



**Kamau v Nkumei & another (Environmental and Land Originating Summons 4 of 2021) [2024] KEELC 13504 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13504 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 4 OF 2021  
CG MBOGO, J  
DECEMBER 3, 2024**

**BETWEEN**

**DANIEL KAMAU ..... PLAINTIFF**

**AND**

**KARINO OLE NKUMEI ..... 1<sup>ST</sup> DEFENDANT**

**NAPANOI ENE LENKUUMEI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before the court for determination is the notice of motion dated 9<sup>th</sup> July, 2024 filed by the plaintiff/ applicant and it is expressed to be brought under Sections 1A, 3,3A, 99 & 100 of the Civil Procedure Act and Order 51 Rule 1 & 4 of the Civil Procedure Rules seeking the following orders: -

1. Spent.
2. That this honourable court be pleased to amend Order Number 2 in its judgment delivered on 27<sup>th</sup> February 2024 and in its decree issued 21<sup>st</sup> March, 2024 in this matter to provide as follows;
 

“In the event that the defendants/respondents fail to comply with order i. above, the officer commanding Narok police station be ordered to oversee execution of the eviction order.”
3. That the cost of this application be provided for.
4. Any other or further relief(s) that this honourable court may deem fit and just to grant.

2. The application is premised on the grounds on its face, and it is further supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that he filed this matter on 3<sup>rd</sup> March, 2021 and it was heard, and a judgment delivered on 27<sup>th</sup> February, 2024 and that a decree was



- subsequently issued on 21<sup>st</sup> March, 2024. Further, he deposed that after 90 days lapsed from the date of judgment, he initiated the process of eviction and encountered a challenge when the OCS Narok Police Station informed him that there was no such police station as Narok North Police Station.
3. The plaintiff/ applicant deposed that it is as a result of the above that he seeks an amendment of order ii. of the judgment to refer to Narok Police Station. He also deposed that he has complied with order iii. of the judgment, and no prejudice will be suffered by the defendants/ respondents if the application is allowed.
  4. The application was canvassed by way of written submissions. The plaintiff/ applicant filed his written submissions dated 30<sup>th</sup> September, 2024 where he raised one issue for determination which is whether this court be pleased to amend Order number 2 in its judgment delivered on 27<sup>th</sup> February, 2024 and in its decree issued 21<sup>st</sup> March, 2024 in this matter to provide as follows; “In the event that the defendants/ respondents fail to comply with order i. above, the officer commanding station Narok police station be ordered to oversee execution of the eviction order.”
  5. On this issue, the plaintiff/ applicant submitted that this court can invoke Sections 99 and 100 of the Civil Procedure Act to correct clerical or arithmetical mistake in judgments and decrees or orders arising from an accidental slip or omission. He relied on the case of Leonard Mambo Kuria v Ann Mambo [2017] eKLR, and submitted that no prejudice or injustice will be occasioned to any party if this application is allowed since it is only seeking to give effect to the actual intention of the court in its judgment of 27<sup>th</sup> February, 2024.
  6. Before I delve further into the application, from the record, and upon perusal, on 7<sup>th</sup> October, 2024, this court noted that the defendants/ respondents were served with the instant application on 19<sup>th</sup> July, 2024 via email. Whereas it came to the attention of the court that the 1<sup>st</sup> defendant/ respondent is deceased, sufficient time was granted to the 1<sup>st</sup> defendant/ respondent to regularize their position through their counsel whose brief was held by Mr. Kilele, the learned counsel for the 2<sup>nd</sup> defendant/ respondent.
  7. As at the time of writing this ruling, the defendants/ respondents had not filed their responses or complied with the directions of this court issued on 19<sup>th</sup> July, 2024. Be that as it may, I have considered the application and the written submissions filed by the plaintiff/ applicant.
  8. Sections 99 and 100 of the Civil Procedure Act states as follows: -
    - “99. 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.
    100. 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.”
  9. The above cited provisions were discussed in the case of Leonard Mambo Kuria v Ann Wanjiru Mambo [2017] eKLR as follows:
    - “The application of these two sections [Sections 99 and 100 of the *Civil Procedure Act*, Cap 21] has been considered before in several decisions. They vest a general power to the courts to correct or amend their records. As such they are an exception to the doctrine of ‘functus



officio’-- the principle that once a decision has been given, it is (subject to any right of appeal) final and conclusive. It cannot be revoked or varied by the decision-maker. As the court stated in the case of *Jersey Evening Post Limited v Ai Thani* [2002] JLR 542 at 550:-“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.”

10. In this application, the plaintiff/applicant seeks to correct order ii. of the orders issued in the judgement delivered on 27<sup>th</sup> February, 2024. This court issued the following orders: -
  - i. That the defendants/respondents to vacate the suit properties known as Cis-Mara/Rotian/356 and Cis-Mara/Rotian/357 within 90 days from the date hereof failure to which the plaintiff/applicant shall evict them.
  - ii. In the event that the defendants/respondents fail to comply with order i. above, the officer commanding Narok North Sub County police station be ordered to oversee execution of the eviction order.
  - iii. That the plaintiff/applicant to issue a cheque of the sum owing to the defendants/respondents within 90 days from the date hereof.
  - iv. That the costs of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents.
11. As pointed out by the plaintiff/ applicant, there is no police station referred to as Narok North Sub County Police Station. The mistake stems from the pleadings i.e. the prayers as sought in the originating summons dated 9<sup>th</sup> February, 2021, and which was carried over to the judgment.
12. Indeed, this was an inadvertent and genuine mistake curable under Sections 99 and 100 of the [Civil Procedure Act](#). I thus find merit in the notice of motion dated 9<sup>th</sup> July, 2024. Order ii. of the judgment delivered on 27<sup>th</sup> February, 2024 is hereby amended to reflect as follows: -

“In the event that the defendants/respondents fail to comply with order i. above, the officer commanding Narok Police Station is hereby ordered to oversee execution of the eviction order.”

13. I make no orders as to costs. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 3<sup>RD</sup> DAY OF DECEMBER, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**03/12/2024.**

In the presence of: -

Mr. Meyoki Pere – C. A.

