

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 863 of 2002

PHILOMENA WANJIRU KAMWERE.....PLAINTIFF

VERSUS

PATRICK NYOIKE NJEHIA.....DEFENDANT

R U L I N G

The Plaintiff applies to this court by way of Notice of Motion *ex parte* under Order L Rule 1, Order XLIV Rules 1 and 2 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, and Section 143 of the Registered Land Act for orders that this court do review and/or vary its judgment delivered on 11th February 2005 and the subsequent decree issued on 1st March 2005 and substitute its order for the transfer of the plot known as LR No. RUIRU E/BLOCK 5/212 to the Plaintiff, with an order that the Land Registrar, Thika do rectify the Register by the removal of the Defendant's name and substitution therefore with the Plaintiff's name.

In support of the application Philomen Wanjiru Kamwere has sworn an affidavit in which she avers that she had filed this suit against the Defendant seeking among other prayers:

An order that the Defendant do execute a Transfer in respect of the suit premises being LR No RUIRU E/BLOCK 5/212 in favour of the Plaintiff; that judgment was delivered on 11th June 2005 in her favour; that on presentation of the transfer documents to the Land Registrar for registration she was advised that she would pay stamp duty on the transfer at 4% of the value of the plot as if she was purchasing the plot from the defendant before the transfer could be registered; that the Registrar advised her that her advocate on record should have sought an order for Rectification of the Register in accordance with Section 143 of the Registered Land Act (Cap 300) instead of an order for transfer; that the Registrar further advised that she makes an Application before the court for the variation of the orders in the judgment by substituting the order for transfer with that of rectification of the register.

Mr. Wanjama for the Applicant submitted that if the order sought is granted, no stamp duty nor transfer fee is chargeable as the order sought is to rectify the register by removing the Defendant's name from the Register and the substitution thereto with that of the Plaintiff.

Having considered the application in light of the affidavit evidence on record and submissions by Counsel, I am satisfied that this is a proper case to exercise my discretion in favour of the Applicant.

Accordingly I allow the application in terms of prayer (a) of the Notice of Motion dated 18th September 2007.

Dated at Nairobi this 13th day of June 2008.

J. L. A. OSIEMO

JUDGE