



**Shah & another v Wambugu (Sued as administrator of the Estate of the late Jacob Juma) & 2 others; Chelogoi (Proposed Interested Party) (Environment and Land Case Civil Suit 312 of 2009) [2022] KEELC 15521 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15521 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 312 OF 2009  
J OMANGE, J  
DECEMBER 15, 2022**

**BETWEEN**

**ASHOK RUPSHI SHAH ..... 1<sup>ST</sup> PLAINTIFF**

**HITEN KUMAR AMRITLAL RAJA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MIRIAM WAIRIMU WAMBUGU (SUED AS ADMINISTRATOR OF THE  
ESTATE OF THE LATE JACOB JUMA) ..... 1<sup>ST</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**DAVIS NATHAN CHELOGOI ..... PROPOSED INTERESTED PARTY**

**RULING**

1. This matter came up before this court on October 27, 2022. On this date the court had directed an application filed by the plaintiffs/ applicant be mentioned for directions. The matter had also previously on September 22, 2022 been given a hearing date for October 27, 2022. The record does not clearly indicate what the hearing date was for.
2. When the matter came up on October 27, 2022 counsel for the plaintiff/ applicant asked the court to allow the application dated October 13, 2022 on the grounds that there was a clerical error on the face of the court's judgement as the plaintiff's property was erroneously referenced as IR NO 64014 and not 64011.



3. Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant indicated that they have no objection to the amendment. The counsel for the proposed interested party on his part strenuously opposed the application on the grounds that the plaintiff/ applicant were seeking to ambush the applicant before the application dated August 3, 2022 could be heard. Counsel in his application dated October 17, 2022 urged the court to hear the two applications together.
4. Counsel for the plaintiff/ applicant sought for 14 days to respond to the application dated August 3, 2022. The court gave the Respondents 14 days to file responses to the application dated August 3, 2022. The application was also set for mention on December 15, 2022. In the meantime, the 1<sup>st</sup> defendants application was scheduled for ruling on December 15, 2022.
5. I have carefully considered the various applications and documents filed in this matter. I am satisfied that in order to clearly delineate the issues and hear parties on merits of their applications it is in order that the court determine the various issues separately.
6. As such directions will shortly be issued on the proposed interested parties application dated August 3, 2022.
7. Regarding the application, I have looked at the pleadings herein and the judgement which was delivered by the court, I note that in several instances in the body of the judgement, such as in page 21, 25 and 26 the court refers to the suit property as No 18485 (IR No 64011).
8. However, in the prayers and the final order the court refers to the property as LR No 18485 (IR NO 64014). There is clearly an error.
9. Section 99 of the [Civil Procedure Act](#) on amendment of judgments, decrees or orders, provides as follows: -
 

“ 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.”
10. The courts have had occasion to pronounce themselves on this issue. The Court of Appeal after considering at length the application of section 99 of the [Civil Procedure Act](#) in the case of [Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others](#) [2010] eKLR, stated as follows:
 

It 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.
11. Some of the applications 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.
12. Having considered the foregoing I am satisfied that the error was a clerical error which the court can properly invoke its jurisdiction under section 99 to correct.



13. I have considered the additional prayers sought in the application to seek the assistance of the police to enforce the courts orders. I note that given that the decree had not been perfected it cannot be said that it had been properly served, efforts made to ensure compliance and sufficient difficulty proved to warrant involvement by the police at this stage. As such I find the prayers on police involvement are premature.
14. In the final result the application is allowed in the following terms;
  - a. The judgement of the court delivered on July 28, 2022 and the decree extracted therefrom be reviewed by amending the IR NO 64014 to IR No 64011. Any consequential pleadings arising from the error on the Judgement to be amended accordingly.
  - b. Each party to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 15TH DAY OF DECEMBER 2022.**

**JUDY OMANGE**

**JUDGE**

\*\*In the presence of: Mr Kimani holding brief for Mr Mwangi for the 1st plaintiff applicant

Mr Ombach for applicant/interested party

Mr Shah Kamau for Attorney General

Steve - Court assistant

