Shah & another v Wambugu (Sued as Administrator of the Estate of the Late Jacob Juma) & 2 others; Chelogoi (Interested Party) (Environment & Land Case 312 of 2009) [2023] KEELC 19052 (KLR) (20 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19052 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 312 OF 2009

JE OMANGE, J

JULY 20, 2023

BETWEEN

ASHOK RUPSHI SHAH .... 1ST PLAINTIFF

HITEN KUMAR AMRITLAL RAJA .... 2ND PLAINTIFF

AND

MIRIAM WAIRIMU WAMBUGU (SUED AS ADMINISTRATOR OF THE ESTATE OF THE LATE JACOB JUMA) .... 1ST DEFENDANT

COMMISSIONER OF LANDS .... 2ND DEFENDANT

REGISTRAR OF TITLES .... 3RD DEFENDANT

AND

DAVIS NATHAN CHELOGOI .... INTERESTED PARTY

RULING

1. There are three pending applications in respect of the suit Parcel of Land known as Land Reference Number 18485 situated in Loresho, Nairobi (hereinafter referred to as the suit property).
2. The first application is by the Proposed Interested Party dated 3rd August, 2022. The Second is the 1st Plaintiffs application dated 31st January, 2023. The last application is the proposed interested party's application dated 17th April 2023. A notice of Preliminary Objection has been raised in respect of this application by the plaintiff.
3. For neatness and for good order this court will commence with the Notice of Motion application filed by the Proposed Interested Party dated 3rd August, 2022. This was the first application.

4. By a Judgment dated and delivered on 28th July 2022, this Court (Hon Justice Komingoi) inter alia restrained the 1st Defendants, their servants, agents, nominees from trespassing, selling, transferring, constructing, charging, interfering, or in any manner dealing with the suit property, granted a permanent injunction against the 1st Defendant, declared that the 1st Defendant's title was fake and fraudulent thus he had no claim over the suit property and that the Plaintiffs were the legal owners of the suit property.

5. The Court further awarded KES 50,000,000 as General damages for trespass and allowed costs and interests for the Plaintiffs.

6. By an application dated 3rd August 2022, the Proposed Interested Party seeks the following reliefs:

    a. Spent.

    b. This Honourable Court do stay execution of the Judgment delivered on the 28th July 2022 by Lady Justice L. Komingoi and any consequential orders and/ or decree emanating therefrom pending the hearing and determination of this Application.

    c. The Honourable Court do set aside and/ or vacate the Judgment entered on the 28th July 2022 by Lady Justice L. Komingoi and any consequential orders and/ or decree emanating therefrom.

    d. The Honourable Court be pleased to join the Proposed Interested Party/ Applicant herein as an interested party in these proceedings.

    e. The Honourable Court to grant the Proposed Interested Party/ Applicant the opportunity to exercise the right to be heard.

    f. That costs of this Application be provided for.

7. The application is supported by the affidavit of Davis Nathan Chelogoi, and based on the grounds that the Interested Party had filed an application dated 22nd July 2022 seeking to be joined as an Interested Party in the suit and arrest the Judgment that had been slated for 23rd June 2022, that despite bringing the Court's attention to the said application, the Court proceeded to deliver the Judgment on 28th July 2022. That the Judgment is greatly prejudicial to the applicant as he has nothing to do with any party, yet such orders will directly affect his interest as he stands to be evicted from the suit property.

8. The applicant alleges that he is not only the owner of the suit property, but also has actual and physical possession thereof. He described the Judgment as a fallacy as the 1st Defendant had nothing to do with the suit property.

9. The applicant states that he has been condemned unheard and denied the right to a fair trial and the execution of the said Judgment will greatly prejudice his rights.

10. The Applicant therefore sought that the Judgment be set aside to allow him to be joined in the suit and the same be heard afresh, on the basis that the interested party was not aware of the cause as he had not been served, and was thus condemned unheard.

11. This application was opposed by the Replying Affidavit of the 1st Plaintiff sworn on 13 October 2022. In it, the 1st Plaintiff stated that together with the 2nd Plaintiff, he is the registered owner of the suit property, which after a protracted and highly contested litigation spanning over 13 years, the Court upheld their status as legal owners by the Judgment.

12. He stated that the Court had already rendered itself on the true ownership of the suit property and the Court now lacks jurisdiction to entertain the Interested Party's Application. That not having been part of the proceedings, he cannot be joined as the suit had reached a logical conclusion and there are no live proceedings to the matter, which is a legal prerequisite for joinder of a party in the proceedings.

13. The 1st Plaintiff contended that the application was a pseudo appeal against the Judgment and that it is highly irregular to allow the Applicant to foist his supposed case for ownership of the suit property on a spent suit wherein the Court has effectively determined that the Plaintiffs are the bonafide owners of the suit property.

14. The 1st Plaintiff described the applicant's motion as an action to sanction an illegitimate and irregular post- judgment re-litigation and re determination of the issue of ownership of the suit property, and since the 1st Defendants had already filed a Notice of Appeal against the Judgment, any attempt as proposed by the applicant would be defeatist of the imminent appeal.

15. The Plaintiffs state that the Applicant's assertion of ownership of the suit property is essentially a fresh cause of action which cannot be determined through his joinder in the proceedings as an Interested Party, and the alleged title was purportedly issued on 4th June 2021 during the pendency of the proceedings. They asserted that when they instituted the suit in 2009, their intention was to assert their rights and interest on the suit property against the 1st Defendant then being the only 3rd party who had illegitimately and unlawfully contested their rights as the true owners of the suit property.

16. The Plaintiffs stated that on a quick review of the documents presented by the applicant, it is evident that the applicant does not have a genuine claim to the suit property, as they had even admitted to invading the suit property and set up all manner of structures thereon, thus have no audience before the Court.

17. The Plaintiffs took issue with the ingenuity of the applicant's purported title- that the applicant's title contains IR number 232908 compared to the suit property being IR 64011, there are similar deed plans 176003 yet there is no proof of any subdivision or amalgamation, the applicant's title is not accompanied by a corresponding lease as is standard of LRA issued titles and that the endorsement dated 4th June 2021 by a CK Ng'etich on the title is registered as IR 222908 which is an anomaly as the certificate of title purports to be registered as IR 232908. The Plaintiff further took issue with the Letter of Allotment, describing it as fraudulent.

18. The Plaintiff contended that the Applicant cannot claim to have been unaware of these proceedings as they substantially featured in media and article coverages. He states that the Plaintiffs will greatly be prejudiced if orders sought are granted. The applicant relied on a copy of the Title document, the Decree, the 1st Defendant's Notice of Appeal and photographs of the suit property.

19. The applicant subsequently filed a further supporting Affidavit attaching a copy of the Lease, as well as correspondence from the Directorate of Public Prosecutions as well as the Ministry of lands, particularly, the letter dated 17th October 2022 from the Chief Land Registrar confirming that the applicant's title was genuine.

20. The applicant further contended that the Plaintiff's title was not legitimate as it was derived from Liney Co Ltd, a non-existent company and/ or Liney Company Limited which was incorporated in 2010 and could not have transferred land in the year 1994.

21. The applicant filed another application dated 17th October, 2022 in response to the Plaintiff's application, and sought that his application as well as the Plaintiff's application be consolidated and the Court grants any directions and orders as it may deem fit. The Court in a Ruling on the 15th December,

2022 declined to consolidate the two applications. It is for this reason that this application is now being considered on its own.

22. Parties filed submissions. Counsel for the applicant centered his submission on the fact that the applicant has a right to be heard. He stated that the applicant has not been heard as his attempts to arrest the Judgement once he learned of the suit failed as the date he was given for directions on his application were after the Judgement was delivered. He thereafter withdrew the application dated 22nd June, 2022.

23. Counsel for the proposed interested Party referred the court to various decisions namely James Kanyiita Nderitu & Another (2016) eKLR in which the former Court of Appeal for Eastern Africa expressed the view that where an order is made without service upon a person who is affected by it procedural cock ups will not deter the court ex debito justitiae from setting aside such an order. On the Right to be heard Counsel further referred the court to the case of Adolfo Gitanga Wakahilhia & 4 Others vs Mwangi Thiongo (1986) eKLR in which the court posed the question "as a matter of law is it just that Judgement should be imposed on them without being heard".

24. Counsel for the 1st Plaintiff filed detailed submission in opposition to the application dated 3rd August, 2022. Counsel commenced the submission by reiterating the journey that the plaintiffs had taken in the court corridors. After a lengthy hearing the court on the 28th July, 2022 reached a decision that the plaintiffs are lawful owners of the suit property. Counsel submitted that the plaintiffs first became aware of the proposed interested party's' fraudulent claim to ownership when the Proposed interested party filed an application dated 22nd June, 2022 which was later withdrawn.

25. Counsel submitted that the proposed interested party's' efforts to scuttle the delivery of the Judgement were not successful. Judgement was ultimately delivered on 28th July, 2022. Counsel stresses that this court is functus officio and any attempts by the court to set aside its own Judgement would be akin to the court sitting on appeal over its own Judgement.

26. In any event it was the submission of Counsel that the Proposed Interested Party is guilty of undue delay having waited 13 years to seek to be enjoined. Furthermore, Counsel raised several anomalies in the proposed interested party's case;

    i. Satisfaction of conditions in the letter of allotment was made 26 years after expiry of the offer on 21st April, 2021.

    ii. The letter of allotment to the proposed interested party was issued on 31st January, 1995 long after the letter of offer to Liney Company and a grant issued to the plaintiffs.

    iii. No part development plan has been presented by the proposed interested party in corroboration of his ownership claim.

    iv. The proposed interested party's' certificate of title has two different IR Numbers.

27. Counsel for the 1st Plaintiff framed the issues to be whether the court is functus officio, whether the proposed interested party's application is barred by the lis pendens doctrine and whether the proposed interested party has made out a case for joinder.

28. The counsel for the proposed interested party filed submissions in response in which he reiterated earlier submissions. That the proposed interested party was not made aware of the suit and that delivery of the Judgement on 28th July 2022 rendered their application dated 22nd June, 2022 superfluous.

Counsel insisted that the court has power to set aside its order if made without service. On the question of whether the documents were fake, counsel submitted this claim is premature as this could only be determined at the hearing of the suit. Counsel argued that fraud had to be specifically pleaded and proved.

29. The court has carefully considered the application, the submissions by both counsels, and the authorities cited. The court frames the following issues for determination:-

I. Is the court functus officio?

II. Whether the court should set aside and or vacate the Judgement entered on the 28th July, 2023?

III. Should the Proposed Interested Party be enjoined to the suit

Whether the court is functus officio

30. It was submitted by counsel for the 1st Plaintiff that the court is functus officio as the Judgement had been delivered, decree amended and lodged for registration, a Notice of Appeal filed and an application for eviction filed. The court was referred to the case of Menginya Salim Murgani v Kenya Revenue Authority [2014] Eklr wherein the apex court stated " It is a general principle of law that a court after passing Judgement becomes functus officio and cannot revisit the Judgement "

31. Counsel referred the court to the decision of Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya) wherein it was stated;

Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19th Century. In the Canadian case of Chandler v Alberta Association Of Architects [1989] 2 S.C.R. 848, Sopinka J. traced the origins of the doctrines as follows (at p. 860);

> " The general rule that a final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal In re St. Nazaire Co., [1879], 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions:
>
> 1. Where there had been a slip in drawing it up, and,
> 2. Where there was an error in expressing the manifest intention of the court. See Paper Machinery Ltd. v J.O. Rose Engineering Corp., [1934] S.C.R. 186"

32. Counsel also referred the court to the case of RAILA ODINGA & 2 OTHERS V INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 3 OTHERS [2013] eKLR, where the Supreme Court laid out the meaning of the term functus officio, cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, "The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law" (2005) 122 SALJ 832 in which the learned author stated;

> ..."The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has

been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker."

33. I have considered the cited authorities. The principle that runs through them is summed up in the Telkom Kenya case supra and it is this. The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.

34. There do therefore exist certain exceptions and these have been captured thus in JERSEY EVENING POST LTD VS AI THANI [2002] JLR 542 at 550, also cited and applied by the Supreme Court; "A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded and the court functus, when its Judgement or Order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available."

35. In the same case the Supreme Court strongly posited " it is a legal and constitutional obligation of any court from the basic level to the highest level, to preserve and protect the adjudicatory form of governance and to uphold decoram and integrity in the scheme of justice delivery. It follows that the courts jurisdiction in oversight of the conscientious and dignified management of the judicial process and in safeguarding the scheme of rendering justice, will not be exhausted until the court is satisfied and declares as much. Even though therefore the court concluded the hearing of the petition by delivery of Judgement, its jurisdiction for upholding the dignity of the judicial process and in relation to the proceedings of the petition remained uncompromised"

36. From the outset I note that the facts in the Telkom Kenya case were distinguishable from the facts in this case. In that case the learned Judge had reopened for consideration new issues relating to the same Judgement earlier delivered by the same court. In this instance, the court is being called upon to set aside the entire decision by a party who claims he was not heard. I find that to lock a party from being heard on his application on the basis that the court is functus would be a derogation of the responsibility which the Supreme Court in the Raila Odinga case supra affirmed each court has which I quote is "to preserve and protect the adjudicatory form of governance and to uphold decoram and integrity in the scheme of justice delivery." Pursuant to this edict this court cannot cite functus to fail to hear applications that are properly before it.

Whether sufficient grounds have been given to set aside the decision

37. The proposed interested party argued that the courts entire Judgement as delivered on 28th July, 2023 should be set aside. This was on the basis that he was not heard hence has been condemned unheard. I have considered the two decisions that the court was to referred to on this aspect. The facts are slightly different from the current case. In the James Kanyitta case the matter proceeded ex parte without notice to the Defendant. In the Adolfo case some parties who were known were deliberately left out of arbitration proceedings. In the instant case the matter was fully heard and determined between two parties. However, another party has now appeared who seeks to be heard in respect of the same suit.

38. There is no doubt that the court has inherent jurisdiction to set aside a Judgement. This was the holding in the Court of Appeal decision of Kenya Power & Lighting Company Limited versus Benzene Holdings Limited t/a Wyco Paints {2016} Eklr . In this case the court noted the wide powers granted to a court under our laws thus: Section 3A of the *Civil Procedure Act* appears to have been introduced

to augment the provisions of section 3, vesting in the courts inherent power to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Of course, this power has now been broadened by the introduction in 2009 of the overriding objectives in sections 1A & 1B and in 2010 by Article 159 of *the Constitution*.

39. The provisions of the law that the proposed interested party has cited in seeking the orders are Article 159(2) of *the Constitution*, Sections 1A,1B,3 and 3A of the *Civil Procedure Act* as well as Order 51 Rule 1 of the Civil Procedure Rules. For ease of reference I will reproduce the above sections below. Article 159 (2) guides courts as follows. In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

    a. justice shall be done to all, irrespective of status;

    b. justice shall not be delayed;

    c. alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

    d. justice shall be administered without undue regard to procedural technicalities; and

    e. the purpose and principles of this Constitution shall be protected and promoted.

40. The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1) (3). A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court. [Act No. 6 of 2009, Sch.] 1B. Duty of Court (1).

41. For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims— (a) the just determination of the proceedings; (b) the efficient disposal of the business of the Court; (c) the efficient use of the available judicial and administrative resources; (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and (e) the use of suitable technology. [Act No. 6 of 2009, Sch.].

42. I have considered the submissions by both counsel. I note that there is no dispute that the proposed interested party was not served. It is also evident that the matter proceeded between two parties in pleadings where he was not named or involved and a decision was made which is subject of appeal. The issues raised by counsel for the 1st plaintiffs as to whether the doctrine of lis pendens applies or as to the merits of his claim are premature. At this stage the only issue the court has to determine is whether the court should exercise its inherent power to set aside the Final Judgement so as to give the proposed interested party a chance to be heard.

43. I have considered the circumstances of this case in their entirety and also the constitutional and statutory guidance given to the court on the principles that ought to guide it in the discharge of its duties. The people of Kenya weary of the delays that besieged the Judiciary is yesteryears were emphatic that they wanted a Judiciary that ensured Justice for all, resolved disputes in a timely manner, offered efficient and affordable justice. In the context of this case, the court has to consider whether reopening

this 14 year old case would serve the ends of justice not only for the proposed interested party but also for the other parties including the 1st Defendant who died during the pendency of these proceedings and was substituted. Essentially the matter would start from scratch, pleadings amended, legal fees would be incurred and pile up and witnesses who had already testified on the matter between the plaintiff and the first defendant recalled again in addition to new witnesses who would now be called by the proposed interested party.

44. While the proposed interested party has a right to be heard I am certain that setting aside this old case would not be an efficient way of exercising/protecting his right. Given that the applicant was not a plaintiff or claiming under any of the parties he is at liberty to file a fresh case for consideration by the court. He can also elect to participate in the appeal which has been filed. I therefore find that it would not serve the interest of justice for all parties to reopen this case.

Whether the proposed interested party should be enjoined as an interested party

45. The proposed interested party sought to be enjoined in the suit on the basis that he is likely to be affected by the outcome. On the other hand, counsels for the plaintiff submitted that given that Judgement had been given the Proposed interested party could not be enjoined. The question is whether after Judgement which this court has declined to set aside, an interested party can be enjoined.

46. Joinder of parties is prescribed under Order 10 Rule 2 of the Civil Procedure Rules thus:

> (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

47. The Rule above gives the court power to enjoin a party at any stage of the proceedings. The definition of proceedings then becomes critical in guiding this court.

48. Black's Law Dictionary defines proceedings inter alia; The regular and orderly progression of a law suit, including all acts and events between the time of commencement and entry of Judgement. In an illustrative quotation that follows the definition, Edwin E Bryant, in The Law of Pleading Under the Codes of Civil Procedure expounds on the definition of this term thus; .... As applied to actions the term "proceeding may include 1. The institution of the action 2. The appearance of the defendant 3. All ancillary or provisional steps such as arrest, attachment of property, garnishment, injunction 4. The pleadings 5. The taking of testimony before trial 6. All motions made in the action 7. The trial 8. The Judgment 9. The execution 10. Proceedings supplementary to execution in code practice 11. The taking of the appeal or writ of error 12. Sending back of the of the records to the lower court from the appellate or reviewing court 13. The enforcement of the Judgement or new trial as may be directed by the court of last resort.

49. From the above exposition, the broad definition of actions that make up proceeding include situations where Judgement has been entered. The Court of Appeal in Tanzania in Tanga Gas Distributors LTD. v Said & Others [2014] EA 448, has held that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of

and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.

50. Closer home the Court of Appeal affirmed the courts wide discretion but cautioned it must be exercised judicially. The Court of Appeal in Civicon Limited v Kivuwatt Limited and 2 Others [2015] eKLR held as follows:

> " Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined....from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial."

51. My interpretation of the section and the above holding of the Court of appeal is that the court has wide discretion to allow joinder of the parties in instances where the court is satisfied that the proposed interested parties have sufficient interest. The courts wide discretion is only fettered by the proviso in Order 10 Rule 2 which states that the joinder should be ... in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, (emphasis mine).

52. In this instance, Judgement has been entered. There is however a pending application seeking orders of eviction and enforcement of the court's Judgement. The court is still seized of the matter which is at the execution stage. The proposed interested party asserts that he is in possession of the suit property. He has sufficient interest in the outcome of the application.

53. It would be untenable to deny him an opportunity to be heard in respect of the application which this court has yet to determine. The Court of Appeal in the Kenya Power and Lighting case supra memorably stated; "The extent of inherent powers of the court was eloquently explained by the authors of the Halsbury's Laws of England, 4th Edn. Vol. 37 Para. 14 as follows;

> " The jurisdiction of the court which is comprised within the term "inherent" is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source

of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them." See also Meshallum Waweru Wanguku (supra):

54. Consequently, I find that the application to be enjoined as an interested party is merited. The proposed interested party is hereby enjoined. He will be given a chance to file his documents in respect of the plaintiffs' application dated 31st January, 2023. A mention date is to be given for directions on the same.

55. The application dated 17th April, 2023 by the Proposed interested party seeks the following orders;

56. The proposed interested party takes issue with the fact that the Amended Decree describes him as an interested party thus creating the false impression that he was attending delivery of the Ruling as an interested party when in fact his application for joinder has not been heard.

57. The first plaintiff in his affidavit states that the Amended Decree reflects the position in court. He states that the Proposed Interested Party through his advocate was in court both on 28th July, 2022 and on 15th December, 2022 when the Judgement and Ruling was delivered.

58. In paragraph 10 of the Replying Affidavit he states that the amended decree is accurate save for omitting the word "proposed" He insists that the Proposed Interested Party will not suffer any prejudice.

59. Counsel for the 1st Plaintiff raises a preliminary objection on two grounds. One that the Proposed Interested Party not being a party to this suit lacks the locus standi to prosecute the application dated 17th April, 2022 and that the application offends Order 45 Rule 6 of the Civil Procedure Rules which bar successive applications for review.

60. I agree with counsel for the plaintiff that the application having been filed before the determination of the application for joinder is incompetent as it was filed before the proposed interested party had been enjoined. Consequently, the application is struck out and should be expunged from the record.

61. However, I note that an issue has been brought before the court on the accuracy of the decree. It is admitted by both parties that the Amended Decree left out the word proposed. Is this court helpless and bound to allow the error to continue?

62. It is important that the court ensures the integrity of its processes. Accuracy is key. An error was made. This court can of its own motion in exercise of the wide powers granted to it by Section 99 and its own inherent powers which I reiterated above correct this error.

63. In the final result, the court makes the orders in respect of the three applications dated 3rd August, 2023, 31st January, 2023 and 17th April, 2023

    a. The prayer to set aside the Judgement delivered on 28th August, 2023 is dismissed.

    b. The proposed interested party is enjoined to the suit as an interested party for purposes of participating in the post Judgement applications.

    c. The application dated 31st January, 2023 is to be mentioned for directions on the disposal.

    d. The application dated 17th April 2023 is struck out.

    e. The Amended Decree to be amended by inserting the word "proposed".

    f. Each party to bear their own costs for the applications.

Dated, signed and delivered Via Microsoft Teams this 20th day of July 2023.

Judy Omange

JUDGE