



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA AT NAIROBI**

*(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Njoki, & Ouko, SCJJ)*

**PETITION (APPLICATION) NO. 26 OF 2019**

**(CONSOLIDATED WITH PETITION NOS. 34 & 35 OF 2019)**

– BETWEEN –

**MONICA WANGU WAMWERE ..... 1<sup>ST</sup> APPELLANT/APPLICANT**  
**PRISCILLA MWARA KIMANI ..... 2<sup>ND</sup> APPELLANT /APPLICANT**  
**LUCY WATURI KIMANI ..... 3<sup>RD</sup> APPELLANT /APPLICANT**  
**ESTHER GATHONI GICIMU ..... 4<sup>TH</sup> APPELLANT /APPLICANT**  
**MICHAEL MAINA KAMAMI ..... 5<sup>TH</sup> APPELLANT/APPLICANT**  
**KOIGI WAINAINA ..... 6<sup>TH</sup> APPELLANT /APPLICANT**

– AND –

**THE ATTORNEY GENERAL ..... RESPONDENT**

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*(Being an application for review of the Judgment of the Supreme Court dated and delivered on 27<sup>th</sup> January, 2023 in Petition No. 26 of 2019 as consolidated with Petition Nos. 34 & 35 of 2019)*

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**Representation:**

Mr. Gitau Mwaru for the appellants  
*(Gitau J. H. Mwaru & Co. Advocates)*

No appearance for the respondent

## RULING OF THE COURT

[1] **CONSIDERING** that on 27<sup>th</sup> January, 2023 this Court delivered a judgment holding that the applicants' rights and freedom from inhuman treatment as protected under Section 74(1) of the repealed Constitution were violated by the Government of Kenya and awarded each of the applicants damages of Kshs. 2,500,000; the Court however, did not make an order on the payment of interest notwithstanding that the applicants had prayed for interest on the damages awarded in the consolidated appeal; and

[2] **NOTING** that on 14<sup>th</sup> February, 2023 the applicants filed a Notice of Motion dated 6<sup>th</sup> February, 2023 under Section 21(4) of the Supreme Court Act, 2011 and Rule 31 of the Supreme Court Rules, 2020 seeking-

*a) THAT the Honourable Court do amend its Order (e) in its judgment delivered on 27<sup>th</sup> January, 2023 and award the applicants interest on the award of Kshs. 2,500,000 to each of the applicants at court rates from the date of filing the High Court Petition on 15<sup>th</sup> April, 2013 until payment in full.*

*b) The costs of this application be costs in the cause.*

[3] **UPON** considering the affidavit in support of the motion sworn by the applicants' advocate, James H. Gitau Mwara, on 6<sup>th</sup> February, 2023 and the applicants' submissions; to the effect that this Court on 27<sup>th</sup> January, 2023 entered judgment in the applicants' favour and awarded them damages of Kshs. 2,500,000 each; that despite the applicants having prayed for interest on the damages awarded in the consolidated appeal, the judgment was silent on the same; that the Court ought to consider reviewing its judgment and grant the applicants interest on the grounds that claimants in similar cases such as, ***Irene Wangari Gacheru & 6 Others v. Attorney General***, HC Petition No. 376 of 2014; [2017] eKLR

and ***Kennedy Kinuthia & 3 Others v. Attorney General***, HC Petition No. 375 of 2014; [2017] eKLR, were granted interest on the damages awarded; that it is trite law and a rule of practice that costs and interest follow the event in a monetary judgment; that an award of interest would act as mitigation against all delays (either intentional or due to bureaucratic long drawn processes) by the government in payment of the assessed damages; and that the Court has inherent powers to amend its judgment and award interest as sought; and

**[4] NOTING** that despite being served with the motion, the respondent has not filed any response thereto; and

**[5] COGNISANT** that Section 21(4) of the Supreme Court Act provides as follows:

*“The Court may, on its motion or on application by any party with notice to the other or others, correct any oversight or clerical error of computation or other error apparent on such judgment, ruling or order and such correction shall constitute part of the judgment, ruling or order of the Court.”*

**[6] BEARING IN MIND** that the scope of the Court’s jurisdiction to review its judgment under Section 21(4) of the Supreme Court Act which embodies the “Slip Rule” is circumscribed as aptly appreciated in ***Fredrick Otieno Outa v Jared Odoyo Okello & 3 Others***, SC Petition No. 6 of 2014; [2017] eKLR -

*“By its nature, the Slip Rule permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter*

*the clear intention of the Court. In other words, the Slip Rule does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior Courts demonstrates, this is the true import of the Slip Rule.”*

**[7] APPRECIATING** that the Court at paragraph 97 of its judgment and in particular, under limb (e) of its Orders held as follows:

*“e) The Government of Kenya shall pay damages assessed at Kshs. 2,500,000.00/- to each of the appellants in this consolidated appeal.”*

Further, from the reading of the judgment there is no indication that the Court intended to deny the applicants interest on the damages awarded; and

**[8] ACKNOWLEDGING** that the omission to award interest falls within the bounds of the error(s) contemplated under Section 21(4) of the Supreme Court Act; and that review of the judgment in issue to award interest would not alter the substance thereof rather it would give effect to the Court’s intention. See ***Musembi & 13 Others (Suing on their own behalf and on behalf of 15 residents of Upendo City Cotton village at South C Ward, Nairobi) v. Moi Educational Centre Co. Ltd. & 3 Others***, SC Application No. E019 of 2021; [2022] KESC 19 (KLR).

**[9] WE HEREBY PRONOUNCE** that the motion has merit and invoke our jurisdiction under Section 21(4) of the Supreme Court Act to review the judgment to include an award of interest on the damages at court rates from the date of the judgment of this Court being; the 27<sup>th</sup> January, 2023 until payment in full.

**[10] CONSEQUENTLY** and for the reasons aforestated we make the following Orders:

- i. The Notice of Motion dated 6<sup>th</sup> February, 2023 and filed on 14<sup>th</sup> February, 2023 is hereby allowed.***
- ii. Consequently, the Judgment dated 27<sup>th</sup> January, 2023 is hereby reviewed and in particular Order (e) at paragraph 97 which shall now read as follows:***

***“e) The Government of Kenya shall pay damages assessed at Kshs. 2,500,000.00/- to each of the appellants in this consolidated appeal. The appellants shall also have interest on the damages at court rates from the date of the judgment being 27<sup>th</sup> January, 2023 until payment in full.”***

- iii. There having been no opposition by the respondent, we make no orders as to costs in regard to this motion.***

It is so ordered

**DATED and DELIVERED at NAIROBI this 21<sup>st</sup> day of April, 2023.**

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**M. K. KOOME**

**CHIEF JUSTICE & PRESIDENT OF  
THE SUPREME COURT OF KENYA**

.....  
**P.M. MWILU**

**DEPUTY CHIEF JUSTICE &  
VICE PRESIDENT OF THE  
SUPREME COURT**

.....  
**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....  
**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

.....  
**W. OUKO**  
**JUSTICE OF THE SUPREME COURT**

