



**Mwangi v Kenya Commercial Bank Ltd (Commercial Case 552 of 2003)
[2024] KEHC 3283 (KLR) (Commercial and Tax) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 552 OF 2003
A MABEYA, J
MARCH 21, 2024**

BETWEEN

FRANCIS NJOROGE MWANGI PLAINTIFF

AND

KENYA COMMERCIAL BANK LTD DEFENDANT

RULING

1. Before Court is the application dated 25/5/2023. It is brought under sections 3A, 89 and 100 of the *Civil Procedure Act*, 2010. The applicant sought that the Court correct's the judgment delivered on 21/10/2020 under the slip rule.
2. The application was premised on the grounds set out on the face of the Motion and the affidavit of FRANCIS NJOROGE MWANGI sworn on 25/5/2023. The applicant's contention was that he instituted the suit against the defendant and judgment was delivered in his favour on 21/10/2020. That the Court ordered the parties to appoint an independent party to take accounts in order to determine the wrong debits.
3. That the parties settled on Nyenge and Company CPAS as the auditor who presented a report dated 1/11/2021 wherein the recalculated amount was identified as Kshs 1,639,786.45. The applicants' case was that he was deserving of interest and the learned judge had erred in failing to include the award of interest. That the defendant had not included interest in the said amount since the court had not provided for it.
4. The defendant opposed the application vide a replying affidavit sworn by its Principal Counsel LILIAN SOGO dated 6/7/2023. The defendant's position was that the plaintiff had not prayed for interest in his amended plaint. That the judgment did not direct the defendant to pay anything more



- than the amount found to have been wrongly debited, that is, Kshs. 1,639,786.00. The defendant further stated the applicant did not establish how the slip rule was applicable in this case.
5. The application was canvassed by way of written submissions which I have considered. It was the applicant's submissions that the Court had made an error in failing to address itself on the issue of interest and the same could be rectified by the slip rule. That the Court did not seek to deny the applicant the award of interest and the omission was inadvertent and was an accidental slip which can be corrected. That in any event, the defendant would not be prejudiced as allowing the application would mean that justice is served to both parties.
 6. On its part, the defendant submitted that according to the applicant's pleadings, the reliefs which had been sought were specific and the issue of interest was not pleaded. That the applicant could not rely on the slip rule as there was no accidental error or defect to be corrected in the judgment. That the accidental slip rule was not applicable where the corrections would go to the substance of the judgment.
 7. I have considered the pleadings and the submissions on record. The main issue before for determination is whether the judgment made on 21/10/2020 should be corrected or amended to include an order for interest.
 8. Section 99 of the *Civil Procedure Act* 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.”
 9. While section 100 of the said Act provides that: -

“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.”
 10. It was the applicant's case that the Court had made an error in failing to address itself on the issue of interest and the omission could be cured under the slip rule. On its part, the defendant was categorical that the issue of interest having not been pleaded, there was no accidental error or defect to be corrected in the judgment.
 11. In *Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others* [2010] eKLR, the court stated: -

“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.

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.

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.

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”.

12. The above then is the parameters under which the slip rule will apply. In the present case, is the failure to award interest an error curable under the slip rule? In its judgment of 21/10/2020, the Court held that any sum found to have been improperly debited on the applicant be refunded and the prayer for the same allowed if there was evidence of unlawful debits. The issue of interest was not raised at the pleadings. All that was pleaded and or claimed were ‘costs and interest of the suit’.
13. In my understanding, the interest pleaded here was interest on costs once ascertained. It was not the interest on the amount claimed. If it were the applicant’s intention to claim interest on the amount claimed, he would have claimed it in paragraph c of the plaint. Had it been claimed, the Court would have included it in paragraph 69 of its judgment. Parties are bound by their pleadings.
14. The question is whether interest is recoverable as of right or whether an award of interest is discretionary. Section 26 (1) of the *Civil Procedure Act* vests the Court with discretionary power to award interest on pecuniary judgments. It reads: -

“(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

15. In *Kenya Commercial Bank Limited v Sheikh Osman Mohammed* [2013] eKLR, the court held that: -

“The principle is that the award of interest is a matter of discretion but generally interest on general damages is awarded from the date of judgment, being the date when the principal obligation to pay is established.”



16. From the foregoing, an award of interest is solely left to the discretion of the court. In this instance, the court did not exercise its discretion because the same was not claimed in respect to the unlawful debits. The same cannot be a mistake capable of being corrected by the slip rule as allowing interest would be akin to making a variation of the whole decision of the Court.
17. In the premises, the Court finds that there has been no evidence of a clerical or arithmetic mistake disclosed in the judgment of 21/10/2020 to warrant correction. The application is without merit and is therefore dismissed with costs.

It is so ordered.

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

A, MABEYA, FCI Arb

JUDGE

