

HIGH COURT OF AUSTRALIA

EDELMAN J

SOLOMONE TUBERI

PLAINTIFF

AND

FEDERAL COURT OF AUSTRALIA & ANOR

DEFENDANTS

[2025] HCASJ 46

Date of Judgment: 4 December 2025

M6 of 2021

ORDERS

1. *The orders made on 25 August 2022 by Edelman J in these proceedings, and authenticated on 12 February 2025, be varied as follows:*
 1. *The plaintiff's application for constitutional or other writs, filed on 22 January 2021, be dismissed.*
 2. *The plaintiff pay the costs of the second defendant.*

Representation

The plaintiff is unrepresented

No appearance for the first defendant

The second defendant is represented by Australian Government Solicitor

EDELMAN J.

The slip rule and this case

1 This application concerns the "slip rule" in r 3.01.2 of the *High Court Rules 2004* (Cth). The slip rule provides that "[t]he Court or a Justice may, at any time, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission".

2 On 25 August 2022, I delivered judgment in this matter in open court. I directed that my reasons for decision be incorporated into the transcript. As part of those reasons for decision, I stated that the order would be that the "application should be dismissed with costs under r 25.09.01 of the *High Court Rules 2004* (Cth)". But in the course of pronouncing orders, I stated only that "[t]he application for constitutional or other writs, filed on 22 January 2021, be dismissed". Mea culpa.

3 On 12 February 2025, the solicitors for the second defendant, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, which was the only active defendant in the proceeding, sought (and obtained) authentication of the orders by this Court. Consistently with my erroneous pronouncement in open Court, the solicitors did not seek costs in their draft proposed order for authentication. Although the solicitors characterise this omission as their own erroneous failure, it is better described as a failure that was the consequence of the erroneous manner in which I pronounced the orders in open court. On 10 October 2025, after noticing that my reasons provided for the payment of costs, the solicitors brought this application, under the slip rule, to vary the authenticated orders so as to provide for a further order that the plaintiff pay the costs of the second defendant.

The legal principles applicable to the slip rule

4 As this Court said in relation to the near-identical predecessor to the present slip rule, the rule is in an old and traditional form of so-called "inherent jurisdiction"¹ being a power "at any time to correct an error in a decree or order arising from a slip or accidental omission".² The rule applies even if the order has been perfected or authenticated and operates upon slips and accidental omissions

1 See *Queensland v Stradford* (2025) 99 ALJR 396 at 468 [300]; 421 ALR 376 at 461; *Minister for Immigration and Multicultural Affairs v MZAPC* (2025) 99 ALJR 486 at 503 [57]; 421 ALR 483 at 503 ("that arises like a ghost in the machine of Parliament's creation").

2 *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2]* (1982) 151 CLR 590 at 594, quoting *Milson v Carter* [1893] AC 638 at 640.

by either or both of the court or the legal representatives of the parties (or the party themselves if unrepresented).³

5 Putting to one side instances of "clerical mistake", the only jurisdictional facts that must exist for the power to correct slips to be enlivened are: (i) the presence of an error in a judgment or order; and (ii) the error being a consequence of an accidental slip or omission. The second criterion contrasts with the essential deliberative choice made, the "substance of the result that was reached and recorded".⁴ Nevertheless, there is no closed class of slips that can be corrected and even a slip with very significant consequences can be corrected; in *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2]*,⁵ the slip was a failure to seek interest on the judgment sum which would increase the amount awarded by more than 30 per cent and in *The Commonwealth v McCormack*,⁶ the slip was a failure to seek restitution of the amount paid in satisfaction of a judgment that was later reversed.

6 The slip rule is discretionary and "not available as a matter of course".⁷ It has been said to be a power that is "to be exercised sparingly, lest it encourage carelessness by a party's legal representatives and expose to risk the public interest in finality of litigation".⁸ For instance, factors that weigh against the exercise of discretion include "if something has intervened which would render it inexpedient or inequitable that it be made"⁹ or if there is a serious delay, particularly one which is not explained by evidence that the application for correction of the error was

3 See *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2]* (1982) 151 CLR 590 at 594-595. See also *The Commonwealth v McCormack* (1984) 155 CLR 273 at 277.

4 *Burrell v The Queen* (2008) 238 CLR 218 at 224-225 [21]; *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* (2015) 90 ALJR 224 at 226 [8]; 327 ALR 41 at 43-44.

5 (1982) 151 CLR 590.

6 (1984) 155 CLR 273.

7 *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2]* (1982) 151 CLR 590 at 597.

8 *Achurch v The Queen* (2014) 253 CLR 141 at 154 [18], quoting *Gould v Vaggelas* (1985) 157 CLR 215 at 275; *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* (2015) 90 ALJR 224 at 226 [8]; 327 ALR 41 at 44.

9 *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2]* (1982) 151 CLR 590 at 597, citing *Tak Ming Co Ltd v Yee Sang Metal Supplies Co* [1973] 1 WLR 300 at 306; [1973] 1 All ER 569 at 572.

made soon after its discovery.¹⁰ One factor which weighs strongly in favour of the exercise of discretion is where the error is plain or obvious. The obvious nature of the error has two consequences. First, it militates against any possibility that a delay might have been the product of forensic choice. Secondly, it is a lesser inroad into the principle of finality, with which the slip rule is in tension, for the correction of an error that is obvious than for the correction of an error that can only be established by significant argument.

Application of the slip rule in this case

7 As my 25 August 2022 reasons for decision make clear, there was an obvious error in the order which I pronounced orally. The error was the omission of an order for costs. Although there was a substantial delay between the pronouncement of orders by the Court and this application, the discretion to apply the slip rule has considerable support from the obviousness of the error based on the reasons for judgment combined with the action by the second defendant's legal representatives to bring this application without substantial delay following the discovery of the error after obtaining the authenticated orders. The plaintiff has not pointed to any prejudice arising from the delay.

8 The application for correction by the slip rule, and affidavit in support, were brought to the notice of the plaintiff by email to the plaintiff's registered email address. By direction of the Court, the second defendant was also required to make brief submissions to alert the plaintiff to the basis of the application, and the plaintiff was given a period in which to provide any brief submissions in response. The plaintiff was notified of these directions by email from the Registry of this Court. After the second defendant's submissions were filed two days late due to technical difficulties, an email was sent by the Registry to the recorded email address for the plaintiff informing the plaintiff that the period for the plaintiff to make any response had been extended by two days. The plaintiff did not respond. The Registry also attempted to contact the plaintiff via his last known telephone number, but that number had been disconnected. No further details for the plaintiff could be obtained from the second defendant to assist the Registry in contacting the plaintiff.

Orders

9 Without any order for the costs of this application, the orders made on 25 August 2022, and authenticated on 12 February 2025, should be varied by orders as follows:

10 *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2] (1982) 151 CLR 590 at 597.*

The orders made on 25 August 2022 by Edelman J in these proceedings, and authenticated on 12 February 2025, be varied as follows:

1. The plaintiff's application for constitutional or other writs, filed on 22 January 2021, be dismissed.
2. The plaintiff pay the costs of the second defendant.