



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
ELC CASE NO.46 OF 2013

MOSES RUGUTPLAINTIFF

VERSUS

PHILIP KIPNGENO.....1ST DEFENDANT

DAVID MITEY CHERUIYOT.....2ND DEFENDANT

RULING

Introduction

1. What is before me is an application dated 2nd November, 2017 brought pursuant to section 80, 63 and 3A of the Civil Procedure Act. The Plaintiff/Applicant seeks orders for review of the judgment and consequential orders entered herein. I must point out from the outset that the application ought to have been brought pursuant to section 99 of the Civil Procedure Act and not section 80 as indicated in the Notice of Motion but in view of Article 159 (2) (d) of the Constitution, I shall not dwell on the procedural inadequacies.

Applicant's submissions

2. The application which is unopposed is premised on the grounds stated in the Notice of Motion and the Plaintiff/Applicant's supporting affidavit sworn on the 2nd November 2017. Counsel for the Applicant relied on the Applicant's Affidavit. The Applicant depones that at the time of filing suit in 2013 the suit property was known as plot number 380 formerly Plot No. 59 United Soy Londiani.

3. He further depones that by the time the court was issuing the judgment in June 2017, the registration details had changed and the land parcel is now known as plot number 356 United Soy Londiani. He annexed a copy of a mutation form in respect of the said parcel of land bearing the new parcel number.

4. In view of the above information which became clear to the Plaintiff when he tried to execute the decree counsel submitted that it is fair and just that the judgment and decree be amended accordingly.

Analysis and Determination

5. As mentioned above this is not an application for review but one for correction of an error in the judgment and decree. Section 99 of the Civil Procedure Act provides as follows:

6. 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.

7. In the instant case it is clear that the parcel number as indicated in the Plaint no longer exists as it has since been changed. The judgment and decree as issued can therefore not be executed.

8. Since the court does not issue orders in vain I exercise my discretion under section 99 of the Civil Procedure Act and direct that the judgment dated 29th June 2017 be amended to read as follows:

a) That a declaration is hereby issued that the Plaintiff is the lawful proprietor of Plot No. 356 UNITED SOY LONDIANI, previously Plot NO. 380 and 59 UNITED SOY LONDIANI.

b) An order of permanent injunction be and is hereby issued restraining the defendants from entering, putting up structures, alienating or otherwise adversely interfering with the plaintiff's enjoyment of his absolute and inalienable proprietary rights with respect to all that parcel of land known as plot no. 356 UNITED SOY LONDIANI situated in Kericho County.

c) An eviction order is hereby issued ejecting the defendants from the plaintiff's Plot No. 356 UNITED SOY LONDIANI formerly Plot No. 380 and 59 UNITED SOY LONDIANI within the next 3 months.

d) The defendant shall pay the costs of this suit.

Dated, signed and delivered this 19th day of December 2017.

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J.M ONYANGO

JUDGE

In the presence of:

Mr Achola for Andama for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

Court assistant: Rotich