



**Mwanzi & another v Mansur (Environment & Land Case
67 of 2015) [2023] KEELC 475 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 475 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 67 OF 2015
JO OLOLA, J
FEBRUARY 2, 2023**

BETWEEN

MUMIN MAHMOUD MWANZI 1ST APPLICANT

HASHIM MAHMOUD MWANZI 2ND APPLICANT

AND

BURHAN ALI MANSUR RESPONDENT

RULING

1. By the Notice of Motion dated July 20, 2018, Mumin Mahmoud Mwanzi and Hashim Mahmoud Mwanzi (the applicants) pray for orders:
 - (a) That the decree herein be amended in respect of the spellings of the names of some of the persons named therein as the beneficiaries of the suit properties; and
 - (b) That the costs be provided for.
2. The application is supported by an affidavit jointly sworn by the two applicants and is premised on the grounds that:
 - (i) The names of the affected persons were misspelt in the decree due to typographical errors; and
 - (ii) The said errors were out of accidental slips and omissions.
3. Francis Maina Gichohi, the Legal Representative and holder of a grant of administration ad litem of the estate of Burhan Ali Mansur (the respondent) is opposed to the grant of the orders sought. In a replying affidavit sworn and filed herein on October 15, 2018, the Respondent avers that the



application is totally misconceived, pretentious, hollow, baseless and is a veiled attempt to introduce new beneficiaries who have never been the subject of the dispute herein.

4. The respondent further avers that the powers of this court under the Slip rule are limited to correction of clerical errors or arithmetical mistakes in Judgments and decrees and that the resultant decree herein was extracted in perfect consonance with the Judgment of the court and in terms of the prayers sought by the applicant in the Originating Summons.
5. The respondent avers that all the names of the beneficiaries as listed in the decree were in perfect agreement with the names listed at Paragraph 19 of the Supporting Affidavit to the Originating Summons and that the purported typographical errors are in the Applicant's pleadings as opposed to the decree and there is therefore nothing to correct under section 99 of the Civil Procedure Act.
6. I have carefully perused and considered both the application and the response thereto. I have similarly perused and considered the oral submissions made herein by the Learned Counsels representing the parties herein.
7. By their application before me, the two applicants seek to have the decree issued herein amended in respect of the spellings of the names of some eleven (11) individuals listed as the beneficiaries of the suit properties. It is the Applicant's case that the names of the said individuals were misspelt in the decree due to typographical errors and that the same arose out of accidental slips and/or omissions.
8. On his part, the respondent has urged the court to reject the application. It is the respondent's case that the application is misconceived as the names listed in the decree were in perfect agreement with the names as listed in the applicant's pleadings and that there was therefore nothing to warrant the court's intervention under the powers granted to the court to correct clerical errors and arithmetical mistakes.
9. The application before the court is expressed to have been made pursuant to section 99 of the Civil Procedure Act. The said Section provides:-

“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. Examining the principles to be applied under the said section in *Republic v Attorney General and 15 others, ex-parte Kenya Seed Company Limited and 5 others* (2010) eKLR, the court observed as follows:

“27. 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 Judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

28. 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.



The Australian Civil Procedure has provisions in pari materia with section 99. As was stated in the case of *Newmont Yandal Operations Pty Limited v The J Aron Corp and the Goldman Sachs Group Inc* (2007) 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered Judgment where the orders do not truly represent what the Court intended.

29. Nearer home, the predecessor of this Court in *Lakhamshi Brothers Limited v R Raja and Sons* (1966) EA 313 endorsed that application of the rule, that is, to give effect to the intention of the court when it gave its Judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted. Spry JA in the Raniga case (supra) also stated as follows:

A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when Judgment was given or, in the case of a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention.

30. What is certainly not permissible in the application of section 99, is to ask the Court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order.”

11. In the matter before me, the applicants had in the Originating Summons sought two prayers listed as follows:

1. That it be declared that the respondent holds parcel of land L.R Nos Aguthi/Gatitu/2438, 2442, 2443, 2444 in trust for the benefit of the family of Mahmoud Sheikh Mwanzi (deceased) in respect of Aguthi/Gatitu/2438 and for the benefit of the family of Asha Biriti Mwanzi (deceased) in respect of L.R Nos Aguthi/Gatitu/2442, 2443, 2444; and
2. That the trust so declared be determined by cancellation of the respondent as the proprietor of the suit properties and in place thereof the same be registered in the names of the identified beneficiaries thereof respectively as per Paragraph 19 of the Supporting Affidavit.

12. Subsequently and by the Judgment of this Court rendered on April 20, 2015, this court gave Judgment in favour of the applicants and allowed the Originating Summons in terms of the said Prayers 1 and 2 thereof. The decree sought to be amended was then extracted with the names of the beneficiaries listed as they were at Paragraph 19 of the supporting affidavit.

13. At Paragraph 2 of the supporting affidavit to the present application before me, the Applicants aver as follows:

- “2. That we have since noted that the decree herein dated July 8, 2015 has typographical errors in the spellings of the names of some of the persons decreed as the beneficiaries of the suit properties, which names thus vary in



spelling with the proper names in the respective National Identity Cards as per the copies annexed hereto marked (M1).”

14. At Paragraph 3 of the same affidavit, the applicants have listed the names they seek to rectify indicating both the name as appears in the decree and the proper name appearing in the identity card.
15. I have carefully looked at the names. Contrary to the respondent’s contention that the applicants by the amendments sought herein were trying to introduce new parties to the dispute, it was apparent from a plain reading of the names listed that a mistake had been done in spelling the names in the applicant’s pleadings as earlier filed. For instance, the name Hashim Mahmoud Mwanzi was spelt in the pleadings and the decree as Hashim Mahamoud Mwanzi. Similarly Asha Mahmoud Mwanzi’s name is spelt as Asha Mahamoud Mwanzi while Amina Mahmoud Mwanzi’s name is equally misspelt as Amina Mahamoud Mwanzi.
16. Those in my view are errors that can be corrected under the provisions of section 99 of the *Civil Procedure Act*. The intention of the court when it gave its Judgment was to award the suit properties to the rightful beneficiaries of the land. If the errors in the spellings of the names had been brought to the attention of the court, I am satisfied that the Court would have still made a similar order.
17. Accordingly I am satisfied that there is merit in the Motion dated July 20, 2018. I allow the same in terms of Prayer (a) thereof with no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 2ND DAY OF FEBRUARY, 2023.**

J. O. Olola

JUDGE

In the presence of:

Mr. King’ori for the Applicants

Mr. Ngugi for the Respondents

Court assistant - Kendi

