

favour of the respondent and ordered for specific performance of the contract. The High Court also made some alternative orders.

The applicant successfully appealed to the Court of Appeal against that decision of the High Court. Dissatisfied with the decision of the Court of Appeal, the respondent appealed to this court. In its judgment stated above, this court reversed the decision of the Court of Appeal and “restored the judgment and substantial orders of the High Court.” This court also made an alternative order that **“if the specific performance cannot be performed then the respondent is to pay to the appellant, by way of damages, the market value of the suit house.”** It is against this highlighted alternative order that this application is made.

The application is based on the grounds that there is discord between the orders made by the Supreme Court and those made by the High Court so far as regards payment in lieu of specific performance thus occasioning uncertainty as to which order to comply with in effecting payment in lieu of specific performance and that in the interest of justice the application ought to be allowed.

The application is supported by an affidavit of Mike Okua sworn on 27th May, 2009.

At the hearing, the applicant was represented by Messrs. William Byaruhanga and Andrew Kasirye of Kasirye, Byaruhanga & Co. Advocates. The respondent on the other hand was represented by Messrs. B. Tumusinguzi and Muhimbura.

Presenting the applicant’s case, Mr. Byaruhanga submitted that this application is brought under the slip rule (rule 35 (1) of the Rules of this Court) seeking that this court’s judgment dated 20th January 2009, in Civil Appeal No. 23 of 2007, be recalled and corrected. He pointed out that the intention of this court at the time of the judgment was to restore the judgment and orders of the High Court. He argued that that being so, the alternative order made by this court that “if the specific performance cannot be performed, then the respondent (now applicant) is to pay the appellant (respondent), by

way of damages, the market value of the suit house” was a slip. He reasoned that that order created conflict with the alternative orders of the High Court which included an order for damages in the sum of shillings twenty million. He concluded that to give effect to the intention of the court at the time of the judgment, it was necessary to remove that slip order and stop at restoring the judgment and orders of the High Court. He prayed that the application be allowed.

Mr. Tumusinguzi opposed the application essentially on two grounds and relied on an affidavit in reply of Omony Stanley sworn on 28-04-2010.

The first ground of objection to this application was that the application is premature. Learned counsel contended that the application would have been necessary if it was shown that the specific performance could not be performed. He pointed out that paragraph 6 of Omony’s affidavit in reply shows that the deponent’s search in the Lands Office reveals that the applicant is still the registered proprietor of the suit land and therefore, that specific performance is still possible.

The second ground of counsel’s opposition to the application was that this court has spelt out in ***Orient Bank - vs - Fredrick Zaabwe & Another, Civil Application No. 17 of 2007***, the circumstances in which the slip rule can be applied. He submitted that in the instant case, the applicant has not shown that any of these circumstances exists to justify application of the slip rule.

He conceded however, that there is discord between the alternative order of this court and the order of the High Court as to damages. He prayed that the application be dismissed.

In reply, Mr. Byaruhanga agreed with the principles laid down by this court in ***Orient Bank Case*** (supra), relating to the scope of application of the slip rule. He stated that the trial judge gave the alternative orders because there were circumstances which emerged in the course of the trial that could make specific performance not possible. He pointed

out that the prayers of the respondent to this court in that appeal were to allow the appeal and restore the judgment and orders of the High Court. Payment of the market value of the suit house was not part of the prayers. He reiterated his prayers.

The law governing the slip rule is rule 35 (1) of the Supreme Court Rules.

It reads thus:

“A clerical or arithmetical mistake in any judgment of the court or any error arising in it from accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the court, 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 the judgment was given.”

This court had in ***Orient Bank Case*** (supra), 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***

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--- 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.”

To buttress that point, this court quoted with approval an explanation by Sir Charles Newbold, P. in ***Lakhamishi Brothers Ltd. - vs - R. Raja and Sous (1966) EA 313 at p. 314*** where he said:

“I would here refer to the words of this court given in the Ranaiga case (1965) EA at p. 703 as follows:

‘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.

In the instant case, the intention of the court at the time of giving the judgment, was to restore the judgment and orders of the High Court, particularly of specific performance, and to ensure that justice was done in the event that the specific performance cannot be performed.

The High Court orders were as follows:

- (1) ***The plaintiff is entitled to specific performance - - - ;***
- (2) ***General damages of shillings twenty million;***
- (3) ***Interest at 22% per annum’;***

Alternative:

(1) ***The plaintiff is entitled to a full refund of the deposit paid, i.e:***

- (a) ***US\$50,000.***
- (b) ***Arrears and installments of Ug. Shs. 18,020,000=***
- (c) ***Proportionate rent of US\$9,984 - - -.***
- (d) ***General damages of shillings twenty million;***
- (e) ***Interest on (a) and (d) at 20% per annum; and***
- (f) ***Costs of this suit.***

Both counsel agreed that the prayers of the respondent, who was the appellant in that appeal, did not include payment of the market value of the suit house if the specific performance cannot be performed. For clarity, we reproduced here below the respondent's prayers:

“It is proposed to ask the court to allow the appeal, set aside the judgment and orders of the Court of Appeal and reinstate the judgment and orders of the High Court with costs to the appellant.”

Clearly, payment of the market value of the suit house if the specific performance cannot be performed was not included in the respondent's prayers. The inclusion of the order of payment of the market value of the suit house if the specific performance cannot be performed was therefore a slip. The fact that the respondent did not include that relief in his prayer was overlooked. Had that fact been brought to the attention of the court, without doubt, the order for payment of the market value of the suit house if the specific performance cannot be performed, would not have been made.

To give effect to the intention of the court is to remove the alternative order ***“for payment, by way of damages, of the market value of the suit house if the specific performance cannot be performed.”*** The order should stop at restoring the judgment and orders of the High Court.

We so order.

The orders of the court in Civil Appeal No. 25 of 2007 are therefore amended to read as follows:

“The appeal is allowed and the judgment and orders of the Court of Appeal are set aside. The judgment and orders of the High Court are restored with costs here and in the two courts below.”

The application is accordingly allowed.

We make no order as to costs.

Dated at Kololo this 25th day of June. 2010.

***B. J. ODOKI
CHIEF JUSTICE***

***J. W. N. TSEKOOKO
JUSTICE OF THE SUPREME COURT***

***G. M. OKELLO
JUSTICE OF THE SUPREME COURT***

***C. N. B. KITUMBA
JUSTICE OF THE SUPREME COURT***

DR. E. KISAAKYE

JUSTICE OF THE SUPREME COURT