



M'Mutuota & another v Kathanga & another (Environment and Land Appeal 40 of 2018) [2022] KEELC 15367 (KLR) (14 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15367 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 40 OF 2018
CK NZILI, J
DECEMBER 14, 2022**

BETWEEN

M'MBIJIWE M'MUTUOTA APPELLANT

AND

JANE KATHANGA APPLICANT

AND

M'MBIJIWE M'MUTUOTA 1ST RESPONDENT

JANE KATHANGA 2ND RESPONDENT

RULING

1. The court is asked by an application dated July 20, 2022 to correct or amend the decree to read LR No Nthimbiri/Igoki/222 instead of Ntima/Igoki/222 and allow the Land Registrar to lift the restrictions or caution placed therein. The application is supported by a sworn affidavit of Jane Kathanga on the even date. The reasons given are that there was a mistake on the description of the property and if rectified the same would not affect the merits of the decree. The application was served upon the respondents but no response was filed.
2. Section 99 of the *Civil Procedure Act* as read together with Order 21 Rule 3 of the *Civil Procedure Rule* grants the court powers to correct any errors or anomalies to its judgments or decree. While addressing this power in *Godfrey Karume vs Kilimo Shutu & 6 others* (2020) eKLR, the Court of Appeal declined to recall, re-open, review or set aside the judgment and its orders said to have mistakenly determined the date of the letter of allocation as the date when time started to run in a claim for adverse possession. The court cited with approval *Manchester Outfitters*, Petition No 6 of 2015 Supreme Court of Kenya and *Jasbir Sign Rai & 3 others v Tardochan Signh Rai & 4 others* [2014] eKLR, & *Fredrick Otieno Otieno Outa vs Jared Odoyo Okello & 3 others* (2017) eKLR, on the proposition that the court could not depart from its earlier decision on grounds on mere doubts to its correctness.



3. The court held that there was no evidence that the judgment was obtained through fraud, deceit, was a nullity or mistaken belief. In short, the court said that the review was premised on clerical or arithmetical errors.
4. In *Leonard Mambo Kuria vs Ann Wanjiru Mumbo* (2017) eKLR, the Court of Appeal held that Sections 99 & 100 of the *Civil Procedure Act* gives general power to the court to correct or amend its records which is an exception to the doctrine of functus officio. The court cited with approval *Jersey Evening Post Ltd vs Al Thani* (2002) JLR 542 where it was held that the doctrine did not prevent the court from a judicial change of mind even when the decision had been communicated to the parties since proceedings were only fully concluded and the court becomes functus officio when the decree or order has been effected.
5. In *Republic vs AG & 15 others Ex parte Kenya Seed Co. Ltd and 5 others* (2010) it was held that the slip rule involves a correction so as to give effect to the actual intention of the judge and or to ensure that the judgment or order does not have a consequence which the judge intended to avoid adjudicating on. In *Esther Muthoni Gathungu vs Lucy Njeri (sued) as the administrator of Kamau Gathungu Mbiriri* (2019) eKLR, the court was faced with a situation of misdescription of names and the title. The court allowed the application in order to give full effect to its intention in the judgment.
6. Applying the foregoing principles to this application, the plaint at the lower court described the suit land as L R No Ntima/Igoki/222. The copy of records attached to the plaint was over to L R No Nthimbiri/Igoki/222.
7. Therefore, it is quite apparent that there was a mistaken but honest and genuine error on the part of the parties and the trial court all along misdescribed the suit property. In my considered view, the correction would not in any way affect the merits of the judgment.
8. As regards the caution, the same was registered pursuant to land disputes tribunal case involving the applicant. The same was referred to in the proceedings before the trial court.
9. This court under Section 68 of the *Land Registration Act* has powers to lift such restrictions after an occurrence of an event, contemplated in the order.
10. In this case, the event occurred upon the delivery of the judgment. Therefore, and in order to implement the judgment, the court finds merits in the request.
11. In the circumstances the application dated July 20, 2022 is allowed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 14TH DAY OF DECEMBER, 2022

In presence of:

C/A: Kananu

No appearance

HON C K NZILI

ELC JUDGE

