



**Horeria v Weru & another (Environment & Land Case
756 of 2012) [2025] KEELC 1485 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1485 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 756 OF 2012
CA OCHIENG, J
MARCH 20, 2025**

BETWEEN

JAMES KIMANI HORERIA PLAINTIFF

AND

JOHN MWAGO WERU 1ST DEFENDANT

TOWN CLERK NAIROBI CITY COUNCIL 2ND DEFENDANT

RULING

1. What is before this Court for determination is the Plaintiff's Chamber Summons application dated the 13th September 2024, which is brought pursuant to Sections 3A, 99 and 100 of the *Civil Procedure Act* including Order 9 Rule 10 and Order 51 of the Civil Procedure Rules. The Plaintiff seeks the following Orders:
 - a. Spent.
 - b. That the name of the 2nd Defendant/Judgment debtor be corrected to read; "Nairobi City County Government" instead of "The Town Clerk Nairobi City Council", to facilitate execution of the decree after the judgment.
 - c. That the costs of this application be provided for.
2. The application is premised on grounds on its face and on the supporting affidavit of James Kimani Horeria where he explains that he filed this suit vide a Plaint dated the 25th October 2012 against the 2nd Defendant before the Transition Authority had come into force to transit all suits filed under the Local Government Act (Repealed), to the devolved government.
3. He avers that, in the course of proceedings, he filed a Notice of amendment of the 2nd Defendant's name under Order 9 Rule 10 of the Civil Procedure Rules and served it on the Defendants', notifying them of the hearing on 2nd December 2014. He contends that on the said date, he appeared together



with his Advocates before Hon. Justice Okong’o and in the presence of the Defendants Advocate’s, the Hon. Judge pronounced that he had effected the amendment of the 2nd Defendant’s name to “Nairobi City County Government”. He annexed a copy of the cause list for 2nd December 2014, in which the matter was listed before Hon. Judge Okong’o. He attributed the failure to correct the 2nd Defendant’s name on the court for failing to record the amendment and argued that mistake of court should not be visited upon him.

4. The Plaintiff explained that the hearing of this suit was conducted by Hon. Lady Justice Christine Ochieng, who was on service week from Kajiado. Further, that she directed parties to file submissions, of which the 2nd Defendant filed submissions dated the 13th February 2019 in its name as Nairobi City County and in her judgment of 16th December 2019, the Hon. Lady Justice Christine Ochieng directed the 2nd Defendant as it is today (Nairobi City County Government), to issue him with a Beacon Certificate.
5. He contends that after delivery of judgement, his advocates sent a draft Decree to the 2nd Defendant’s advocates for approval but she refused to approve stating that the suit was filed against Town Clerk Nairobi City Council and not Nairobi City County Government. He urges the court to correct the heading of the judgment issued herein to read “Nairobi City County Government”, in accordance with Section 99 and 100 of the [Civil Procedure Act](#), adding that the correction will not occasion any prejudice to the 2nd Defendant.
6. The application is opposed by the 2nd Defendant vide Grounds of Opposition dated the 11th July 2024. It contends that the application seeks to amend pleadings by incorporating new facts into an already determined suit. It avers that no court proceedings took place on 2nd December 2024 and that the application offends provisions of Section 25 and 27 of the [Civil Procedure Act](#); Order 1 Rule 3 and 4; Order 3 Rule 1(1); Order 4 Rule 1 (c) and Order 21 Rule 1, 4, 7 and 8 of the Civil Procedure Rules and intends to impose costs on a party, not party to proceedings.
7. The application was canvassed by way of written submissions.

Submissions

8. In its submissions, the Plaintiff reiterates his averments in support of the instant Chamber Summons application and relied on the case of *Steve Onyango v Techspa General Supplies Ltd & 2 Others* [2020] eKLR to argue that this court has power to reopen the case for the limited purpose of correcting the 2nd Defendant’s name. He contends that no hardship would be visited upon the 2nd Defendant since the trial judge laid all blame on it.
9. The 2nd Defendant submits that the amendment of pleadings does not lie under Section 99 and 100 of the [Civil Procedure Act](#) as the provision is limited to correction of clerical errors, arithmetical mistakes, calculations of interest, wrong figures/dates and that parties are bound by their own pleadings. To this end, the case of *Steve Onyango v Techspa General Supplies Ltd & 2 others* [2020] eKLR as well as the case of *Daniel Otieno Mogire v South Nyanza Sugar Co. Ltd* [2018] eKLR were cited to support the 2nd Defendant’s arguments. It reiterated that there is nowhere in the proceedings that that the Plaintiff attempted to amend the name of the 2nd Defendant as alleged.

Analysis and Determination

10. Upon consideration of the instant Chamber Summons application, Grounds of Opposition, supporting affidavit and rivalling submissions, the only issue for determination is whether the 2nd Defendant’s name should be amended to read ‘Nairobi City County Government’.



11. The Plaintiff calls on this court to exercise its discretion under Sections 3A, 99 and 100 of the *Civil Procedure Act* and correct the 2nd Defendant's name on the judgment issued on 16th December 2019 to read "Nairobi City County Government". On its part, the 2nd Defendant has vehemently opposed the instant application vide its Grounds of Opposition.
12. I note Judgment was entered for the Plaintiff in this matter on 16th December 2019, which is about five (5) years ago. It appears that the Plaintiff has been unable to execute the Decree herein. The Plaintiff claims he filed a Notice of Amendment of the 2nd Defendant's name dated the 18th November 2014 and served it on both Defendants. Further, he insists that the same was allowed by Hon. Justice Okong'o on 2nd December 2014 and annexed a copy of a cause list indicating that the matter was listed on the said date, however, proceedings of this court, which the court has carefully examined, have no such record.
13. On perusal of the Plaint dated the 25th October 2012, I note that the 2nd Defendant is described as a 'local authority established under the provisions of the Local Government Act, Cap 265 of the Laws of Kenya; I note that messrs Murugugu, Rigoro & Company Advocates signed off as advocates for 2nd Defendant described as "Nairobi City County" in its submissions dated the 13th February 2019. This in essence means they were representing the Nairobi City County throughout these proceedings.
14. Article 264 of *the Constitution* provides that:

“The transitional and consequential provisions set out in the Sixth Schedule shall take effect on the effective date.”
15. While the sixth schedule on transitional and consequential provisions at section 33 stipulates that:

“An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established under the former Constitution or by an Act of Parliament in force immediately before the effective date, whether known by the same or a new name.”
16. I note in its judgement dated the 16th December 2019, the Court issued orders directed to the 'local authority', in this case, 'Nairobi City County Government' which succeeded the Nairobi City Council. From a reading of the transitional provisions in *the Constitution*, I opine that for all intent and purposes in the judgement, the "Town Clerk Nairobi City Council" meant 'Nairobi City County Government'.
17. It is trite that Section 99 and 100 of the *Civil Procedure Act* vests this court with a general power to correct its records. The application of the provision has been dubbed 'the Slip Rule'. In the case of Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR, the Court held that:

“... Some of the applications of the rule are fairly obvious and common place and are easily discernible like clerical errors, arithmetical mistakes, calculations of interest, wrong figures or dates. Each case will, of course, depend on its own facts, but the rule will also apply where the correction of the slip is to give effect to the actual intention of the Judge and/or ensure that the judgment/order does not have a consequence which the Judge intended to avoid adjudicating on.” Emphasis Mine



18. While in the case of Republic v County Secretary, Nairobi City County & Another Ex Parte Wachira Nderitu Ngugi & Co. Advocates [2016] eKLR it was held that:

“The legal rights and liabilities of the defunct local authorities are to accrue in favour of and be sustained against their successors which in this case are the respective County Governments.....”

Emphasis mine

19. The Court takes judicial notice of the fact that it is the Nairobi City County Government that is the successor of the Nairobi City Council. Further, I note this suit was filed before the Nairobi City County Government succeeded the Nairobi City Council. In my view, this is a clear-cut case for invoking the ‘Slip Rule’, since the suit was filed during the defunct Nairobi City Council but judgement delivered after the establishment of the Nairobi City County Government. Further, it is clear that even the exhibits relied upon which the 2nd Defendant’s Advocate had subjected to cross examination emanated from the Nairobi City Council.

20. In the circumstances, while associating myself with the decisions quoted, I will allow the Plaintiff to amend the 2nd Defendant’s name to read ‘Nairobi City County Government’ instead of ‘Town Clerk Nairobi City Council’.

21. In the foregoing, I find the Chamber Summons application dated the June 13, 2024 merited and will allow it, but make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20th DAY OF MARCH 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Odhiambo Isaac for Defendant

Gaturu for Applicant

Court Assistant: Joan

