

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION No. 1455 OF 2021

5 (Arising from Civil Suit No. 0791 of 2019)

1. **KAHOORA ENTERPRISES LTD** }
2. **KAHUNGA INVESTMENTS LTD** } **APPLICANTS**
3. **MORRIS KAJURA** }
4. **BEATRICE KABARULI** }

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VERSUS

1. **MODPART LIMITED** }
2. **BETRA KAMUGISHA** } **RESPONDENTS**
3. **DFCU BANK LIMITED** }

15 **Before: Hon Justice Stephen Mubiru.**

RULING

a. Background.

20 The applicants obtained a loan from the 3rd respondent. Upon the applicants' default, the 3rd respondent took steps to realise the security. The applicants filed a suit challenging the legality of the process. The 3rd respondent filed a counterclaim seeking recovery of the amount outstanding on the loan and a declaratory order for enforcement of its rights as mortgagee. The suit was dismissed and judgment was on 16th December, 2000 entered in favour of the 3rd respondent on the counterclaim. The applicants filed a notice of appeal on 21st December, 2000 but took no
25 further steps. Enforcement of the decree is now underway.

b. The application.

30 The application is made under the provisions of section 98 and 99 of *The Civil Procedure Act*, section 33 of *The Judicature Act* and Order 52 rules 1, 2 and 3 of *The Civil Procedure Rules*. The applicant seeks an order correcting mistakes and errors in the judgment. It is contended that recovery of the decretal amount precludes recovery by exercise of power of sale by mortgagee, yet the judgment contains both. Whereas the amount in the decree is fixed, that recoverable by

exercise of power of sale by mortgagee is to be ascertained at the time of advertising and sale. Both orders cannot be made at the same time in the same judgment.

c. Affidavit in reply

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By the respondent's affidavit in reply, it is averred that the applicants filed a notice of appeal seeking to challenge that finding. There is no mathematical or clerical error in the decision that calls for rectification under the slip rule. Both impugned orders arose directly from the issues framed by the parties. The court having pronounced itself on those issues, they cannot be litigated
10 again. The application is an abuse of process solely intended to buy time.

d. Submissions of counsel for the applicant.

M/s Nyazi, Kiboneka and Mbabazi Advocates on behalf of the applicants submitted that the nature
15 of the slip is that there is likely to be a variation in the amount recoverable depending on the mode adopted. The respondent filed an affidavit showing that the sale is going on. If the court process is used the amount recoverable is fixed in the judgement. If they proceed under powers of sale by mortgagee, the amount will rise significantly due to accumulated interest. The two orders cannot co-exists in the same judgment since they are mutually exclusive.

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e. Submissions of counsel for the respondents.

M/s A.F Mpanga Advocates on behalf of the respondents submitted that there is no slip. The Judge made a decision of what he intended. This should be a ground of appeal. There is no clerical error.
25 The court is being asked to change the decision. The Judge addressed the issues as framed. There was no slip or omission. They argue that the judge is wrong yet both counsel framed the issue. The court cannot correct finding of law or fact except by way of appeal. It is an abuse of process.

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f. The decision.

The settled position of law is that after the passing of the judgment, decree or order, the court becomes *functus officio* and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. What this means is that a Court cannot sit as an appellate Court over its decision; once it has decided a matter, it ceases to be seized of it, and it cannot re-open it for any purpose whatsoever except in appropriate and exceptional situations such as when the judgment; (a) was obtained by fraud or deceit; (b) was a nullity; (c) was given under a mistaken belief that the parties consented to it; (d) was given in the absence of jurisdiction; (e) the proceedings adopted were such as to deprive the decision or judgment of the character of a legitimate adjudication; or (f) was rendered with fundamental irregularity. However on the other hand, a judgment should be an accurate record of the judge's findings and of the reasons for the decision. It should not normally be necessary for a party to bring an appeal to correct an error, if it turns out that the parties and the judge agree that there is an error and that a correction should be made.

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Therefore under section 99 of *The Civil Procedure Act*, clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them 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. This section not only allows the court to correct garbled or incorrect transcriptions, spelling and grammatical mistakes, and even matters of style, but also so that the reasons recorded accurately reflect why the court made the decision that it made, even if they were not then properly or fully articulated. When a judgment is delivered (orally or in writing) the court on its own motion or parties or their advocates may ask the judge to correct phrases that are confusing or unclear, or minor factual points that have been accidentally misstated. This power may be invoked where the decree does not correctly reflect the court's decision, as contained in its reasons stated in the judgment. A slip rule amendment can be made at any stage to enable the court to properly reflect what was intended and to enable a fair resolution of proceedings, consistent with the interests of justice (see *Mellor v. Swire (1985) 30 Ch D 239* and *IC v. RC [2020] All ER (D) 74*).

30 Court has no powers to alter its own judgment except for the limited purpose of correcting clerical or mathematical errors (see *Erimiya Serunkuma v. Elizabeth Nandyose [1959] EA 127*). A clerical

mistake is a mistake of calculation, or a mistake in writing or typing, whereas an error arising or occurring from accidental slip or omission is an error due to careless mistake or omission on the part of the Court. There cannot be an amendment to any final order unequivocally made since the result of would be to trigger another process of adjudication (see *Moore v. Buchanan* [1967] 1 WLR 1341; *In Re Inchcape* [1942] Ch 394 and *Tak Ming Co. Ltd v. Yee Sang Metal Supplies Co.* 1973 1 WLR 300). Neither can the slip rule be used by a party to seek clarity of a judgment but only to correct minor errors. If the omission sought to be corrected goes to the merits of the case, or seeks to clear an ambiguity in the decision, it is beyond the scope of this provision, for which the proper remedy for the aggrieved party is to file appeal or an application review.

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The slip rule has three features; first, the rule is not directed to pure omissions, i.e. something that the Judge meant to do but by some oversight he or she forgot to do. Secondly, the slip is in the nature of a “clerical or typographical” error. This betokens an error in expression or calculation of something contained within the decision, not an error going to the reason or intention forming the basis of that decision. Such slips might include an arithmetical error in adding or subtracting sums, mis-transposing parties’ names, a slip in carrying over a calculation from one part of the decision to another or, as here, the mistaken insertion of a rogue number. Thirdly, it is this kind of slip (clerical or typographical) that is as a result of “accident or omission.” This, too, points to correction of slips or mistakes in expression, rather than changes to the reasoned or intended basis of the decision (see *NKT Cables A/S v. SP Power Systems Ltd* [2001] All ER (D) 74). It is not a warrant to correct what are more substantive errors, in the sense of a mistake of fact or law, is it a warrant to correct a pure omission, being something that the Judge intended to include or take account of but which he or she has wholly omitted to in reaching his or her decision.

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This provision only covers genuine slips or omissions in the wording of a handed down judgment which were made by accident, e.g. the misdescription of a party or the incorrect insertion of a date. The slip rule is only applicable to give effect to the court’s thoughts or intentions at the time of making the order and not additional thoughts arising after it is handed down. It cannot be used to correct substantive mistakes, for example an error in law. It cannot be invoked to add a provision having substantive effect which was not in the contemplation of the parties or the court at the hearing. Substantive errors can only be corrected through the appeal process. Due to the *functus*

officio doctrine, the court has no power to correct substantive errors concerning the decision itself (i.e. a mistake of its own in law or otherwise) even if they are apparent on the face of the judgment. In those circumstances, the remedy would lie in the appeal process.

5 What gives the court jurisdiction under this provision is that the slip or omission was accidental, and not due to a mistake or error of the court or a party or any misunderstanding. Its real purpose is to ensure that the judgment conforms to what the court intended. The key requirement in every case is simply that the order should reflect the actual intention of the court. The rule applies only to situations where if the amendment requested was not effectuated, the original order would not
10 represent the intended order of the court. The slip rule can be applied only where the proposed amendment is one about which no real difference of opinion can exist. Counsel for the applicant has not demonstrated that there was such an accidental slip or omission.

On the face of the decision, it seems to me my brother Judge gave no thought to these two matters
15 at the time of writing the judgment, and, therefore, they did not form part of his intention when making the decision. In correcting it to give effect to one and not the other, this court would practically not be giving effect to the thoughts and intention of the Judge but rather be introducing into the judgment something that did not cross his mind at the time he wrote the judgment. That error or omission is not susceptible to correction under the slip rule. In the absence of some
20 qualification as to the kind of error, such as “clerical or typographical,” as opposed to how it arose (by “accident”), the applicant seeks to extend it impermissibly beyond the accepted scope.

The application therefore seeks to vary the operative or substantive part of the Judgment in circumstances where there is neither a failure to reflect the intention of the court nor any accident
25 or slip. What was declared in the judgment was done deliberately. The court decided what it was asked to decide by addressing each of the issues raised and providing an answer to the issue. I am of the view that this Court has no jurisdiction to determine and pronounce itself upon those issues again as it will have the effect of re-writing the Judgment and in the process making orders, which were not made in the original Judgment. The slip rule does not apply to a mistake that is the
30 consequence of a deliberate decision. The slip rule cannot enable the court to have second or additional thoughts. Once the judgment is handed down, any mistakes of law or fact must be

corrected by an appellate court. In conclusion, the application fails and is hereby dismissed with costs to the respondent.

Signed, dated and delivered at Kampala this 21st day of February 2022.

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Stephen Mubiru
Judge
21st February, 2022.

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