



**Mwaura v Mwaura & 3 others (Environment & Land Case
1457 of 2016) [2022] KEELC 13804 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13804 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1457 OF 2016**

**MD MWANGI, J
OCTOBER 25, 2022**

BETWEEN

ALICE WANJIRU MWAURA PLAINTIFF

AND

PETER NJUGUNA MWAURA & 3 OTHERS DEFENDANT

RULING

In respect of the notice of motion application dated April 25, 2022 brought under section 99 of the [Civil Procedure Act](#).)

Background

1. Judgment was delivered in this matter in favour of the plaintiff on March 7, 2019, by Justice E.O Obaga, who is no longer in this station. The honourable judge granted the plaintiff the orders sought in her plaint. However, the good judge erroneously wrote the plaintiff's name as 'Alice Waithera Mwaura' instead of 'Alice Wanjiru Mwaura' at paragraph (a) on page 5 of his judgment.
2. The plaintiff only discovered the error after extracting the decree and presenting it to the Land Registrar Kiambu for enforcement of the orders of the court.
3. The plaintiff has therefore come back to this court under the provisions of sections 3A & 99 of the [Civil Procedure Act](#), seeking the correction of the error in the judgment.
4. 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 on its own motion or an application of any of the parties.”



5. This is what is referred to as the ‘slip rule’. The court is permitted under the section 99, even on its own motion to invoke the rule, to correct clerical or arithmetical mistakes in judgments, decrees or orders, arising from accidental slip or omission. The section suffices and there is no need to make reference to section 3A of the Act which reserves the court’s inherent power that the court may draw upon where there is no express provision of the law to put right what would otherwise result to an injustice or an absurdity for that matter.
6. In the case of *Republic v Attorney General & 15 others Ex parte Kenya Seed Company Ltd & 5 others* (2010) eKLR, the court noted that,

“(section 99) is a codification of the common law doctrine dubbed ‘the slip rule’, the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which would otherwise become *functus officio* upon issuing a judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

Some of the application 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.

The *Australian Civil Procedure* has provisions in pari material with section 99. As was stated in the case of *Newmont Yandal Operations Pty Ltd v J Aron Corp & the Goldman Sachs Group Inc* (2007) 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended.

Nearer home the predecessor of this court in *Lakhamshi Brothers Ltd v R Raja & Sons* (1966) EA 313 endorsed that application of the rule, that is, to give effect to the intention of the court when it gave its judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted. Spry JA in *Raniga Case* (supra) also states as follows:-

“A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when Judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.”

What is certainly not permissible in the application of section 99 is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order.”

7. In this case, I have looked at the pleadings filed by the plaintiff. The plaint, the verifying affidavit as well as the plaintiff’s witness statement; all indicate the plaintiff’s name as ‘Alice Wanjiru Mwaura’. Even in her testimony before the court on February 5, 2019, the plaintiff introduced herself as ‘Alice Wanjiru Mwaura’.



8. I am satisfied that the honourable judge inadvertently wrote the name 'Alice Waithera Mwaura' instead of 'Alice Wanjiru Mwaura' in the judgment delivered on March 7, 2019. I will therefore invoke the provisions of section 99 of the Civil Procedure Act to correct the 'slip' and give effect to the intention of the court.
9. Accordingly, an order is hereby issued, directing the Deputy Registrar of this court to amend paragraph (a) of page 5 of the judgment of Honourable Justice E.O Obaga delivered on March 7, 2019 to correct the name written as 'Alice Waithera Mwaura' to read 'Alice Wanjiru Mwaura'.
10. The court makes no order as to the costs of the application.
It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2022

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mugu for the Applicant.

No appearance for the Defendants.

Court Assistant – June

M.D. MWANGI

JUDGE

