

SUPREME COURT OF NIGERIA
 12TH DECEMBER, 1995. SC. 185/1989
S. M. A. BELGORE, A. B. WALI, M. E. OGUNDARE,
E. O. OGWUEGBU, S. U. ONU, JJSC.

BERLIET NIGERIA LTD. APPELLANT
 AND
 ALHAJIMUSTAPHA KACHALLA RESPONDENT

JUDGMENTS - Interest on judgment debt - where 10% is provided for under court rules - Plaintiff need not claim the interest vide the writ of summons.

JUDGMENTS - Omission or clerical mistakes - Made by a particular judge in his judgment - Where that judge has left the High Court - Any other judge can rectify the omission.

JUDGMENTS - Omission - Where the lower courts found there was an omission - As to 10% interest on judgment debt - Whether they had power correct that omission.

STATUTES - Interpretation of statutes - clear and unambiguous provision - How to be construed.

FACTS

The plaintiff/appellant before the High Court Kano under the undefended list obtained judgment in the sum of N112,822.72 against the defendant/respondent. The appellant did not claim any interest before or at the time judgment was entered in its favour. Appellant relying on the provisions of Order 27 rule 8 of the Kano State High Court Rules sought to recover 10% per annum interest on the judgment debt on the ground that the said interest is automatic vide the provisions of the aforesaid rules of court. Appellant's ex parte motion which was granted was subsequently set aside. Appellant made the same claim vide a motion on notice which was refused on the ground that the trial High Court was functus officio.

Appellant's appeal to the Court of Appeal was also dismissed. Being dissatisfied appellant has further appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

(a) Whether the Court of Appeal was right in holding that Order 27 rule

8 of the Kano State High Court (Civil Procedure) Rules, 1976 did not provide mandatory award of 10% interest on all judgment debts unless otherwise ordered by the trial Chief Judge.

(b) If the answer to question No. 1 is in the negative whether the judgment creditor must, in each case, specially ask for an award of interest.

(c) Whether the non-application of Order 27 rule 8 of the Kano State (Civil Procedure) Rules, 1976 by the learned trial Chief Judge amounted to an omission which could be corrected by himself or by another judge sitting in his stead.

HELD Unanimously allowing the appeal per Lead Judgment of **ONU JSC**)

Interpretation of statutes

1. As it is glaring that the provisions of the above statute are clear and free from any ambiguity, the position in law is that those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly. (p. 2079H)

Interest on judgment debt

2. In the light of the above, it is my firm view that neither is there the necessity in the Writ of summons nor by way of oral application, for the Appellant to claim for such 10% interest up to the time of judgment to be added to the judgment debt, since that would not have had the effect of rendering the court functus officio. Thus, the subsequent motion filed by the Appellant in 1986 before the same High Court for an order that interest be calculated at the rate of 10% on the said judgment debt with effect from the date thereof until liquidation, would if granted, not have had the effect of making an addition to the terms of the judgment as contended by the Respondent. (p. 2080 C)

Omission or clerical mistakes

3. I therefore take the view that the court below was clearly in error in that part of its decision I had set out above at the inception of this judgment where it held that even though the non-award of interest was an omission, only the trial judge could have corrected it. What one can imply from that conclusion is that where, as in this case, the trial judge was no longer a judge of the High court no other judge could rectify omissions or clerical mistakes in the judgment to bring out the intended effect. No authority was cited by the court below for this proposition but such a power must of necessity flow the inherent powers of the courts as recognized by section 6(6) (a) of the 1979 Constitution (as amended) and the unlimited jurisdiction conferred on the Kano High Court by section 236

(1) of the same Constitution as an institution and not to the individual judges. Where a judge who delivered a judgment for any reason is not available, another judge in exercise of the general powers under sections 6(6) (a) and 236(1) of the Constitution (ibid) should be in as good a position as the judge who delivered the judgment, to correct any palpable slips in the said judgment. (p. 2086 B)

Where the lower court found there was an omission

4. Be that as it may, as earlier pointed out, the learned Chief Judge and the court below having held that there was an omission, whether it be that of the court, the Registrar or counsel, the two lower courts, in my judgment, had power which they ought to have exercised, to correct such omission on the Appellant's application. (p. 2087 F)

NOTABLE POINTS OF INTEREST

ONUJSC

1. Court cannot intend to allow defendant undue delay in paying judgment debt

It could not have been the intention of the learned trial Chief Judge when giving the judgment in this suit on 29/11/82 to allow the Respondent to escape from his just liability by refusing to pay the judgment debt indefinitely. For instead of paying the judgment debt immediately, the Respondent herein only completed payment after four years - thereby depriving the Appellant of its money and the interest it could have earned. (p. 2086 F)

OGUNDARE JSC

2. Principle behind interest on judgment debt

Unless the court otherwise orders, a judgment debt carries 10 per centum per annum interest from the date of judgment until it is liquidated by the judgment-debtor. The principle behind the rule seems to me to be to provide incentive to judgment debtors for the speedy payment of judgment debts and to ensure that judgment creditors do not suffer much detriment as a result of a delay in the settlement of judgment debt. The wording of the rule clearly shows that the judgment automatically carries interest at 10 per centum per annum until it is satisfied. (p. 2093 H)

3. Prejudgment interest is different from interest on judgment debt

There clearly is a difference between award of interest pre-judgment where Plaintiff must specifically claim such and prove it and the award of interest on a judgment-debt which is purely statutory and can only be awarded if there are

provisions to that effect in the law or rules of the court. The Court below, with respect, seemed to have confused the claim for interest here with a claim for interest on a monetary claim pre judgment. (p. 2094 D)

REPRESENTATION

Appellant absent.

Not represented

Representation absent. Not represented

CASES REFERRED TO

Okumagba v. Egbe (1965) 1 NMLR 65

Ojokolobo v. Alamu (1987) 3 NWLR (Part 61) 377

Adigun v. A.G of Oyo State (No. 2) (1987) 2 NWLR (Part 56) 1971

Freighters Limited v. Timber Shipping Co; S.A. (1971) 1 Q.B. 268;

London & Overseas Freighters Ltd. vs. Timber Supply Co. S.A. (1971) 1

Moore v. Buchanan (1967) 3 All E.R. 273

Hatton v. Harris (1892) A.C. 547 at 560

Tak Ming Co. Ltd. v. Yee Sang Metal Supplies Co. (1973) 1 All E.R. 569

Sabbagh & Sabbagh v. Bank of West Africa Ltd. (1966) All N.L.R. 234

STATUTES & RULES REFERRED TO

High Court Civil Procedure Rules of Kano State 1976 O. 27 r.8

Supreme Court Rules O. 2 r. 11

High Court Law Cap.49 Laws of Northern Nigeria 1963 s. 29(1) Judgments Act 1838 (U.K.) s. 17

Arbitration Act 1950 (U.K.) s. 20

Constitution of the Federal Republic of Nigeria 1979 ss. 6(6)(a); 236(1)

Sheriffs and Civil Process Act Cap. 407 LFN 1990 s. 104

LEAD JUDGMENT BY ONUJSC

On the 29th day of November, 1982 Musdapher, C.J., (as he then was) sitting at the Kano State High Court holden in Kano, awarded judgment in plaintiff/appellant's favour in the sum of N112,882.72 against the defendant/respondent pursuant to a writ of summons issued under the undefended list.

An application to set aside the judgment was struck out on 7th March, 1983 by the same Chief Judge who had entered judgment for the appellant. The appellant who ostensibly did not ask for interest by its writ of summons aforesaid before or at the time when the judgment was entered in his favour, brought a motion ex parte dated 7th November, 1985 before Minjibir, Ag. C.J.

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(as he was) praying for an order that 10% interest be paid on the aforesaid judgment debt of 29th November, 1982 until it be wholly paid. The learned Ag. C.J. on 12th November, 1985 granted the appellant's application. This ex parte order was however short-lived as on 21st April, 1986, it was set aside on an application brought by the respondent. Matters did not end there as the appellant thereafter by way of a motion on notice dated the 15th day of July, 1986 applied to the trial court under Order 27 rule 8 of the Kano State High Court (Civil Procedure) Rules, 1976, that an order be made that 10% automatic interest be calculated and paid on the judgment debt including costs and the same with effect from 29th November, 1982 until the whole amount had been finally liquidated.

C In his ruling dated 8th October, 1986 the learned C.J. dismissed the application held inter alia that -

D *"According to my own understanding of the provisions of the Rules (Order 27 rule 8) above quoted, the rate of 10% interest per annum is payable on any judgment debt unless a contrary order to that effect has been given by the court that has given that judgment. The judgment in this case was given on the 29/11/82 by my predecessor in office without giving the 10% interest on the outstanding judgment debt and no contrary order to that effect has been given. This leads me to say that the provisions of the above Order and Rule have not been complied with.*

E *Consequently, and in my considered opinion, this position amounted to an omission..... It is my considered opinion and I so hold that by granting the order prayed for, I will be making addition to the judgment entered into on the 29/11/82. The question to ask is this: Is this court competent to make the addition to bridge in the gap in the judgment already delivered in the open court? If the answer is in the affirmative, the court is therefore empowered to make the deletion in any judgment that has been delivered in the open court, a practice which is manifestly wrong as far as I can see it.*

F *It is indisputably clear that once a judgment is delivered in the open court, the court or Judge delivered the same becomes 'functus officio'.*
G (Italics mine for emphasis)

The appellant appealed against the above decision to the Court of Appeal. (coram: Mohammed; Aikawa and Achike, J.J.C.A.) which in a considered judgment proceeded to dismiss it.

H Being dissatisfied with the court below, the appellant has further appealed to this court on seven grounds, whereof three issues distilled therefrom are as set out hereunder following the exchange by the parties of their briefs of argument in accordance with the rules of this Court.

(a) Whether the Court of Appeal was right in holding that Order 27

rule 8 of the Kano State High Court (Civil Procedure) Rules, 1976 did not provide a mandatory award of 10% interest on all judgment debts unless otherwise ordered by the trial Chief judge.

(b) If the answer to question No. 1 is in the negative whether the judgment creditor must, in each case, specifically ask for an award of interest.

(c) Whether the non-application of Order 27 rule 8 of the Kano State High Court (Civil Procedure) Rules, 1976 by the learned trial Judge amounted to an omission which could be corrected by himself or by another Judge sitting in his stead.

The respondent submitted two issues for our determination, to wit:

1. Whether it was open to the appellant to come by way of motion to vary the judgment dated 29/11/82 to add the prayer for interest which was not dealt with in the judgment when the court that delivered the said judgment had become functus officio.

If the answer to the above question is in the positive: the question then arises as to:-

2. Whether having regards to the fact that when the application for interest was made to the trial court there was no longer in existence any judgment debt: the appellant could still call in aid the provisions of Order 27 Rule 8 of the Kano High Court Civil Procedure Rules 1976 for his claim to interest.

In my consideration of this appeal, I intend to stick to the appellant's three questions. At the hearing of the appeal on 18th September, 1995 although both parties were absent, with the briefs having been filed and exchanged, the appeal was taken as having been argued vide Order 2 Rule 11 Supreme Court Rules.

QUESTION NO. 1

I am of the view that it is firmly established that what falls for determination in this appeal is the construction to be given to Order 27 rule 8 of the State High Court (Civil Procedure) Rules which provides as follows:-

"Unless otherwise ordered by the court, interest shall be paid on outstanding judgment debts at the rate of 10% from the date of judgment whether or not the judgment debtor is allowed time to pay or to pay by installments."

As it is glaring that the provisions of the above statute are clear and free from any ambiguity, the position in law is that those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly. See Ekeogu v. Aliri (1991) 3 NWLR (Pt. 179) 258; Okumagba v. Egbe (1965) 1 NMLR 62; African Newspaper of Nigeria Limited & 2 Ors. V. The Federation Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137 and Ojokolobo v.

Alamu (1987) 3 NWLR (Pt. 61) 377. A cursory look at the record of proceedings coupled with a careful study of Order 27 rule 8 of the Kano High Court (Civil Procedure) Rules (hereinafter in this judgment referred to simply as the rules) admit of the following interpretation viz:

1. That 10% interest shall be paid on all Judgment debts from the date of judgment.
2. That the court may in its discretion, order otherwise than in I above.
3. That where the court fails to exercise its discretion in favour of the judgment debtor as in (2), then the mandatory 10% interest shall remain to be C paid is automatic.

In the light of the above, it is my firm view that neither is there the necessity in the Writ of summons nor by way of oral application for the appellant to claim for such 10%; interest up to the time of judgment to be added to the judgment debt, since that would not have had the effect of rendering the D Court functus officio. Thus, the subsequent motion filed by the appellant in 1986 before the same High court for an order that interest be calculated at the rate of 10% on the said judgment debt with effect from the date thereof until liquidation, would if granted, not have had the effect of making an addition to the terms of the judgment as contended by the respondent. The trial court was E therefore, in my view, to the following extent right when it held that:-

"According to my own understanding of the Rules above quoted the rate of 10% interest per annum is payable on any judgment unless a contrary order to that effect has been given by the court that has given that judgment."

F However, the court below, with due respect, erred when it concluded in respect of its own interpretation of Order 27 rule 8 as follows:-

"The provisions of the above order taken by itself is clear and self explanatory, but the court in its exercise of its discretion can order otherwise. In the present case we are dealing with a situation where the trial G Judge does not apply to and did not exercise his discretion in awarding 10% interest on the judgment debt. English cases on the interpretation of similar provisions for the award of interest are irrelevant in view of the provision of section 29(1) of the High Court Law."

H The court below further erred also when it arrived at the conclusion that:

"Returning to the provisions of Order 27 rule 8 (supra) it is clear that payment of the 10% interest was not automatic as submitted by the respondent."

So also did it err by holding categorically that section 29(1) of the

high Court Law Cap. 49, Laws of Northern Nigeria 1963 (applicable to Kano State) is ousted by any reference to, or reliance on English cases which interpreted statutes with provisions similar to Order 27 rule R (ibid). That section provides:

“29(1) All imperial laws declared to extend or apply to the jurisdiction of the court shall, in so far as they relate to any matter with respect to which the legislature of Northern Nigeria is for the time being competent to make laws, be in force so far as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future local legislation.”

With utmost due respect, this section, in my view, cannot be authority for the proposition put forward by the court below. This is so because it is elementary that judgments by courts of other jurisdictions on issues similar to those which a court is called upon to pronounce in this country are relevant and, at least, of persuasive authority. See Adigun v. A.G of Oyo State (No.2) (1987) 2 NWLR (Pt. 56) 1970.

Such English cases, and statutory provisions which are similar and of relevance for consideration herein are: 1. London & Overseas Freighters Limited v. Timber Shipping Co. SA. (1971) 1 Q.B. 268; 2 The Myron v. Trade and Export S.A.(1970) 1 Q.B. 527; 3. section 17 of the Judgments Act 1838 (U.K.) and, 4 section 20 of the Arbitration Act, 1950 (U.K.).

Section 17 of the judgments Act 1838 (U.K.) (Ibid) provides as follows:

“Every judgment shall carry interest at the rate of Four pounds per centum per annum from the time of entering up the judgment until the same shall be levied under a writ of execution.”

Section 20 of the Arbitration Act, 1950 (U.K.) on the other hand stipulates that:-

“A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.”

Construing Section 20 of the Arbitration Act, 1950 (U.K.) ibid) Donaldson. J., in the Myron (supra) at p. 537 said:-

“The consequence is that, unless there is a direction to the contrary, the award carries interest at the rate of 4% per annum from the date of the award until payment.”

In London & Overseas Freighters Ltd. Case (supra) the Court of Appeal (England) approved the decision of Donaldson. J. in the Myron (supra) and in comparing both sections Salmon. L.J. said at p. 247 thus:-

“This is perhaps not a very happily worded section (S. 20 Arbitra

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tion Act.) *One thing, however, is at any rate clear, it gives an arbitrator the power to exercise a discretion which a Judge does not possess. A Judge has no power to say anything about interest after judgment. The judgment automatically carries interest at 4% per annum until it is satisfied. So does an award*” unless the award otherwise directs ...

In the instant case, the statute with whose interpretation we are here
B concerned, to wit: Order 27 rule 8 of the Kano State High Court (Civil Procedure) Rules, 1976 is in pari material with that of Order 27 rule 8 of the High Court of Plateau State (Civil Procedure) Rules, also of 1976. In construing the latter rule in the case of Reuben N.A. Ekwunife v. Wayne (West Africa) Limited (1989) 5 NWLR (Pt. 122) 422 one of the issues formulated for the determination
C of this court was whether a court can order interest to be paid on a judgment debt from a date before the date of the judgment. This court (per Nnaemeka-Agu, J.S.C.) held, allowing the appeal, inter alia, at p. 447 of the Report thus:

“Clearly, this rule, like the Judgment Act of 1838, and unlike the Act
D of 1934, deals with payment of “outstanding judgment debts.” It has nothing to do with a claim of interest as a right either under a contract or mercantile custom or a principle of equity. Like the judgment Act of 1838, Order 27 rule 8 of the Plateau State (Civil Procedure) Rules, 1967, is a statutory authority for a court to award interest at 10% per annum on the outstanding judgment debt.
E I do not therefore agree with the learned Justices of the Court of Appeal that it is an authority for the court to award interest from a date antedating the judgment, for the simple reason that there cannot, for what I have said, be a judgment debt as at that date “

Construing the phrase “unless otherwise ordered by the court” the learned
F Justice opined that

“..... It is left for me to consider the implication of the words “unless otherwise ordered by the court”” Effect must of course be given to those words. But, for the simple reason that there can be no judgment debt until the date of judgment, it cannot, as I have stated be an authority for the court to award
G interest from the accrual of the cause of action or from any other date antedating the judgment. It appears to me therefore that the discretion given to the court to order otherwise, is limited to the rate of interest. So, where the court sees good reasons for so doing, it can order a rate of interest other than 10%. In other words, even though the substantive part of the enactment says “in-
H terest shall be paid on outstanding judgment debts at the rate of 10 percent” - a provision which would have been construed as mandatory - that provision is influenced by the opening phrase - “unless otherwise ordered by the court.” Which gives the court a discretion to order otherwise. So, this is a classic case of where the word shall must be interpreted as being directory only, and not

mandatory.

In my view, as the power to award interest under the rule is one which derives from the rule itself, it is not obligatory that interest thereunder must be claimed on the writ or pleaded in the statement of claim.....

In the instant case, it appears to me that for what I have said, the learned trial Judge had jurisdiction or power under the rule to award interest from the date of accrual of the cause of action, that is from a date antedating the judgment...”

As Agbaje, J.S.C. succinctly put it at p. 454 of the Report:

“As I have just said, the statutory interest can only run from the date of judgment. In my judgment therefore, there is no jurisdiction in the High Court of Plateau State to award interest on a judgment debt from a date antecedent to the date of the judgment debt, under Order 27 rule 8.”

And shedding more light on the use of the phrase, “unless otherwise ordered by the court” the learned Justice at pages 454-455 of the Report went on to expatiate as follows:

“The expression, “unless otherwise ordered by the court” which opens the provisions of Order 27 rule 8 in question does not, in my judgment, confer any discretion on the High Court as to when the interest will begin to run, that is to say, either before or from the date of judgment. On the other hand, the expression, in my judgment, governs the word immediately following it in the enactment, that is to say, “interest” and its rate. So in my judgment the statutory interest will apply unless the court orders otherwise, that is to say, unless the court orders that the interest of more or less than 10% shall be paid having regard to the circumstances brought to its notice. “

The comparison therefore made by the Court below (per Achike, J.C.A.) to the effect that -

“Interest on a judgment debt, is in a way, similar to award of costs It is useful to draw some analogy from the case of award of costs. If at the end of its judgment the court did not make an award of costs suo motu, it is open to the parties to appeal to the conscience of the court for costs. If the successful party in a suit neglects to urge the trial court to award costs to it, the court may naturally overlook the issue of costs because a successful party is not obliged to ask for costs, in fact he may waive his right to costs for several plausible reasons.” is inept in that whereas the award of costs is entirely at the discretion of the court, judicially exercised, the award of interest by Order 27 rule 8 (ibid), unless otherwise ordered, does not depend on the Judge’s discretion since it is

automatic. See *Himma Merchants Ltd. v. Aliyu* (1994) 5 NWLR (Pt. 347) 667, in which in analogous situation, Ogwuegbu, J.S.C. construed Order 40 Rule 7 of the Bauchi State High Court (Civil Procedure) Rules (in pari materia with Order 27 rule 8 herein being considered) and further held at p. 83 of the Report that

“The Court of Appeal purported to rely on the above rule in confirming the award of interest made by the trial court but with respect fell into grave error in failing to apply the rule correctly. On a proper construction, the rule means that the court may grant time within which to pay a judgment debt and may when making such an order also order interest to be paid thereon from the date of the judgment or afterwards, but not otherwise. The rate of interest cannot exceed 10% per annum.”

Question 1 is accordingly answered in the negative.

QUESTION NO.2:

Having answered Question No. 1 in the negative the answer to Question No.2 must perforce be rendered in the negative without much ado.

D QUESTION NO. 3:

This question which enquires whether the non-application of Order 27 rule 8 of the Rules by the learned Chief Judge amounted to an omission which could be corrected by himself or by another Judge sitting in his stead must, of necessity, in the light of all I have hereinbefore on Questions 1 and 2, be answered in the affirmative.

In the first place; the learned Chief Judge had held, wrongly in my view that the failure of his predecessor to make an order for the payment of 10% interest on the judgment debt amounted to an omission which he could not, on the authority of *Bakare v. Apena* (1986) 4 NWLR. (Pt.33) 1, rectify. The court below also, erroneously in my judgment, endorsed the decision of the learned trial Judge. Thus when it held inter alia that:-

“On submission (b) it is clear that when the substantive judgment was delivered by the then Chief Judge in 1982 he did not mention that the judgment debt shall carry any interest. The learned trial Judge quite rightly held that an omission or error had occurred and that the court was functus officio. The case of Bakare v. Apena (1986) 4 NWLR (Pt.33) I was well cited by the learned trial Judge.

However, such omission or clerical mistake could be cured by means of an application brought before the Judge that delivered the substantive judgment or by this court on appeal against the omission or mistake.”

H It was wrong, in that based on the interpretation I had earlier on placed on Order 27 rule 8 (ibid), to wit: that the non-award of 10% interest at the time the judgment was delivered did not amount to an omission, as it statutorily applied automatically.

Assuming without conceding that the failure to award interest was an omis-

sion, I am of the view that such clerical mistake or omission could be cured, as the court below went on to demonstrate, on an application by way of motion. See *Hatton v. Harris* (1892) A.C. 547 where Lord Watson at page 560 of the Report said:

“When an error of that kind has been committed, it is always within the competency of the court, if nothing has intervened which would render it inequitable to do so, to correct the Record in order to bring it into harmony with the order which the Judge obviously meant to pronounce. The correction ought to be made upon motion to that effect, and is not a matter either for appeal or for re-hearing.”

As this Court, however, had occasion to distinguish in *Ashiyambi v. Adeniji* (1967) 1 All NLR 82 at page 90:-

“Learned counsel for the defendants invoked the inherent jurisdiction of the court to amend the judgment and order in this case after the filing of the formal order. That such jurisdiction exists is not open to debate but the circumstances governing its exercise are subject to judicial discretion.”

See also *Minister of Lagos Affairs, Mines & Power & Anor v. Akin Olugbade & ors.* (1974) 1 All NLR (Pt.2) 226; (1974) 11 SC.11 at 19 in which an application by way of motion brought before this Court for review of a previous judgment was refused since its prayers were held to have gone beyond the “Slip Rule” in that it raised issues of fact and law and not merely questions of any clerical errors either in the early judgment or in the formal order as drawn up in consequence of it. See further *Bakare v. Apena* (supra) and *Commissioner of Lands Mid-Western State of Nigeria v. Chief Francis Edo-Osagie & Ors.* (1973) 6 SC. 155. In the latter case, this court brought the distinction with the case in hand to the fore when at page 163 of the Report (per Fatayi Williams, J.S.C. as he then was) it held thus:

“We agree..... that the learned trial Judge having delivered his final judgment in Suit No.B/116/71 on 30th September, 1972, became functus officio with respect to that suit. Except for the making of ancillary orders such as orders for stay of execution of the judgment or for payment of a judgment debt by installments, for which there are statutory provisions; once a Judge has delivered a final judgment in a matter pending before him; he ceased to be seized of that matter and he cannot re-open it in an application made under a statute by one of the parties as has been done in the case in hand.” (Italics mine for emphasis).

Although the two cases above are not on all fours with the instant case, judgment having been entered on the undefended list thereon by the learned Chief Judge, it became an outstanding judgment debt to which Order 27 rules 8 of the Rules had full sway. Be that as it may, as the Judicial Commit-

tee of the Privy Council rightly, in my view, had occasion to point out in Milson v. Carter (1893) A.C. 638 at 640:

“The Court has power at any time to correct an error in a decree or order arising from a slip or accidental omission whether there is or is not a general order to that effect.”

B I therefore take the view that the court below was clearly in error in that part of its decision I had set out above at the inception of this judgment where it held that even though the non-award of interest was an omission, only the trial Judge could have corrected it. What one can imply from that conclusion is that where as in this case, the trial Judge was no longer a Judge
C of the High Court no other Judge could rectify omissions or clerical mistakes in the judgment to bring out the intended effect. No authority was cited by the court below for this proposition but such a power must of necessity flow from the inherent powers of the courts as recognised by section 6(6)(a) of the 1979
D Kano High Court by Section 236(1) of the same Constitution as an Institution and not to the individual Judges. Where a Judge who delivered a judgment for any reason is not available, another Judge in exercise of the general powers under sections 6(6)(a) and 236(1) of the Constitution (ibid) should be in as good a position as the Judge who delivered the judgment, to correct any
E palpable slips in the said judgment.

Thus, when the rule (rule 8 (ibid) in its clearness provided that:-

*“Unless otherwise ordered by the Court interest shall be paid on outstanding judgment debt at the rate of 10% from the date of judgment whether or not the judgment debtor is allowed time to pay or to pay by
F instalments.”* (Italics mine)

it could not have been the intention of the learned trial Chief Judge when giving the judgment in this suit on 29/11/82 to allow the respondent to escape from his just liability by refusing to pay the judgment debt indefinitely. For instead of paying the judgment debt immediately, the respondent herein
G only completed payment after four years - thereby depriving the appellant of its money and the interest it could have earned. See also Milson v. Carter (supra), Thus, in Jefford v. Gee (1970) 2 Q.B, 130 at 143, 144, the Court of Appeal in England opined that interest should be payable whenever money is wrongly withheld from the one who is entitled to it. The privy council on the
H other hand in Tak Ming Co, Ltd, v. Yee Sang Metal Suppliers Co. (1973) 1 All ER 561) (per Lord Pearson), included an order for interest separate from the judgment when it held inter alia:

“..... There were also factors in favour of making the order under the slip rule. The respondent had been kept out of their money

the balance due to them, for which the appellants have been held responsible - for several years and it is just that they should have interest on it.....
“

Having held as above that the case of Bakare v. Apena (supra) on which the trial court relied and as approved by the Court of Appeal, is not on all fours with the present case, if the court below was correct in saying that there was an omission by the trial Chief Judge, such an omission can surely be cured under the “*Slip Rule*” and the inherent jurisdiction of the court. This is because while in the Bakare v. Apena Case the learned Judge attempted to review matters of fact and law which had actually been decided upon, in the instant case on appeal, the question of interest had not been decided upon by the learned trial Chief Judge.

By virtue of Order 27 rule 8 (ibid), the Registrar whose duty it is to include 10% interest on all judgment debts “unless otherwise ordered,” is equally enjoined by section 104 of the Sheriffs and Civil Process Act, Cap. 189 (now Cap. 407) Laws of the Federation of Nigeria, 1990 (a statute applicable to the whole Federation) which stipulates as follows:-

“Any person in whose favour a judgment is given or made in a court of any State or the Capital Territory may obtain from the Registrar or other proper officer of such court a certificate of such judgment in the form and containing the particulars set forth in the Second Schedule or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such court.”

The above section would appear to obviate the difficulty posed by the lack of identical provisions in the Sheriffs and Civil Process Law Cap, 123 Laws of Northern States of Nigeria (as applicable to Borno State) where execution in the instant case, decided in Kano State, should be levied. Be that as it may, as earlier pointed out, the learned Chief Judge and the court below having held that there was an omission, whether it be that of the court, the Registrar or counsel, the two lower courts, in my judgment, had power which they ought to have exercised, to correct such omission on the appellant’s application. As was held in, *In Re Inchape (Earl of) Craigmyle v. Inchape* (1942) CH. 394 at 397:

“‘It is clear that, if a Judge’s attention is directed to a particular point and applying his mind to that point, he decides it, there can be no alteration under this Rule even if the Judge has fallen into manifest error. And at page 399:-” but there was an accidental omission on the part of counsel, and I did not make the order which I would have made if that accidental omission had not occurred. I am glad to find it possible to give this construction to the rule, as I think it is a rule of great convenience, and

in the present case real hardship would have resulted if I had not felt able to make the order asked for on this motion,”

Compare Nigerian General Superintendence Co. Ltd, v. The Nigerian Ports Authority (1990) 1 NWLR (Pt. 129) 741 at Page 748, where the Court of Appeal in upholding every court’s right to correct accidental slips and omissions that a judgment for the return of money is usually accompanied by an award of interest for the period for which it is claimed, held that in appropriate cases, where interest is awarded, though not claimed in the writ, it is in the nature of a consequential order. See also Umunna v. Okwuraiwe (1978) 6 SC. 1 at 9 and Order 8 rule 16 of the Supreme Court Rules 1985 as amended. The latter rule provides:-

‘The Court shall not review any judgment once given and delivered by it save to correct any accidental slip or omission, or to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the court decided or shall the operative and substantive part of it be varied and a different form substituted.’
(Italics mine for emphasis)

Question No. 3 is accordingly answered in the affirmative.

In the result, this appeal succeeds and it is allowed by me. The application made by the appellant for the amount of the outstanding judgment debt from 29th November, 1982 at 10% per annum interest until the date it was liquidated is hereby accordingly granted as prayed. There shall be costs of N1,000.00 payable by the respondent to the appellant.

F **BELGORE JSC**

The Court, once judgment is entered, cannot alter its decision. What can be altered is not as to the substance but as to minor errors whether of spelling or that of typographical, or in the form of mathematical error wherein correct figures can be entered. In matters of claim for debt, it is presumed that interest will be paid and once application is made for this, even after the judgment has been delivered to award interest is omitted in the judgment. I therefore agree for the fuller reasons in the judgment of my learned brother, ONU, J.S.C. that this appeal succeeds and I hereby also allow it with the same consequential orders.

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WALI JSC

I have read in advance the lead judgment of my learned brother Onu, J.S.C., and I agree with his reasoning that the appeal has merit and will be

allowed.

The wording of Order 27 rule 8 of the Kano High Court Civil Procedure Rules, 1976 is clear as regards the award of interest on an outstanding judgment debt. Its purport is - unless the Court giving judgment orders to the contrary, such outstanding judgment debt shall carry interest at the rate of 10% from the date it is given. In this case no such contrary order was given. It is therefore an omission which the Court can rectify where such interest was not awarded and an application to that effect was made. The learned Chief Judge should have granted the application brought on notice for award of the 10% interest.

I agree that the Court of Appeal was also wrong in affirming the trial Court's decision.

The appeal is allowed and the decisions of the trial Court and the Court of Appeal are set aside. In place thereon an order that the judgment debt shall carry interest at the rate of 10% per annum from 29th November, 1982 until it is liquidated is hereby substituted.

N1,000.00 costs is awarded to the appellant against the respondent in this appeal.

OGUNDARE JSC

The main question arising in this appeal is as to the correct interpretation of Order 27 rule 8 of the High Court (Civil Procedure) Rules 1976 of Kano State which provides:

"Unless otherwise ordered by the court, interest shall be paid on outstanding judgment debts at the rate of 10% from the date of judgment whether or not the judgment debtor is allowed time to pay or to pay installments."

Judgment had on 29/11/82 been entered by the Chief Judge of Kano State High Court in favour of the plaintiff (who is appellant in this appeal) against the defendant (now respondent) in the sum of N112,882.72 with costs. On 7/11/85, the plaintiff brought an application ex parte before the High Court praying that 10% interest be paid on the judgment debt from 29/11/82, the date of the judgment until the debt was wholly paid. The application was granted but on an application by the defendant to have the order set aside, the order for interest made on 7/11/85 was on 21/4/86 set aside by the court.

Undaunted, the plaintiff again on 15/7/86 applied to the Court by way of motion on notice brought under Order 27 rule 8 of the High Court (Civil

Procedure Rules) 1976 of Kano State

“To specifically order that 10% automatic interest be calculated and paid on the judgment debt and costs in this suit amounting to N113,032.72 from 29/11/82 until the whole amount has been fully paid.”

The learned trial Chief Judge of the State after hearing counsel for B the parties, on 8/10/86 dismissed the application. While holding that:

“According to my own understanding of the provisions of the Rules above quoted, the rate of 10% interest per annum is payable on any judgment debt unless a contrary order to that effect has been given by the court that has given that judgment.”

C He, however, went on to observe -

“The judgment in this case was given on the 29/11/82 by my predecessor in office without giving the 10% interest on the outstanding judgment debt and no contrary order to that effect has been given. This leads me to say that the provisions of the above order and Rule have not been complied with.

D *Consequently, and in my own considered opinion, this position amounted to an omission whose remedy, if any, will not be considered. It is my considered opinion and I so hold that by granting the order prayed for. I will be making addition to the judgment entered into on the 29/11/82.*

Posing the question:

E *“Is this court competent to make addition to bridge in the gap in the judgment already delivered in the open court?”*

the learned Chief Judge answered:

“It is indisputably clear once a judgment is delivered in the open court, the court or Judge delivering the same becomes functus officio’.

F The plaintiff appealed unsuccessfully to the Court of Appeal. In dismissing the appeal to it, that Court, per Aikawa J.C.A., after setting out the relevant rule, opined:

G *“The provisions of the above order taken by itself is clear and self explanatory, but the court in the exercise of its discretion can order otherwise. In the present case we are dealing with a situation where the trial Judge does not apply to and did not exercise his discretion in awarding 10% interest on the judgment debt. English cases on the interpretation of similar provisions for the award of Interest are irrelevant in view of the provision of section 29(1) of the High Court law which provides:-*

H *‘29(1) All Imperial Laws declared to extend or apply to the jurisdiction of the court shall in so far as they relate to any matter with respect to which the Legislature of Northern Nigeria is for the time being competent to make laws, be in force so far only as the limits of the local jurisdiction and local circumstances permit and subject to any of existing or future local*

legislation ..

The learned Justice of Appeal then held:

“Returning to the provision of Order 27 Rule 8 (supra) it is clear that payment of the 10% interest was not automatic as submitted by the respondent.”

On whether the omission to award interest could subsequently be cured, the learned Justice in his lead judgment observed:

“..... it is clear that when the substantive judgment was delivered by the then Chief Judge in 1982 he did not mention that the judgment debt shall carry any interest. The learned trial Judge quite rightly, held that an omission or error had occurred which could not be cured and that the Court was functus officio. The case of Bakare v. Apena (1986) 4 NWLR (Pt.33) 1 was well cited by the learned trial Judge. However, such omission or clerical mistake could be cured by means of an application brought before the Judge that delivered the substantive judgment or by this Court on appeal against the omission or mistake:

On what is to be contained in a certificate of judgment, the learned Justice said:

“... Section 104 (supra) provides:-

Any person in whose favour a judgment is given or made in a court of any Region or part of the Federation may obtain from the Registrar or other proper officer of such Court a Certificate of such judgment in the form and containing the particulars set forth in the second Schedule or as near thereto as the circumstance will permit.’

The said form set forth in the second Schedule states that the abstract of the judgment should contain, inter alia, the rate of interest (if any payable thereon. and the date from which it is possible (sic).

The Certificate of judgment in the present case does not show any rate of interest because when the said judgment was delivered no interest was made payable on it. Therefore I am of the opinion that the Registrar is not bound to include 10% interest on this judgment.”

Achike J.C.A. in his concurring judgment observed:

“This (sic) provisions (Order 27 Rule 8) show that in certain circumstances the court has some discretionary powers to order or refuse to award interest on a judgment debt. But where the court declines to interfere with a request for interest on judgment debt the rule seems to make it mandatory that judgment debt would attract interest which is stipulated on the above rule. Interest on a judgment debt is in away, similar to award of costs except that award of costs in so far as the proper principle in this regard is

applied, is a matter entirely at the discretion of the court and generally

award of costs is not appealable unless the award palpably amounts to an abuse of the court's discretion:"

(brackets are mine)

Later in his judgment, the learned Justice of appeal held:

"My understanding of the rule is, barring circumstances where the court makes a specific order with regard to award of interest on judgment debt, the court is under a duty to award interest at the prescribed rate if requested to do so by the successful judgment creditor. It cannot be otherwise."

On whether a judgment-creditor could after judgment apply to the court for interest: the learned Justice opined:

"The bone of contention here, however, is, whether for any reason whatsoever that prompted a judgment-creditor to decline in expressly asking for the order of court for interest on the judgment debt, the judgment-creditor could subsequent to the judgment apply to the court to decree an interest on the judgment. In my view, since on delivery of its judgment the court generally becomes functus officio it is no longer possible for the trial judgment (nor any judge of the same jurisdiction) to re-open the trial and consider any application for award of interest on the judgment debt. Since an order relating to award of interest on a judgment debt is always linked to a judgment, the successful plaintiff in the suit is entitled, as of right and in his discretion, to urge the court for award of interest on the judgment debt or in fact decline to make such application."

The plaintiff has further appealed to this Court upon 7 grounds of appeal and has set out in his written Brief of Argument the following questions for determination:

"(a) Whether the Court of Appeal was right in holding that order 27 rule 8 of the Kano State High Court (Civil Procedure) Rules 1976 did not provide for a mandatory award of 10% interest on all judgment debts unless otherwise ordered by the trial Chief Judge.

(b) If the answer to question No. 1 is in the negative whether the judgment creditor must, in each case, specifically ask for an award of interest.

(c) Whether the non application of order 27 rule 8 of the Kano State High Court (Civil Procedure) Rules 1976 by the learned trial Chief Judge amounted to an omission which could be corrected by himself or by another Judge sitting in his stead."

I shall consider them together.

It is the contention of the plaintiff that Order 27 rule 8 under consid

eration, in its proper construction means 1. 10% interest shall be paid on all judgment debts from the date of judgment:

2. The court in its discretion, may order otherwise than (1) above and

3. That where the court fails to exercise its discretion in favour of the judgment debtor as in (2) above, then the mandatory 10% interest shall remain to be paid and is automatic.

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It is further submitted in the appellant's Brief that the discretion of the trial court relates only to order otherwise but not to order that interest should be paid. It is finally submitted on this issue that "*as Order 27 rule 8 awards a mandatory 10% interest per annum on every judgment debt from the date it was delivered, a judgment creditor need not apply for it. The party who may apply that the otherwise be ordered should be the judgment debtor. If the trial court fails to exercise its discretion in favour of the judgment debtor then the addition of 10% interest should be merely an administrative duty for the Registrar of that court to perform ...*"

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On the application of English cases, it is submitted that the Court of Appeal was in error in holding that Section 29(1) of the High Court Law of Northern Nigeria ousted any reference to, or reliance on English cases. It is submitted on issue (c) that the non-award of 10% interest at the time the judgment was delivered, did not amount to omission as it applied automatically. It is the further submission of the plaintiff that in view of the provisions of order 27 rule 8 the Registrar was bound to include 10% interest on all judgment debts "unless otherwise ordered" The non-inclusion of the interest in the certificate of judgment issued by the Registrar was an omission which the High Court had power to correct.

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It is submitted on behalf of the defendant that the judgment of the High Court delivered on 19/11/82 determined the issues in dispute between the parties herein and as it did not provide for award of interest the court would have no jurisdiction to grant the plaintiffs prayer for interest. It is further argued that at the time plaintiff brought his application the judgment debt having been paid there was no longer any outstanding judgment debt upon which interest of 10% could be charged as provided in Order 27 rule 8.

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It is not difficult to resolve the main issue in this appeal which is the construction to be placed on Order 27 rule 8 of the High Court (Civil Procedure) Rules 1976, of Kano State. The rule is very clear and unambiguous. Unless the court otherwise orders: a judgment debt carries 10 per centum per annum interest from the date of judgment until it is liquidated by the judgment-debtor. The principle behind the rule seems to me to be to provide incentive to judgment debtors for the speedy payment of judgment-debts and to

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ensure that judgment creditors do not suffer much detriment as a result of a delay in the settlement of judgment debts. The wording of the rule clearly shows that the judgment automatically carries interest at 10 per centum per annum until it is satisfied. The rule however, gives the court a discretion to order otherwise. In my respectful view, this discretion is a veto which the trial court may exercise to direct that no interest be paid on a judgment debt, or to order that a lesser interest be paid. Where he does not give any direction or where the judgment is silent as to payment of interest on the judgment debt, the judgment debt automatically carries interest at the rate fixed by the rule, that is, 10 per centum per annum from the date of the judgment.

To this extent I agree with the learned trial Judge's construction of the rule and uphold the submissions made on behalf of the plaintiff. And with profound respect to their Lordships of the court below, they are clearly in error when they held that payment of interest under Order 27 rule 8 was not automatic. There clearly is a difference between award of interest pre-judgment where plaintiff must specifically claim such and prove it and the award of interest on a judgment-debt which is purely statutory and can only be awarded if there are provisions to that effect in the law or rules of the court. The Court below, with respect, seemed to have confused the claim for interest here with a claim for interest on a monetary claim pre judgment. And the analogy drawn in the judgment of Achike J.C.A., with the award of costs is, with respect, not just apposite.

Both the trial court and the Court below were of the view that failure to award post-judgment interest in the main judgment of 29/11/82 was an omission that could not be rectified by the trial court except on appeal. I regret I cannot agree with the two courts below. As stated earlier, the award of interest on a judgment debt is, by Order 27 rule 8, automatic and does not necessarily require a specific pronouncement in the judgment. Where this is made it is only pronouncing the obvious. *Surplusagium non nocet*. The Registrar of the trial court, on application made to him under section 104 of the Sheriffs and Civil Process Act. Cap. 407 Laws of the Federation of Nigeria, 1990, ought to issue a certificate of judgment in the form provided in the Second Schedule to the Act and state thereon the interest of 10 per centum per annum from the date of judgment, as provided for in Order 27 rule 8.

Following the refusal of the High Court of Borno State to enforce, by execution, the claim of the plaintiff for interest from the date of judgment on the ground that the certificate of judgment was silent as to the plaintiff's entitlement to such interest, the plaintiff did what I consider the proper thing

to do and that is to apply to the High Court of Kano State in the terms of the present application. That court had jurisdiction to grant the prayer which was no more than to enforce plaintiff's statutory right to interest on a judgment debt. He was not, as the courts below saw it, seeking an addition to the substantive judgment. The trial court was, therefore wrong to refuse the prayer and the court below was equally wrong to affirm that refusal.

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It is contended for the defendant that as the judgment debt had been fully repaid before plaintiff made his application there was no outstanding judgment debt upon which interest could be charged as provided in Order 27 rule 8. This argument over-looks the fact that the rule made interest payable from the date of judgment until the judgment debt is fully paid. The accumulated interest from 29/11/82 when judgment was delivered and the date when the debt was paid would still be owing by the defendant.

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About the most disturbing aspect of the judgment of the court below is the decision that section 29(1) of the High Court Law of Northern Nigeria had rendered the application of English cases irrelevant in Nigeria. Section 29(1) provides:

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"29(1) All imperial laws declared to extend or apply to the jurisdiction of the court shall, in so far as they relate to any matter with respect to which the legislature of Northern Nigeria is for the time being competent to make laws, be in force so far only as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future local legislation."

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It is submitted in the appellant's Brief thus:

"This section with respect, cannot be an authority for the proposition put forward by the learned justices of the Court of Appeal. It is of elementary learning in this country that judgments by courts of other jurisdictions on issues similar to those which a court is called upon to pronounce in this country are relevant and at least of persuasive authority. See Adigun v. A-G. of Oyo State (No.2) (1(87) 2 NWLR (Pt. 56) 1970."

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I agree entirely with the submission. It is the mildest reproach one can make of that part of the lower court's judgment. I will rather not say anything more. For my part, I have considered the various English authorities cited in appellant's Brief and I find them very useful in the determination of this appeal. On the construction of Order 27 rule 8 which is in pari material with section 20 of the English Arbitration Act, 1950 I find the dissenting judgment of Edmond Davies L.J. in London & Overseas Freighters Ltd. v. Timber Supply Co. S.A. (1971) QB 268 more persuasive than the majority decision of Salmon and Phillimore L.JJ., and I have followed it in this case.

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For the reasons I have given above I agree with the conclusion reached by my learned brother Onu, J.S.C. (whose judgment I have read before now) that this appeal succeed. It is allowed by me, I set aside the decision of the two courts below and grant plaintiff's application dated 15th day of July, 1986. It is ordered as prayed in the motion. I award to the plaintiff costs of
B this appeal as assessed by m learned counsel, Onu, J.S.C.

OGWUEGBUJSC

I have had a preview of the judgment of my brother, Onu, J.S.C. in
C this appeal. I agree with him that the appeal has merit and ought to succeed.

The principal issue for consideration in this appeal is the proper construction of Order 27, rule 8 of the Kano State High Court (Civil Procedure) Rules, 1976, which reads:

*"Rule 8: Unless otherwise ordered by the Court interest shall be
D paid on outstanding judgment debt at the rate of 10% from the date of judgment whether or not the judgment debt is allowed time to pay or to pay by instalments."*

In this case, the learned trial Chief Judge on 29:11:82 gave judgment for the plaintiff for the sum of N112,882.72 with costs. He made no order as to
E the payment of interest on the judgment debt. The plaintiff subsequently filed an application to the High Court under Order 27 rule 8 of the Kano State High Court, (Civil Procedure) Rules, praying the court:

*"To order that 10% automatic interest be calculated and paid on
F the judgment in this suit amounting to N114,037.72 until the whole amount has been fully paid."*

The application was refused by the learned trial Chief Judge on the ground that he was functus officio having delivered the judgment in open court.

The plaintiff who was dissatisfied with the ruling appealed to the
G Court of Appeal, Kaduna Division. That court dismissed the appeal. There is a further appeal to this court.

In my view, the consequence Order 27, rule 8 is that, unless the court of trial orders to the contrary, a judgment debt carries interest at the statutory rate of 10% from the date of judgment. It is immaterial whether the judgment
H debtor is allowed time to pay or by instalments. Since the learned trial Chief Judge did not make any order at all to the payment of interest, he cannot be said to have exercised his discretion under Order 27, rule 8.

The effect is that the rule places on the judgment debtor a statutory

duty to pay interest on the judgment debt at the rate of 10% from the date of judgment unless there is a direction to the contrary.

Two English statutory provisions on the payment of interest on judgment debts and awards are relevant in this case and the constructions placed on them by the English courts are persuasive. These are section 17 of the Judgments Act, 1838 and section 20 of the Arbitration Acts, 1950.

“Section 17 every Judgment Act, 1838:

“Section 17..... every judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment untilsame shall be satisfied.....

Section 20 of the Arbitration Act, 1950:

“Section 20. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.”

The above statutory provisions were construed in the cases of *The Myron* (1970) 1 Q.B. 527 and *London Overseas Freighters Ltd. v. Timver Shipping Co. S.A.* (1971) 1 Q.B. 268. While construing section 20 of the Arbitration Act, 1950, the Court of Appeal in the latter case held as follows:

“One thing, however, is, at any rate, clear it gives an arbitrator the power to exercise a discretion which a Judge does not possess. A Judge has no power to say anything about interest after Judgment. The judgment automatically carries interest at 4 per cent per annum until is satisfied. So does an award “unless the award otherwise directs.” Has the arbitrator a power to direct that the sum awarded shall carry what he considers to be reasonable interest, or is his power limited to ordering that it shall carry no interest or interest at less than 4 per cent until such time as it shall be satisfied? Accordingly, I do not think that Parliament when dealing with the interest which should be payable from the date of an award and giving the arbitrator a discretion in relation to such interest, can have intended to fetter that discretion by restricting the arbitrator to directing that no or less than 4 percent interest should be paid in such cases.”

(Italics is mine for emphasis)

The failure of the learned trial Chief Judge to make an order as to payment of interest is to my mind, an accidental omission. That issue was not adjudicated by the learned trial Chief Judge. He had jurisdiction to make the order that 10% interest be paid on the judgment debt from the date of judgment and the application was properly before him. The mistake ought to have been corrected as a matter of course. Clerical mistakes in judgments and orders or errors arising therein from any accidental slip or omission, may, at any

time be corrected by the court on a motion without appeal.

The requirements of the slip rule are satisfied in this case and the court is not precluded from making an order under the slip rule since nothing has intervened which would render it inexpedient or inequitable to do so. There is no such factor in this case. See *Moore v. Buchanan* (1967) 3 All ER. 273. *Hatton v. Harris*, (1892) A.C. 547 at 560 and *Tak Ming Co. Ltd. v. Yee Sang Metal Supplies Co.* (1973) 1 All E.R. 569.

In *Sabbagh & Sabbagh v. Bank of West Africa Ltd.* (1966) All NLR 234 (Reprint) and *National Employers Mutual General Insurance Association Ltd. v. Ladun Martins* (1969) All NLR 469 (Reprint). This court applied the provision of section 17 of the judgment Act, 1838 and Order 46, rule 7 of the Supreme Court (Civil Procedure) Rules, 1945 which was applicable in Lagos. Order 46, rule 7 reads as follows:

"The court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done reckoned from the date of the judgment or order..... as the court may think fit, and may order interest at a rate not exceeding five pounds per centum per annum to be paid upon any judgment, commencing from the date thereof or afterwards."

In both cases, this court applied the provision of section 17 of the Judgment Act, 1838 in affirming the judgment for the payment for interest at the rate of 4% per annum in the latter case and in varying the rate of interest from 5% per annum to 4% per annum in the earlier case. The courts below were in error not to have corrected this accidental omission.

For the reasons given above and the fuller reasons given in the lead judgment of my brother Onu, J.S.C. I allow the appeal and set aside the judgment of the courts below. It is hereby ordered that interest shall be paid to the plaintiff/appellant on the outstanding judgment debt from 29:11:82 at 10% per annum until the judgment debt is satisfied. The appellant is entitled to the costs of this appeal which I assess at N1,000.00.

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