks correction of various parts of the judgment dated 1/9/2023 and decree of this Court issued on 28/9/2023. The Motion was supported by the grounds on the face of it. It was the applicant's contention that the Court had the jurisdiction, under section 99 of the *Civil Procedure Act*, to correct arithmetic or typography errors.
3. The 1st defendant opposed the application vide a replying affidavit sworn by Tajveer Sing Rai on 13/12/2023. The respondent's averment was that the errors in the judgment were massive and could not be corrected within the precincts of section 99 of the *Civil Procedure Act*. That the corrections had the effect of causing substantial alterations of the judgment and the plaintiff had the option of reviewing or appealing against the impugned judgment. That the errors formed the reasons for its appeal to the Court of Appeal in the Memorandum of Appeal dated 11/12/2023.
4. The application was canvassed by way of written submissions which I have considered. The plaintiff submitted that the purpose of the application was not to alter the final judgment but rather to correct



the arithmetic errors and dates. That in the premises, the plaintiff did not need a review or an appeal as the Court has jurisdiction under section 99 of the Civil Procedure Act to correct the errors.

5. On its part, the 1st defendant submitted that based on the grounds in the application, the plaintiff was in essence seeking a review of the judgment and decree which could only be done under Order 45 of the Civil Procedure Rules. That the corrections were substantial in nature and not arithmetical and therefore prejudicial to the 1st defendant. That the slip rule could only be used for correcting minor errors and the plaintiff was asking the Court to sit on appeal on its judgment.
6. I have considered the parties' averments and submissions. The main issue is whether the plaintiff has made out a case for correction of errors in the judgment and decree dated 1/9/2023 and 28/9/2023, respectively.
7. The plaintiff invoked section 99 of the Civil Procedure Act which provides that: -

“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.”

8. The plaintiff's sought the following corrections in the Judgment;
Paragraph 6 on 'plaintiff's zone' to read '1st defendant's zone'
At paragraph 22 to correct '2007' to read '2011'
At paragraph 25 to correct '2012' to read '2011'
At paragraph 39 to correct the word 'fries' to read 'flies'
At paragraph 61 to correct the date '21/7/2023' to read '21/7/2006'
At paragraph 63 to correct the date from '23/05/2004' to read '23/09/2004'
At paragraph 74 to correct the word 'month' to read 'mouth'
At paragraph 76 to correct the 'plaintiff's argument' and 'plaintiff' to read the '1st defendant's argument' and '1st defendant' respectively
At paragraph 86 to correct 'Kshs 137,975,479/= ' to read 'Kshs 135,975,479/= '
At paragraph 102 to correct the total sum awarded of 'Kshs 507,799,612' to read 'Kshs 542,552, 088'
At paragraph 104 to correct the date '1/8/2023' to read '1/8/2005'
At paragraph 106 to correct the word 'month' to 'mouth'
At paragraph 110 to correct the sum of 'Kshs 507,799,612' to read 'Kshs 542,552,088'
At page 47 paragraph 111 to correct the sum of 'Kshs 507,799,612' to read 'Kshs 542,552, 088'
9. In Republic v Attorney General & 15 others Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR: -

“The starting point is the construction of section 99 of the CPA which we must now reproduce:

“99. 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.”

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

... 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.’

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.”

10. This position was restated in the case of *Nedermar Technology BV Ltd v Kenya Anti Corruption Commission & another* [2009] eKLR where it was held that: -

“The primary purpose of the provision is akin to rectification, namely to allow the court to correct a formal order which by accident or error does not reflect the actual decision of the judge. It also authorizes the Court to make an order which it failed to make as a result of the accidental omission and counsel did not at the time ask for it. This would not constitute a variation or a new decision. In my view, the rule ought to apply to all situations which when drawn to the Court’s attention immediately enlists remarks from the Court such as “Ghosh, it should not have happened” and situations where the Court upon detecting the error would be obligated to move on its own motion.”

11. In the present case, I have noted that paragraphs 39, 76 and 106 are only grammatical errors. In paragraphs 22, 25, 61, 63, 104, the corrections sought are meant to correct the dates given in the judgment while in paragraphs 6 and 76, the court interchangeably referred the plaintiff as the defendant. I have considered these errors and I find that these are genuine errors that fall squarely within the ambit of section 99 of the *Civil Procedure Act*. They do not consist of a variation of the judgment but rather an accidental slip that cannot go unrectified.
12. With respect to paragraph 86, the Court finds justification in correcting the amount of Kshs 137,975,479/- to reflect the correct amount of the loss of profit for delay which is Kshs 135,975,479/-. The same position applies to paragraph 102 where the error is arithmetic with regard to the addition of the total losses. This then imparts the amount awarded of Kshs 507,799,612/- which should be Kshs 542,552,088/-.



13. In the premises, the Court finds that the plaintiff has made out its case for rectification of the judgment of the Court and the resultant decree. The errors on the record are regretted and had the Court noticed the errors before any of the Counsel did, the Court would have moved *suo motto* to rectify the same. The huge number of documentations that fell for consideration and the length of the judgment may have been the cause of this regrettable oversight.
14. Accordingly, the application is allowed and the Judgment dated 1/9/2023 is hereby corrected under section 99 of the *Civil Procedure Act* as follows: -
- At Paragraph 6 on ‘plaintiff’s zone’ to read ‘1st defendant’s zone’
- At paragraph 22 to correct ‘2007’ to read ‘2011’
- At paragraph 25 to correct ‘2012’ to read ‘2011’
- At paragraph 39 to correct the word ‘fries’ to read ‘flies’
- At paragraph 61 to correct the date ‘21/7/2023’ to read ‘21/7/2006’
- At paragraph 63 to correct the date from ‘23/05/2004’ to read ‘23/09/2004’
- At paragraph 74 to correct the word ‘month’ to read ‘mouth’
- At paragraph 76 to correct the ‘plaintiff’s argument’ and ‘plaintiff’ to read the ‘1st defendant’s argument’ and ‘1st defendant’ respectively
- At paragraph 86 to correct ‘Kshs 137,975,479/=’ to read ‘Kshs 135,975,479/=’
- At paragraph 102 to correct the total sum awarded of ‘Kshs 507,799,612’ to read ‘Kshs 542,552, 088’
- At paragraph 104 to correct the date ‘1/8/2023’ to read ‘1/8/2005’
- At paragraph 106 to correct the word ‘month’ to ‘mouth’
- At paragraph 110 to correct the sum of ‘Kshs 507,799,612’ to read ‘Kshs 542,552,088’
- At page 47 paragraph 111 to correct the sum of ‘Kshs 507,799,612’ to read ‘Kshs 542,552, 088’
15. Consequently, the decree issued on 28/9/2023 is hereby corrected to accord with the corrected judgment. There shall be no order as to costs.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MARCH, 2024.

A. MABEYA, FCI Arb

JUDGE

