



**M'itwamwari & another (Suing as the Legal Representative of Maria Kanario
M'itwamwari - Deceased) v Igoki Mutethia Farmers Cooperative Society Ltd & 2 others
(Environment & Land Case 5 of 1990) [2023] KEELC 17264 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17264 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 5 OF 1990**

**CK NZILI, J
MAY 3, 2023**

BETWEEN

**MARIA KANARIO M'ITWAMWARI 1ST PLAINTIFF
ALEX MWITHIMI M'ITWAMWARI 2ND PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF MARIA KANARIO
M'ITWAMWARI - DECEASED**

AND

**IGOKI MUTETHIA FARMERS COOPERATIVE SOCIETY LTD 1ST
DEFENDANT
JENIFFER KANARIO (SUED AS THE LEGAL REPRESENTATIVE OF JAPHET
KARUMA – DECEASED) 2ND DEFENDANT
ZIPPORAH MUCHIOKI 3RD DEFENDANT**

RULING

1. By an application dated February 1, 2023 the court is asked to:
 - i. Order the Land Registrar Meru to cancel the subdivision and resultant numbers emanating from land reference number Kirimara/Kithithina/Block 1/128.
 - ii. Order the Land Registrar Meru to dispense with the production of the title deed numbers Kirimara/Kithithina/Block 1/561 and Kirimara/Kithithina/Block 1/562 for purposes of cancellation.
 - iii. Order the Land Registrar Meru to register parcel LR No Kirimara/Kithithina/Block/1/128 previously Plot No 128 Mutethia Farm Timau in the names of the plaintiff.



2. The application is premised on the ground that plot No 128 Mutethia Farm Timau was decreed to the plaintiff in the judgment delivered on 4/5/2022 out of a prolonged litigation, the plot number ceased to exist and was converted to Kirimara/Kithithina/Block 1/128. That while aware of the changes, the 3rd defendant caused her name to be registered as joint owner with the deceased.
3. That despite knowledge of the ongoing case, the 3rd defendant caused the registration and subdivided the land into two portions.
4. That if the orders sought are not granted, the applicant would be unable to enjoy the fruits of his judgment.
5. In the affidavit supporting the application Alex Mwitimi M'Itwamwari deposed that Mutethia Farm was under cooperative union before and upon registration new numbers were issued which changed Plot No 128 to Kirimara/Kithithina/Block/1/18 as per a certificate of official search attached as AMM "1" and in the name of the deceased mother and the 3rd defendant caused a subdivision into Kirimara/Kithithina/Block 1/581 and she transferred the other Parcel No Kirimara/Kiithithina/Block 1/562 as per an official search marked AMM "3". That due to the change it was virtually impossible to implement this court's decree as there was non-existent parcel known as Plot No 128 Mutethia Farm as changes were done after registration of the names and new number issued. That since this court pronounced itself on the manner of the acquisition was done, it was necessary for the court to exercise its, inherent powers to ensure that the end of justice are met.
6. Though the application was served upon the respondents and an affidavit of service dated February 24, 2023 was filed, no replying affidavit or grounds of opposition were filed by the respondents.
7. From the judgment of the court, issues number (I) – (II), (III), (iv), (vii), (ix) and (x) related to Parcel No 128 Mutethia Farm Timau otherwise described as LR No Kirimara/Kithithina/1/128 subsequently subdivided into LR No Kirimara/Kithithina/Block 1/561 and 562 as per D. Exh No's 8-12 which were copies of official searches dated 13.5.2009.
8. Section 99 of the *Civil Procedure Act* allows for the amendment of clerical or arithmetical errors or accidental slips or omissions.
9. Sections 3A and 100 of the *Civil Procedure Act* on the other hand provides for amendment of defects or errors in the proceedings. See *Japhet Nzila Muangi vs Minister for Land & Environment County Government of Mombasa and another* (2019) eKLR.
10. In the case of *Esther Muthoni Gathungu vs Lucy Njeri (sued) as the administrator of the estate of Kamau Gathingu Mbiri* (2019) eKLR, at issue was whether the decree or judgment could be amended so that it could aid the Land Registrar Ngong to rectify the title to the suit land. The court cited with approval *Vallabdas Karsandas Raniga vs Mansuklal Jivraj & others* (1965) EA 780, where it was held that a court could apply slip rules where it was fully satisfied that it would give effect to the intention of the court at the time the judgment was given or in case a matter was overlooked.
11. Further, the court cited with approval *Leonard Mambo Kuria vs Ann Wanjiru Mambo* (2017) eKLR, where the court of appeal held that Sections 99 and 100 of the *Civil Procedure Act* grant courts a general power to correct or amend their record as exceptions to the doctrine of *functus officio*.
12. As to the application of the doctrine of slip rule, the court also cited with approval *Republic vs AG & 15 others ex parte Kenya Seed Co Ltd and 5 others* (2010) eKLR that it is a rule which forms part of the inherent jurisdiction of the court which would otherwise become *functus officio* upon issuing a judgment or order to re-open the case but only for the limited purpose stated in the section *inter-*



alia on clerical errors, arithmetical mistake, calculation of interest, wrong figures or dates or to ensure that the actual intention of the judgment and or ensure that the judgment or order does not have a consequence which the judge intended to avoid adjudicating on. In this instance, the court allowed for the amendment seeking to rectify the name as well as to cancel the name of the deceased from the title and to allow the three parties to jointly share the suitland.

13. Similarly, in *Teresia Njeri Mwangi and another vs Roseline Kamuyu & others* (2021) eKLR there was a misdescription of the suit property which the evidence by the parties had clarified thoroughly oral and through documentary evidence. An appeal had also been filed against the decree which had substantially progressed. The court said that whereas it had jurisdiction to rectify the mistake the effect would have been profound since it was going to the same issues before the Court of Appeal.
14. In this suit, there is no doubt that there was consolidation of three files prior to the hearing of the suit. The initial holder in the lead file had not amended the initial plaint to reflect the description of the suit property and its resultant two sub-divisions.
15. That notwithstanding, the issue of the correct description of the suit property has not been under dispute both in the pleadings, evidence tendered and in the written submissions. This is well captured at pages 6, 7, 8, 10 & 13 of the judgment. Similarly, the court is framing the issue for determination at item number (ix) and (x) captured the correct parcels of land and its subdivisions as LR No Kirimara/Kithithina Block 1/561 and 560 which were the resultant subdivisions of LR No Kirimara/Kithithina/Block 1/128.
16. Therefore, in order to reflect the intention of the court, I find that there is need to invoke Sections 3A, 99 and 100 of the *Civil Procedure Act* and review paragraphs 4, 8, 13, 82, 83, 90, 101, 122 and 123 of the judgment in so far as the description of the suit property is concerned. The decree dated September 1, 2022 shall also be amended to reflect the intentions of the court.
17. For the avoidance of doubt the court made a finding that LR No Kirimara/Kithithina/Block 1/128 with effect from November 12, 1990, was not capable of being transferred and its resultant subdivisions LR No Kirimara/Kithithina/Block 1/561 & 562 were illegal, unprocedural and contrary to the existing court orders.
18. Consequently, prayers 2 & 3 of the application lack merits since the same was covered by the judgment. As regards prayer No 3, no basis has been made for the said prayer for this court to interfere with the discretion of the land registrar in the exercise of its statutory mandate under Section 80 of the *Land Registration Act*.
19. The upshot is that I find the prayers sought in the application superfluous save to direct for the amendments of the judgment and the decree as provided above.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

THIS 3RD DAY OF MAY 2023

In presence of

C.A John Paul

Mwanzia for the defendant

Mr. Karanja for the plaintiff

HON. C. NZILI



ELC JUDGE

