



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 15 OF 2016**

**JULIUS AMUGUNE OKANDA.....PLAINTIFF/APPLICANT**

**VERSUS**

**JAMES MUNANDI ATSIBILWA.....DEFENDANT/RESPONDENT**

**RULING**

The application is dated 25<sup>th</sup> January 2021 and seeks the following orders:-

1. That the court be pleased to rectify and/or correct an error on its judgment in terms of the parcel number from West Bunyore/Ebusamia/2409 to E. Bunyore/Ebusamia/2409.
2. That pursuant to grant of prayer (a) above, the court do authorize and/or order the Vihiga County Police Commander to provide security for the execution of the rectified judgment during eviction of the defendant from the L.P. E. Bunyore/Ebusamia/2409.
3. That the costs of this application be provided for.

It is based on the ground that this honourable court rendered its judgment in this matter on 23<sup>rd</sup> July, 2019, and on that judgment, there was an error and/or typing error in terms of the land parcel citation as West Bunyore/Ebusamia/2409 instead of E. Bunyore/Ebusamia/2409. That the court has powers under the law and its discretion to rectify the typing and/or topographical error under the slip rule. That the respondent will not suffer any prejudice with the granting of the orders sought. The court granted the defendant six (6) months to vacate from the suit land, which time has lapsed and it is only just that the County Commander, Vihiga County do ensure that security is provided during the eviction exercise.

That respondent submitted that essentially the pleadings by the plaintiff referred to Land parcel No. West Bunyore/Ebusamia/2409. That in his evidence to court, the plaintiff referred to the suit land as West Bunyore/Ebusamia/2409. That the judgment delivered by court was premised on the pleading filed by the plaintiff in court and which the court correctly captured in the judgment by referring to Land Parcel No. West Bunyore/Ebusamia/2409. That no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. That the plaintiff application is an attempt to amend his pleading long after judgment has been delivered and which is a practice that is alien in law.

This court has considered the application and the submissions therein. It is a finding of fact that the court rendered its judgment in this matter on 23<sup>rd</sup> July, 2019, and on that judgment, the land parcel citation as West Bunyore/Ebusamia/2409 instead of E. Bunyore/Ebusamia/2409. I have perused the exhibits produced in this matter by both parties and it is clear that the suit land referred to was E. Bunyore/Ebusamia/2409 and not West Bunyore/Ebusamia/2409. I find that this is an error on the face of the record and in the interest of justice should be rectified. I find the application is merited and I grant the same with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 21<sup>ST</sup> APRIL 2021.**

**N.A. MATHEKA**

**JUDGE**