



REPUBLIC OF KENYA



**Kithuku v Mukuku (Environment & Land Case 28 of 2019)
[2025] KEELC 3933 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3933 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 28 OF 2019**

EO OBAGA, J

MAY 22, 2025

BETWEEN

JOSEPH KITHUKU PLAINTIFF

AND

KAVII MUKUKU DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion dated 18th September, 2023 brought under the provisions of Sections 1A, 1B and 3A of the [Civil Procedure Act](#). The Plaintiff/Applicant has sought issuance of the following orders: -
 1. [Spent]
 2. That the judgment delivered on 17/5/2023 and the subsequent orders issued on 20th June, 2023 be reviewed and accordingly amended to capture the suit property correctly as Okia/Nzuuni/724.
 3. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joseph Kithuku sworn on even date. The deponent averred that from the pleadings herein, the parties were litigation over Nzuuni/Kywasini/724 instead of Okia/Nzuuni/724. He added that the title deed for the suit property was introduced by the Defendant midway through proceedings and somehow the parties did not notice the error in the Plaintiff's pleadings.
3. The Applicant averred that judgment was delivered on 17/7/2023 in favour of the Plaintiff and that the same has a material error on the description of the property. That the subsequent order dated 20th June, 2023 has the same error. He contended that the correct description of the suit property is Okia/



- Nzuuni/724. He further contended that the court has inherent jurisdiction to grant the amendment sought for the ends of justice to be met.
4. Opposing the application, the Respondent filed a replying affidavit sworn by himself on 3rd December, 2024. He averred that parties to a suit are bound by their pleadings and that the Applicant failed to demonstrate that he owns the land. That the Defendant supplied his title deed and defended it but the Plaintiff never challenged it. The Respondent contended that the application is devoid of merit and as such it should be dismissed.
 5. The application was disposed of by way of written submissions.
 6. In the Applicant's submissions dated 7th April, 2025, Counsel identified two issues for determination: -
 - i. Whether the Applicant's application for review meets the requisite threshold?
 - ii. Who should bear the costs of the application?
 7. Citing the provisions of Order 45 Rule 1 (1) of the *Civil Procedure Rules*, Counsel submitted that the Applicant had established sufficient reason for the court to grant the orders sought on a balance of probabilities. Counsel submitted that the judgment of this court cannot be implemented in its current form and that the error in the pleadings was discovered at the execution stage. Reliance was placed on the case of *Francis Njoroge v Stephen Maina Kamore* [2018] eKLR.
 8. Submitting on the second issue, Counsel contended that costs should follow the event and that the Respondent should meet the Applicant's costs.
 9. The Respondent filed his submissions dated 14th April, 2025. On his behalf, Counsel submitted that the Applicant is bound by his pleadings and that nothing can be done to heal the error. That despite being granted leave to amend his plaint, the Applicant did not make the necessary amendments.
 10. Counsel urged the court to dismiss the application with costs.
 11. In the instant case, the judgment delivered on 17th May, 2023 determined all the issues in controversy between the parties herein. There was no uncertainty about the land in dispute and the parties litigated conclusively on the basis of documentary and oral evidence. The above judgment has not been reviewed, appealed or set aside.
 12. It is therefore evident that there is no re-litigation or re-opening of the case for a fresh decision to be made. Indeed, all the substantive issues for determination were canvassed at the trial and what remains is the final execution of the judgment and decree.
 13. Section 3A of the *Civil Procedure Rules, 2010* outlines as follows: -

‘Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.’
 14. The legal provisions for the amendment of decrees and judgments are found at Sections 99 and 100 of the *Civil Procedure Act*. Section 100 provides as follows:-

‘The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.’



15. In *Outa v Okello & 3 others* (Petition 6 of 2014) [2017] KESC 25 (KLR), the Supreme Court held as follows: -

“By its nature, the Slip Rule permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the Slip Rule does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior Courts demonstrates, this is the true import of the Slip Rule. ... The Supreme Court is the final Court in the land. But most importantly, it is a final Court of justice. This being the case, the Court is clothed with inherent powers which it may invoke, if circumstances so demand, to do justice. The *Constitution* from which this Court, and indeed all Courts in the land, derive their legitimacy decrees that we must do justice to all.”

16. The clear intention of the “Slip Rule” as the Supreme Court declared is to enhance the court’s inherent jurisdiction to ensure that justice is done in accordance with the laid down legal procedure. In *Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints* [2016] eKLR, the Court of Appeal held a similar view as follows: -

“Section 3A of the *Civil Procedure Act* appears to have been introduced to augment the provisions of section 3, vesting in the courts inherent power to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Of course, this power has now been broadened by the introduction in 2009 of overriding objective in sections 1A & 1B and in 2010 by Article 159 of the *Constitution*.

The extent of inherent powers of the court was eloquently explained by the authors of the *Halsbury’s Laws of England*, 4th Edn. Vol. 37 Para. 14 as follows;

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.” See also Meshallum Waweru Wanguku (supra)”



This inherent jurisdiction is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.”

17. In this case, the mere change of the description from Title No. Nzuuni/Kyuasini/724 to Title No. Okia/Nzuuni/724 will not affect the ownership rights on the land as the dispute has been determined conclusively in the judgment of this court.
 18. The application herein does not seek to substitute the judgment of the court. The main intention of the application is to ensure that the judgment is fully perfected and that the execution proceedings are finally implemented from the resulting decree.
 19. In the circumstances, the application herein is merited. It is allowed with no orders as to costs.
- It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF MAY, 2025.

In the presence of:

Ms. Kyalo for Mr. Kioko for Defendant/Respondent.

Mr. Asiyo for Mr. Muli for Plaintiff.

Court assistant – Steve Musyoki

