**E A Plans Ltd v Bickford-Smith**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 6 May 1974

**Case Number:** 426/1969 (132/74)

**Before:** Nyamuchoncho J

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*[1] Contract – Consideration – Accord and satisfaction – Wrong sum demanded in error – No accord*

*and satisfaction.*

*[2] Civil Practice and Procedure – Slip – Amendment – Wrong figure demanded in notice to show cause*

*– Amendment allowed – Civil Procedure Act*, *s.* 102 (*U.*)*.*

**JUDGMENT**

**Nyamuchoncho J:** This is an application under 0.19, r. 8 of the Civil Procedure Rules for leave to execute the decree against the defendant. The historical background of this application is that the decree holder unsuccessfully sued the defendant but on appeal the Court of Appeal allowed the appeal. Thereafter efforts were made by the parties to reach a settlement as to costs of the suit and appeal. After protracted negotiations, costs were settled at Shs. 12,000/-; the settlement was communicated to the Registrar in a letter dated 20 February 1973 signed by Hunter and Greig and counter-signed by the defendant. The defendant, however, did not pay the costs promptly, so on 16 May 1973 Hunter and Greig issued a notice to show cause against the defendant and by mistake indicated the costs to be Shs. 1,200/- instead of Shs. 12,000/-. A few days before the hearing, the defendant wrote to the Registrar asking him to collect from bearer cash to cover the full amount claimed as due under the notice in full settlement of the suit and appeal. Hunter and Greig countersigned it as “confirmed and agreed”. Hunter and Greig later it appears informed the defendant about the mistake. The defendant refused to co-operate. On 28 September 1973, the defendant wrote to the Registrar. His letter reads: “Sir, I am informed by Hunter and Greig that the application contained an error. However, in view of my terms of my letter of 13 September 1973 countersigned by them the court is functus officio in this matter and any such error as is alleged is purely a matter between the plaintiff and its advocates. It is clear from this letter that the defendant repudiated liability. He has maintained that attitude at the hearing; he argues that the plaintiff’s advocates were negligent and since the money was paid into court in full settlement, he is discharged. Hunter and Greig admit negligence but say they are not debarred from claiming the balance. By letter dated 20 February 1973, the defendant and Hunter and Greig entered into an agreement for valuable consideration as recorded in that letter for the settlement of the costs at Shs. 12,000/-, the settlement was entered on the file. That agreement was not altered by a subsequent agreement. When the defendant failed to pay the agreed sum, a notice was issued but the clerk who typed it out changed the figure. This error is admitted and deposed to by Achakolong the clerk in his affidavit. The defendant himself does not contend that the agreed sum was altered by agreement or that he was led to believe that the settlement was altered. He simply refuses to pay the balance. I am satisfied that the defendant paid the lesser sum with full knowledge that it was inserted by mistake. He took the advantage to avoid payment of the full settlement and hopes to get away with it. In his letter to the Registrar, he asserts that the court is functus officio. He has, however, given no authority to support this contention. I do not agree that the court is functus officio. The court has power under s. 102 of the Civil Procedure Act to correct clerical mistakes in judgments or orders or errors arising from any accidental slip or omission. According to *Odgers on Pleading and Practice*, 17 Edn., p. 172 this slip rule applies to clerical mistakes and accidental slips or omission both by officers of the court and by the parties. The slip rule was applied in *Chessum v. Gordon*, [1901] 1 K.B. 694. In that case the plaintiffs recovered judgment against the defendant for a sum to be ascertained by a special referee, with costs. The referee assessed the sum payable to the plaintiffs at £3,863 and judgment was drawn up and entered for the plaintiffs for the sum so assessed with costs to be taxed. The plaintiffs carried in their bill of costs for taxation but by a pure slip they did not include in their bill of costs the sum of £160 11s 8d which they had paid to the referee when they took up the award. The master accordingly taxed the bill of costs as carried in and gave his certificate for £516 8s 7d. The defendant paid the plaintiffs the two sums of £3,863 and £516 8s 7d. The plaintiffs’ solicitors shortly afterwards discovered that by mistake the sum paid to the referee had not been included in the bill of costs carried in for taxation. A summons was taken out for an order that the defendant should pay to the plaintiffs the sum of £160 11s 8d. Day, J. ordered that the sum should be referred to the taxing master for taxation and that the taxing master’s certificate should be amended on the ground that there had been a mistake in not including the referees’ fees. On appeal, it was held that there had been an error in the judgment arising from an accidental slip or omission which could be corrected. In *Armitage v. Parsons*, [1908] 2 K.B. 410 the judgment was signed which included the amount for costs which exceeded by the sum of 12s the amount properly allowable for costs. It was held that there was power to amend the judgment. These two cases clearly show that the error in this case can be amended. The court is not functus officio. By another argument the defendant says he is discharged from his obligations to pay the balance in view of the terms of his letter dated 13 September 1973. The defendant knew that amount due was 12,000/- and he agreed to pay that sum. The consent was drawn up, he signed it, it was entered on the court record. No new negotiations were entered upon by him and Hunter and Greig to alter that sum, so, when he tendered the amount shown in the notice as Shs. 1,200/- he knew perfectly well that it was a wrong figure. Nevertheless he tendered the lesser sum. It is clear that he did not tender the lesser sum in good faith. This behaviour on the part of the defendant is to be very much deprecated. The defendant tendered a lesser sum with full knowledge that he was not satisfying the settlement. There was no mistake on his part at the time he tendered the lesser sum which he could advance as a defence. Under the common law payment of a lesser sum which is accepted by the creditor does not discharge the debtor. The law was so stated in *Pennel’s* case and was confirmed in *Foakes v. Beer* (1884), 9 App. Cas. 605. It was applied in *D. & C. Builders v. Rees*, [1966] 2 Q.B. 617. These cases are however different from the present case in that there the debtor offered to pay a smaller sum to the creditor who for different considerations accepted the smaller sum but later sued the debtor for the balance. Accord and satisfaction would defeat the principle laid down in *Pennel’s* case. This is not a case in which accord and satis action can be pleaded when payment of a lesser sum may be a good defence. But as Denning, L.J. said in *D. & C. Builders v. Rees* at p. 625: “In applying this principle, however, we must note the qualification that the creditor is only barred from his legal rights when it would be inequitable for him to insist upon them. Where there has been a true accord, under which the creditor voluntarily agrees to accept a lesser sum in satisfaction and the debtor acts upon that accord by paying the lesser sum and the creditor accepts it, there it is inequitable for the creditor afterwards to insist on the balance, but he is not barred unless there has been truly an accord between them.” On the facts of this case, there has been no accord. The creditor did not voluntarily agree to accept a lesser sum in satisfaction. The fact that the defendant indicated in his letter that it was in full settlement does not alter the position. Equally it is immaterial that the money was paid into court as this can be corrected by virtue of s. 102 of the Civil Procedure Act. It would be inequitable to allow the defendant to retain the balance since he fully understood that he was paying a lesser sum so as to avoid paying the full costs. His hands are not clean and cannot therefore seek an equitable remedy. In my opinion there is no reason in law or equity why the applicant cannot enforce the full amount due to him. Application granted with costs.

*Order accordingly*