



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 12 OF 2010

MILKA NYAKO KANYARI.....PLAINTIFF

VERSUS

ESTHER NYAMBURA RICHU.....1ST DEFENDANT

PETER NYORO KAHIGA.....2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 9th June 2021 under order 45 rules 1(b) section 3A Civil Procedure Act Article 159(d) of the Constitution of Kenya 2010.
2. It seeks orders:-
 - (a) *That the Court be pleased to review its Judgment/Decree in order (b) thereof by substituting the Commissioner of Lands with the Land Registrar.*
 - (b) *Any other order the Court may deem fit to grant to enable execution of the Decree herein.*
 - (c) *Costs be provided.*
3. The grounds are on the face of the application and are set out in paragraphs (a) to (e).
4. The application is supported by the affidavit of Milka Nyakio Kanyari, the Plaintiff Decree Holder, sworn on the 9th June 2021.
5. The application is opposed. There are grounds of opposition filed by the 2nd Defendant/Judgment Debtor dated 27th October 2021.
6. This matter first went to Honourable Wamboto J who on 17th November 2021 directed that the notice of motion be canvassed by written submissions.
7. The Plaintiff's/Applicant's submissions are dated 23rd November 2021. She submits that the non-registration and thus non enforceability of the Decree of this court is because the order is directed to the Commissioner of Lands and the correct officer is Chief Land Registrar/Land Registrar.
8. It is further her submissions that the amendments to the Decree to read Chief Land Registrar will not prejudice the Defendants/Respondents on any way. She prays that the application be allowed.
9. I have considered the notice of motion and the affidavit in support. I have also considered the written submissions filed on behalf of the Plaintiff. The issue for determination is whether the application is merited.
10. The Plaintiff's/Applicant's prayer that the Decree ought to be reviewed to substitute the Commissioner of Lands with the Chief Land Registrar.
11. **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.”

Order 45 rule 1(b) of the Civil Procedure Rules provides that:-

“(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

12. The Judgement of this Court dated 4th June 2020 has neither been set aside nor reviewed. It is not in dispute that in the new constitution dispensation the office of Commissioner of Lands does not exist, what exists is the office of the Chief Land Registrar.

13. I find that this court has discretion to review its judgment so that it can be enforceable.

14. I find that no prejudice will be occasioned to the Defendants/Judgment Debtors if these orders are granted.

15. In conclusion, I find merit in this application and the same is allowed in the following terms:-

(a) That the Judgement/Decree is hereby reviewed to substituting the Commissioner of Lands with the chief Land Registrar.

(b) That the costs of this application be borne by the Plaintiff/Applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 17TH DAY OF MARCH 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Gatumuta for the Plaintiffs

No appearance for the Defendants

Steve - Court Assistant