



**Hanspal (Suing as the son and legal representative of the Late Inderjit Singh Hanspal) v Hanspal & another (Being sued as the daughters and legal representatives of the Estate of the Late Davinder Singh Hanspal) (Environment & Land Case 1218 of 2013) [2023] KEELC 18512 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 18512 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1218 OF 2013  
LC KOMINGOI, J  
MARCH 16, 2023**

**BETWEEN**

**VIJAY HANSPAL ..... PLAINTIFF  
SUING AS THE SON AND LEGAL REPRESENTATIVE OF THE LATE  
INDERJIT SINGH HANSPAL**

**AND**

**JASPRIYA KAUR HANSPAL ..... 1<sup>ST</sup> DEFENDANT  
SACHNA KAUR HANSPAL ..... 2<sup>ND</sup> DEFENDANT  
BEING SUED AS THE DAUGHTERS AND LEGAL REPRESENTATIVES OF  
THE ESTATE OF THE LATE DAVINDER SINGH HANSPAL**

**RULING**

1. This is the Notice of Motion dated 27<sup>th</sup> June 2022 brought under Section 99 of the [Civil Procedure Act](#) and order 51 Rule 1 of the Civil Procedure Rules and under the inherent jurisdiction of this honourable court.
2. It seeks orders:-
  1. Spent.
  2. That the following clerical and/or clerical mistakes in the Judgement dated 12<sup>th</sup> May 2022 be correct as follows:-
    - a. Paragraph 17 and 111 of the judgment – the valued monthly rent in 2013 be corrected to read Kenya shillings Three Hundred and Forty Five Thousand Five Hundred and



Thirty Five (Kshs.345,535) at page 8 of the Amazon Valuers Report dated 12<sup>th</sup> October 2020 being part of the Plaintiff's bundle of documents dated 19<sup>th</sup> October 2022.

- b. Paragraph 116: The rent payable in 2013 be corrected to read Kenya Shilings Three Hundred and Forty Five Thousand, Five Hundred and Thirty Five (345,535/=) at page 8 of the Amazon Valuers Report dated 12<sup>th</sup> October 2022 being part of the Plaintiff's bundle of documents dated 19<sup>th</sup> October 2022.
  - c. Paragraph 116: The total rent the plaintiff was entitled to at the time of the Judgment be corrected to read Kenya Shillings Thirty Six Million Nine Hundred and Seventy Two Thousand Hundred and Forty Five (Kshs36,972,245/=).
  - d. Paragraph 117 (c): The mesne profits the plaintiff is entitled to read Kenya Shillings Thirty Six Million Nine Hundred and Seventy Two Thousand Two Hundred and Forty Five (Kshs.36,972,245/=).
  - e. Paragraph 90 line 4:- replace "Alcon International Limited" with Alcon Holdings Limited".
3. Costs be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 10.
  4. The Application is supported by the affidavit of Jared Omari Mituga Advocate of the Plaintiff sworn on the 27<sup>th</sup> June 2022.
  5. The Application is opposed. There are grounds of opposition filed on behalf of the Defendants/ Respondents dated 7<sup>th</sup> July 2022.
  6. On the 26<sup>th</sup> July 2022, the court with the consent of parties directed that the notice of motion be canvassed by way of written submissions.

### **The Plaintiff's Submissions**

7. They are dated 9<sup>th</sup> August 2022. It is submitted that page 8 of the valuation report where the figures have been derived from, the rent payable in 2013 is Kshs.345,535/= and not the Kshs.245,345/= that was applied in computation of mesne profits.
8. It is also submitted that there is an error in paragraph 116 of the court's judgment where the court takes rent payable in 2013 according to PW3 as Kshs245,345/- in stead of Kshs.345,535/= and applied that erroneous figures of Kshs.245,345 to compute mesne profits payable as Kshs.245,345/= Kshs.26,215,916/- instead of the correct figure of Kshs.345,535 X107 = Kshs.36,972,245/=. He has put forward the cases of Moses Rugut vs Philip Kipngeno & Another [2017] Eklr; R vs Cooperative Tribunal & 2 Others Exparte Mawasiliano Cooperative Savings & Credit Society Limited [2013] eKLR; Margaret Mugure Njuguna (Suing as the Personal Representative of the Estate of Dennis Moimbo Ongayo) vs John Ndungu Gathera [2013] eKLR.
9. It is further submitted that the court recorded the wrong figure on the rent payable in the year 2013 in the course of analyzing PW3's evidence on cross examination. He has put forward the case of Margaret R. Rwambua & Another vs Mugambi Muketha [2001] KLR; Synergy Industrial Credit Ltd vs Cape Holdings Ltd [2021] eKLR.



10. It is submitted that the mistake falls for correction under section 99 of the *Civil Procedure Act*. The other correction at paragraph 90 of the Judgment is a clear clerical error. He prays that the application be allowed with costs

### **The Defendants' Submissions**

11. They are dated 17<sup>th</sup> August 2022. They raise one issue for determination; whether the application has met the requirements for correction of clerical mistakes.
12. Reliance is placed on section 99 of the *Civil Procedure Act*. It is submitted that the figure flagged in paragraphs 17, 111 and 116 of the judgment correctly reflect the court conscious decision based on its appreciation of the evidence and cannot pass as an error apparent on the face of the record.
13. They have put forward the case of Republic vs Attorney General & 15 others; Fredrick Otieno Outa vs Jared Odoyo Okello & 3 Others [2017] eKLR; Sanitam Services EA Limited vs Rentokil (K) Limited & Another [2019] eKLR.
14. It is further submitted that the error must be apparent and self-evident. They have put forward the cases of National Bank of Kenya Limited vs Ndungu Njau [1997] eKLR; Anthony Chelimo vs Kenya Commercial Bank Limited [2020] eKLR.
15. It is also submitted that the Plaintiff has gone as far as analyzing and reevaluating the evidence in his submissions in order to establish the alleged mistake. Re-evaluation of evidence is exclusively the jurisdiction of the appellate court of first instance. It has a duty to analyse, reconsider and re-evaluate the entire evidence on record so as to satisfy itself as to the correctness or otherwise of the decision of the trial court. They have put forward the cases of Patrick Kilonzo vs Teachers Service Commission [2015] eKLR; Francis Origo vs Jacob Kumah Mungala CA 149/2001.
16. It is submitted that this court became functus officio on 12<sup>th</sup> May 2022 when it pronounced judgment save for proceedings of amendment of judgement, decree under section 99 of the *Civil Procedure Act*. They have put forward the cases of John Gilbert Ouma vs Kenya Ferry Services Limited [2021] eKLR; Raila Odinga & 2 Others vs IEBC & 3 Others [2013] eKLR.
17. They pray that the court finds that there is no error apparent on the face of the record and that there is no clerical or arithmetic mistake in the judgment or error arising to warrant a review of the judgment under section 99 of the *Civil Procedure Act*. They pray that the application be dismissed with costs.
18. I have considered the notice of motion and the affidavit in support. I have also considered the grounds of opposition, the written submissions and the authorities cited. The issue for determination is whether this application is merited.
19. Section 99 of the *Civil Procedure Act* provides that:-

“ Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties”.
20. In the case of National Bank of Kenya Ltd vs Ndungu Njau [1997] eKLR the Court of Appeal held that:-

“ A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a



sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.....” the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.”.

21. PW3, Herbert Mwangi Kamau when he was cross examined by the Defendants’ counsel stated;

“Rent from 2013; monthly rent Kshs.245,535/=. I got this from documented rental comparables”.

22. In paragraph 116 of the judgment this court stated:

“The suit property is located in Lavington area which is a high end estate. I will however take the rent payable in the year 2013 in considering the rent payable. PW3 never went inside to assess the state of the house from the inside. I will take Kshs.245,345/= as the rent payable. The Plaintiff would then be entitled to Kshs.245,345/= x107 months = Kshs.26,251,916/ =.”

23. I am satisfied that there is no error apparent on the record to warrant nay corrections by this court.

24. The figure being stated by the Plaintiff to be correct one, which is Kshs.345,535/= only appears in the valuation report. This court after considering PW3’s evidence took Kshs.245,345 as the rent payable.

25. I find that there is no clerical or arithmetic mistake to be corrected in respect of paragraphs 111 and 117.

26. Paragraph 90 of the judgment is however, corrected in line 4 to read Alcon Holdings Limited instead of Alcon International Limited.

27. In conclusion I find no merit in the application and the same is dismissed. Each party do bear own costs.  
It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16<sup>TH</sup> DAY OF MARCH 2023.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

No appearance for the for the Defendants

Mutisya- Court Assistant

**NAIROBI ELC NO.1218 of 2013 Page 5**

