

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: *Fredrick Egonda Ntende, Cheborion Barishaki, Muzamiru Kibeedi,*

JJA

MISCELLANEOUS APPLICATION NO. 366 OF 2020

(ARISING OUT OF CIVIL APPEAL NO. 173 OF 2013)

ROSIE NAIKOBA:.....:APPLICANT

VERSUS

NATIONAL MEDICAL STORES:.....:RESPONDENT

RULING OF CHEBORION BARISHAKI, JA

This is an application brought by way of notice of motion under Rules 2, 36 and 43 of the Judicature (Court of Appeal) Rules SI-13-10 seeking the following orders; -

a) The Court of Appeal be pleased to review and correct its judgment in respect thus;

I. Whereas at page 33 of its judgment the court allowed 4/5 of the costs in the Court of Appeal to the respondent/cross appellant, at page 39 the court awarded her ¾ of the costs in the Court of Appeal and in the High Court.

- II. Whereas at pages 33-34 the court awarded Ug Shs. 12,324,659/= as salary arrears due to the applicant/respondent/cross appellant, at page 38 the court awarded Ug. Shs. 9,900,000/= as withheld salary arrears.
- III. Whereas at page 39 court allowed interest at 25% on awards 1, 2 and 3 (gratuity earned on contract time served, earned leave and one month`s salary in lieu of notice, respectively) from the date of dismissal, the court under award no.8 subjected award no.1 to interest at 6% p.a from the date of judgment until payment in full.
- IV. Whereas award No. 4 was withheld salary arrears and in line with the court`s award of interest on money already earned should have attracted interest at the rate of 25% from the date of dismissal, this award was instead awarded interest at 6% from the date of judgment until payment in full.
- V. The date of the judgment of Cheborion Barishaki JA does not tally with that on the judgments of F.M.S Egonda- Ntende and Muzamiru. M. Kibeedi; JJA.
- VI. No interest was mentioned on award No. 5 yet NSSF contribution was due to the applicant from the respondent from the date of wrongful dismissal and like interest on other earned income should have been at rate of 25% p.a.

b) Costs be provided for.

The grounds therein are briefly that;

- a) There were typographical/clerical errors in the judgment.
- b) This Court has power under the slip rule and its inherent powers to correct its own judgments.
- c) It is necessary for court to correct the afore said errors so that further processes such as execution are not inhibited.

The motion is supported by the affidavit of the applicant which repeats and expounds on the notice of the motion. I find no reason to reproduce its contents here. The respondent did not file an affidavit in reply but made a response to the applicant`s written submissions.

At the hearing of this matter Mr. Kwemara Rwakafusi appeared for the applicant while Mr. Richard Bibangamba appeared for the respondent.

Both Counsel filed written submissions in support and against the grant of the orders sought. I have carefully read the record, submissions by Counsel and perused the authorities cited to Court.

Counsel for the applicant submitted that court could not have meant to have two different orders in regard to costs namely by allowing 4/5 of the costs to the respondent/cross appellant in the court of appeal at page 33 while awarding her $\frac{3}{4}$ of the costs in the same court at page 39. That court intended its 1st order of 4/5 of the costs in the court of appeal to apply to costs in the High Court as well.

Regarding the award of Shs 9,900,000/= as withheld salary arrears under award No. 4, Counsel submitted that court had rightly found that the salary arrears claimed by the respondent/cross appellant were 12,324,659/= and awarded it as such at pages 33-34 and not Shs. 99,00,000/=. That 12,324,659/= was in line with the pleadings of the respondent at page 5 of the record and it was not disputed or traversed at trial.

Regarding ground III on interest, counsel submitted that the interest awarded was 25% p.a on gratuity earned on contract time served, earned leave and salary which should have been paid in lieu of notice as stated at page 39 in award No.6. That the interest would run from the date of dismissal of the respondent/cross appellant. He contended that the later order, award No. 8 which awarded interest at 6% on the same gratuity referred to in award No. 6 was clearly a clerical error which this court has power to correct. That the money court considered as already earned by the respondent at the time of her dismissal attracted interest at rate of 25% p.a from the date of dismissal

On ground IV, counsel submitted that award No.4 namely unpaid salary arrears fell in the category of money the respondent had already earned by the time of her dismissal. That such money included gratuity and earned salary in lieu. He contended that it was an error by court to subject award no. 4 to 6% interest under award No. 8. That in line with award of interest given by court on money already earned, withheld salary arrears of Shs. 9,900,000/= which should be corrected to Shs 12,324,659/= should be subjected to interest rate of 25% p.a from the date of dismissal.

On ground V, counsel for the applicant submitted that in line with the rule 33(11) of the rules of this court, all judgments should have been dated 22/12/2020. That it was a clerical error which court can correct to date the judgment of Cheborion Barishaki, JA 22/2/2020 rather than 23/12/2020.

On ground VI, counsel submitted that no interest was awarded on award No. 5 namely NSSF contribution of Shs. 1,232,465/=. That this was an omission which can be treated as an error and cured under Rule 36. That should court find that the same can only be properly taken as an appeal, the applicant would not belabour it further.

Counsel cited the case of **Kwizera Eddie vs Attorney General Constitutional Appeal no. 1 Of 2008** arising from **constitutional appeal 18 of 2006 arising from constitution petition 14 of 2005**, wherein Lady Justice Stella Arach Amoko JSC citing the case of **Vallasadhas karasandhas Raniga vs Mansukar Jivraj & others (1965) EA 700** said a slip rule will only be made where the court 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 that the order which would have been made had the matter been brought to its attention. He also referred to **Uganda Development Bank Ltd vs Oil seeds (U) Ltd MA Supreme Court Civil Application No. 15 of 1997** where the Supreme Court held that the court has inherent jurisdiction to recall its judgment in order to give effect to its manifest intention or what clearly would have been the intention of court had some matter not been inadvertently omitted but the court will not seat on appeal in its own judgment in the same proceedings.

The applicant must prove that there was a clerical or arithmetic mistake in the judgment or any error arising from an accidental slip or omission which did not give effect to the intention of court when it passed the judgment.

In reply, counsel for the respondent agreed with the applicant's submission in respect to grounds I and V but disagreed with him on grounds II, III, IV, VI and submitted that the aforesaid errors cannot be corrected by way of a slip order issued by this court. He cited **UDB vs Oil Seeds (u) Ltd** Supra for the proposition that a slip order will only be made where the court 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 reasonable doubt, as to the order which it would have made had the matter been brought to its attention.

On ground II, Counsel for the respondent submitted that the applicant was not entitled to 12,324,659/=. She was interdicted for 3 months and was entitled to 50% of her monthly salary. That court did not make an error in noting that her salary for the entire period of interdiction was 19,807,611/= and when this amount is subjected to 50% the same results to 9,903,806/= which court awarded.

On ground III, counsel submitted that award of interest is at the discretion of court. That court awarded interest on award no. 1 at 6% p.a and at the same time awarded 25% p.a under award 6 yet both referred to the same award (award No.1).The respondent agreed that court erred to the extent that it awarded interest at the rate of 25% p.a instead of solely awarding interest at 6% p.a as provided for under award 8. That the default rate in cases where

interest is not specifically awarded by court is 6% following the provisions of S. 26 of the Civil Procedure Act. That court should have maintained the award of 6% p.a interest and should not have given the higher rate of 25% p.a.

On ground IV, Counsel for the respondent submitted that the request by the applicant for court to substitute interest of 6% p.a awarded on award No. 4 with interest of 25% p.a exceeds the jurisdiction given to court under the slip rule. The court made an award of interest under award No. 8 of 6% p.a and there was no indication that the court's award was equivocal or that it intended to award a differing interest rate. That to do otherwise transcended the jurisdiction given to Court under the slip rule as explained in **Lakhamshi Brothers ltd vs R Raja and sons [1966] EA 313**.

On ground VI, it was submitted for the respondent that requiring court to impose an interest rate on award No. 5 went beyond the jurisdiction given to the Court under the slip rule. He cited **Kenlloyd Logistics (U) Ltd Kalson Agrovet Concerns Ltd Civil suit 2010/185** where court held with approval the case of **crescent transportation Co. Ltd vs BM Technical services ltd CA 25/200** that where no interest rate is provided, the rate is fixed at the discretion of the trial judge and further that interest is a matter of discretion of the court.

The respondent adverted that the learned Justices of Appeal acted deliberately when they did not award interest on NSSF contributions that were awarded to the applicant as a result of accumulation of salary arrears. That these were deliberate acts of the court and were not clerical errors. That the applicant could only contest these awards by way of preferring an appeal against the

decision of the Court of appeal and not by an application under the slip rule because such correction was beyond the court's jurisdiction. He cited **Ahmed Kawoya Kanga vs Banga Aggrey Fred [2007] KALR 164** for the proposition that, the error or omission must be an error in expressing manifest intention of the court. That the court cannot under the slip rule correct a mistake arising from its misunderstanding of the law.

In rejoinder, it was submitted for the applicant that she was interdicted for 3 months and 11 days and was thus entitled to Shs. 12,324,659/= in total.

On grounds III and IV, counsel retaliated his earlier submissions on court's basis for awarding interest at 25% p.a on income the applicant had already earned by the time of her dismissal. On ground III, he contended that the respondent ought to have conceded on this ground as court rightly applied a different interest rate to it in award No.6 and should not have been referred to again in award No.8. That on ground IV, asking court to substitute interest 25% interest p.a for 6% p.a on award No. 4 was within Court's jurisdiction.

On ground VI, Counsel conceded and submitted that since no interest was mentioned on award No. 5 in respect of NSSF earnings, the same could not be a clerical or arithmetic error.

I have carefully perused the notice of motion, the affidavit in support, the submissions of the parties and the authorities relied upon in support and opposition to this application. Rule 2 (2) of the Rules of this Court enjoin court to make orders necessary for attaining the ends of justice or to prevent abuse of the process of Court.

The Rules of this Court provide for correction of errors by Court. This is also known as slip rule. The law governing the slip rule is rule 36 (1) of the Court of Appeal rules SI-13-10. It reads thus;

“A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in a decree, be corrected by the court concerned, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.”

The supreme Court in **Fang Min versus Dr. Kaijuka Mutabaazi Emmanuel** Supra while commenting on rule 35 (1) of the Supreme Court Rules which is similar to this Court`s Rule 36 (1) stated that;

*“This court had in **Orient Bank vs Fredrick Zabwe & Another, Civil Application No.17 of 20007**, stated the scope of the application of this rule. There, the court stated as a general rule that “the decision of this court on any issue of fact or law is final, so that the unsuccessful party cannot apply for its reversal - - - - -*

- - under rule 35 (1), this court may correct inter alia any error arising from accidental slip or omission in its judgment, in order to give effect to what was its intention at the time of giving judgment.”

The intention of the court at the time when the judgment was written is important in determining whether to apply the slip rule or not. In

Ranaiga case (1965) EA at p. 703 it was held;

A court will, of course, only apply the slip rule where it is satisfied that it is giving effect to the intention of the court at 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. The above position still holds good. It is therefore, now fairly well settled that there are two circumstances in which the slip rule can be applied namely:

- (1) where the court is satisfied that it is giving effect to the intention of the court at the time when the judgment was given; or*
- (2) 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.”*

For clarity, the court made the following orders in **National Medical Stores versus Rosie Naikoba Civil Appeal No. 173/2013:**

1. Award of Shs 51,774,575 as gratuity earned on contract time served.
2. Award of Shs. 12,108,750/= as earned leave
3. Award of Shs 6,600,000/= as one month`s salary in lieu of notice
4. Award of Shs 9,900,000/= as withheld salary arrears
5. Award of Shs 1,232,465/= as NSSF contribution on withheld salary arrears
6. Interest on 1, 2 and 3 at 25% p.a from the date of dismissal until payment in full

7. General damages of 80,000,000/=
8. Interest on 4, 1 and 7 at the rate of 6% p.a from the date of judgment till payment in full.
9. 3/4 of costs in this court and the court below.

On ground I, the judgment of court reads as follows;

“The cross appellant having succeeded in almost all grounds in the main appeal save for the award of aggravated damages, is entitled to 4/5 of the cost.”

Under award No. 9 Court awarded costs as follows; *“3/4 of costs in this court and the court below.”*

There was an error at page 39 of the Judgment. Court`s intention was to award 4/5 of the costs in the Court of Appeal as shown at page 33 of the Judgment and 3/4 of the costs in the High Court at page 39. It was an error to include the Court of Appeal under award No.9. at page 39.

Regarding ground II, Court`s decision was as follows;

At page 22 of the judgment, Court stated that;

“Counsel for the respondent submitted that the trial judge having found that the respondent was wrongfully terminated, he ought to have awarded her salary arrears of 12,324,659, being 1/2 pay for the period she was interdicted.

The respondent was interdicted for 3 months and her salary for this period would have been 19,807,611/=. She was entitled to 50% of her total salary during interdiction, which would be 9,903,806 for the 3 months.

...She is entitled to withheld salary claimed as salary arrears.....”

At page 33 of the judgment, Court stated that having determined that the cross appellant was entitled to her salary arrears of Shs 12,324,659/= in the main appeal, I find no reason to determine this ground in the cross appeal.

In **John Sanyu Katuramu and 49 Others Vs Attorney General Constitutional Application No. 1/2016** Court cited with approval the decision in **UDB VS Oil Seeds (U) Ltd Civil** Supra, wherein Court held thus;

“A slip order will only be made where the court 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 reasonable doubt, as to the order which it would have made had the matter been brought to its attention”.

At page 22 line 10 of the Judgment, Court stated that the respondent/cross appellant was entitled to only 3 months pay which is the exact period of interdiction from 11th May 2005 to 11th August 2005. She was paid 6,600,000/= per month x 3 months (interdiction)= 19,800,000/=. However, the appellant`s/cross respondent`s Human Resource Manual (Item 12.8.6.2) entitled her to 50% of the salary during her period of interdiction which is equal to 9,903,806/=. Though the respondent claimed Shs. 12,324,659/= as salary arrears, Court`s intention at page 22 was to award her 9,903,806/= as withheld salary arrears being the exact amount for the 3 months` period of interdiction once subjected to 50% deduction as explained herein above.

Court's intention to award Shs. 9,900,000/= as withheld salary arrears is clarified further in award No. 4 at page 38 of the Judgment.

It was therefore an error at page 33 *to wit*; *"Having determined that the cross appellant was entitled to her salary arrears of Shs. 12,324,659/= in the main appeal, I find no reason to determine this ground in the cross appeal."* Instead of stating 12,324,659/=. The amount therein awarded would have been stated as Shs. 9,903,806/= in line with court's decision at page 22 line 10 and page 38 line 25.

Regarding ground III, Court awarded interest as follows;

Award No.6: Interest on 1, 2, 3 at 25% p.a from the date of dismissal to payment in full.

Award No.8: Interest on 4,1 and 7 at the rate of 6% p.a from the date of judgment till payment in full.

Interest in award No.6 of 25% was allowed on award No.1, 2 and 3 being gratuity on contract time served, earned leave and one month's salary in lieu of notice respectively from the date of dismissal till payment in full and in award No.8 interest of 6% p.a was also allowed on award No.1 from the date of judgment. Interest was awarded two times on award No. 1 (gratuity on contract time served) *to wit*; 25% and 6%. It was thus an error at page 39 under award No.8 (interest of 6% p.a from the date of judgment) to have included award No. 1 therein which relates to gratuity earned on contract time served. Court's intention was to award interest of 25% p.a on award No. 1 from the date of dismissal till payment in full as in award No.6. Including

award No. 1 in award No.8 was an error within this Court's jurisdiction to correct.

On ground IV, award No. 4 was Shs. 9,900,000/= as withheld salary arrears and interest on the same under award No. 8 was given at 6% p.a from the date of judgment till payment in full.

The respondent submitted that the applicant's request for court to substitute this award of 6% p.a from the date of judgment with 25% interest p.a from the date of dismissal was inviting Court to sit and decide its previous judgment, a matter on which it is now functus officio.

The respondent's claim in the pleadings of interest on withheld salary arrears was at the rate of 25% p.a from the date of judgment till payment in full.

The respondent had already earned these monies before her dismissal. It was therefore an error at page 39 of the judgment under award No. 8 (interest) to have included therein award No. 4 which relates to withheld salary arrears. The intention of court was to award an interest rate of 25% p.a from the date of dismissal on withheld salary arrears which should have been included under award No. 6 not award No.8.

Regarding differing dates on the judgments, Counsel cited Rule 33(11) of the court of appeal rules for the principle that all judgments should have the same dates.

The judgment of Cheborion Barisahki, JA was dated 23/12/20 and the concurring judgments of Egonda Ntende, Muzamiru Kibeedi, JJA were dated

22nd /12/20. Indeed, this was an error within the jurisdiction of this court to correct.

On ground VI, counsel for the applicant submitted that no interest was awarded on award No. 5, NSSF contribution of Shs. 1,232,465/=. That this can be treated as an omission which can be corrected as an error and cured under Rule 36 of the rules of this court.

The respondent submitted in reply that this was neither a clerical nor arithmetic error that could be corrected under Rule 36 as the court was functus officio. According to the respondent's counsel, this could only be corrected by the applicant preferring an appeal.

The supreme Court in **Sanyu Katuramu and 49 others vs Attorney General** Supra affirmed the decision in **Lakhamshi Brothers ltd vs Raja and sons** Supra at page 314 where sir Charles Newbold P sated as follows;

"..... There are circumstances in which the court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter. But this application and the two or three others to which I have referred go far beyond that. It asks, as I have said, this court in the same proceeding to sit on its own previous judgment. There is a principle which of greatest importance in the administration of justice and the principle is this, it is in the interest of all persons that there should be an end to litigation."

This principle was restated in the case of **Fangmin vs Dr. Kaijuka Mutabazi Emmanuel SCCA No. 6 of 2009.**

Black's Law Dictionary 9th edition, defines 'functus officio' as:

"Having performed his or her office" (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

In **Goodman Agencies Ltd Versus Attorney General and Hassa Gencies (K) Ltd Constitutional Petition No. 03 Of 2008** the constitutional Court cited with approval the decision of the Court of Appeal of Botswana in **Magdeline Makinta vs Fostina Nkwe, Court of Appeal No. 26/2001**- Akiwumi J.A, quoting the South African case of **Odneste Monanyana vs The State, Criminal Appeal No.8 of 2001** (unreported) held:

"The general principle now well established in South Africa as well as Botswana is that once a Court has duly pronounced a final judgment or order it has itself no authority to correct alter or supplement it. The reason is that it becomes thereupon functus officio, its jurisdiction in the case having been fully and finally exercised its authority over the subject matter has ceased."

Clearly, interest on NSSF was not awarded. Even though this omission could have arisen by way of oversight by court, correction of the same is beyond the jurisdiction of this Court under Rule 36 since this does not amount to a clerical or arithmetic error on the face of record. Court's authority in this regard has since ceased as the court is functus officio.

In light of the above, this application is for the most part allowed.

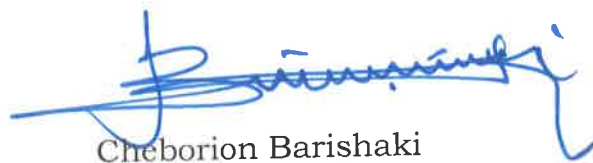
To give effect to the intention of Court and remove the above uncertainties, the orders of the Court in Civil Appeal No. 173 of 2013 National Medical Stores versus Rose Naikoba are therefore amended to read as follows; the applicant herein who was the respondent in the main appeal and cross appellant therein is awarded the following;

1. Shs 51,774,575 as gratuity earned on contract time served.
2. Shs. 12,108,750/= as earned leave
3. Shs 6,600,000/= being one month`s salary in lieu of notice
4. Shs 9,900,000/= as withheld salary arrears
5. Shs 1,232,465/= as NSSF contribution on withheld salary arrears.
6. Interest on 1, 2, 3 and 4 at 25% p.a from the date of dismissal to payment in full
7. General damages of 80,000,000/=
8. Interest on 7 at the rate of 6% p.a from the date of judgment till payment in full.
9. 4/5 of costs in this court (Court of Appeal) and 3/4 of costs in the court below (High Court).

Each party shall bear its own costs for this application.

I so Order.

Dated at Kampala this 26th day of April.....2021



Cheborion Barishaki

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: F.M.S Egonda-Ntende, Cheborion Barishaki & Muzamiru Kibeedi, JJA)

MISCELLANEOUS/ CIVIL APPLICATION NO. 366 OF 2020

(Arising from Civil Appeal No.173 of 2013)

ROSE NAIKOBA ::: APPLICANT

VERSUS

NATIONAL MEDICAL STORES ::: RESPONDENT

Ruling of Muzamiru M. Kibeedi, JA

I have had the advantage of reading in draft the Ruling prepared by my Lord, Cheborion Barishaki, JA. The applicant has made out a proper case for this court to exercise its discretion under the “Slip Rule” as ably set out in the Ruling of Hon. Mr. Justice Cheborion Barishaki. I concur with the Orders as proposed.

Dated at Kampala this ¹²26 day of April 2021



**Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL**

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[CORAM: *Egonda-Ntende, Cheborion Barishaki, Muzamiru Kibeedi, JJA*]

MISCELLANEOUS APPLICATION NO. 366 OF 2020

(ARISING OUT OF CIVIL APPEAL NO. 173 OF 2013)

BETWEEN

ROSIE NAIKOBA=====APPLICANT

VERSUS

NATIONAL MEDICAL STORES=====RESPONDENT

RULING OF FREDRICK EGONDA-NTENDE, JA

[1] I have had the benefit of reading in draft the Ruling of my brother, Cheborion Barishaki, JA. I agree with it.

[2] As Mutangula Kibeedi agrees, this application is allowed with the orders that are proposed by Cheborion Barishaki, JA.

Dated at Kampala this 26th day of April 2021


Fredrick Egonda-Ntende
Justice of Appeal