



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwega v Kailutha & 4 others (Environment and Land Case  
E015 of 2021) [2023] KEELC 20594 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20594 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE E015 OF 2021**

**CK NZILI, J**

**OCTOBER 11, 2023**

**BETWEEN**

**CORNELIUS MUTHURI MWEGA ..... PLAINTIFF**

**AND**

**STANLEY KAILUTHA ..... 1<sup>ST</sup> DEFENDANT**

**KANYILI FRANCIS ..... 2<sup>ND</sup> DEFENDANT**

**BERNARD KIMATHI ..... 3<sup>RD</sup> DEFENDANT**

**GEOFFREY ABURUKI ..... 4<sup>TH</sup> DEFENDANT**

**JOSEPH MUGAMBI ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The court is asked to correct the judgment delivered on 2.11.2022 as regards the misdescription of the suit property from LR No. Ruiru/Rwarera/2247 to, LR No. Ruiru/Rwarera/2447.
2. The applicant avers that there was an inadvertent mistake throughout the pleadings up to the court judgment, though the property was correctly indicated in the sale agreement and title deed produced as exhibits. The applicant, therefore, urges the court to find the clerical mistake or error in defining the suit land genuine as well as curable so that he may execute the final decree. The application is supported by the grounds on its face and the supporting affidavit sworn by Cornelius Muthuri Mwega on 12.6.2023.
3. It is averred that the plaintiff's evidence at the trial was not controverted, and therefore, his lawyer's mistake in misdescribing the suit property should not be visited upon him; otherwise, it would occasion grave and substantial prejudice to him.
4. Sections 99 and 100 of the *Civil Procedure Act* grant a court the power to correct clerical or arithmetical mistakes in judgments, decrees, orders, or errors arising from an accidental slip or omission. In *Leonard*



*Mambo Kuria v Ann Wanjiru Mambo* (2017) eKLR, the court observed that the two sections vest the court with a general power to correct or amend its record, an exception to the doctrine of *functus officio*. The court cited with approval *Jersey Evening Post Ltd v Ai Thani* (2002) JLR 542, that the principle of *functus officio* did not prevent a judicial change of mind even if the decision had been communicated to the parties for proceedings were only fully concluded, and the court functions when its judgment or order had been perfected.

5. In *Republic v AG & others Ex-parte Kenya Seed Co. Ltd & others* (2010) eKLR, it was observed that the slip rule under the common law applies out of the court's inherent jurisdiction to re-open a case but only for a limited purpose of giving effect to the actual intention of the judgment and or to ensure that the judgment or order did not have a consequence other than the one judge intended to avoid adjudicating on, but does not allow a court to sit on appeal of its own decisions or re-do the case based on the exercise of an independent discretion or if it involves a real difference of opinion or requires an argument and deliberation or generally where the intended correction go to the substance of the judgment or order.
6. In this application, what is sought to be corrected is letter (4) instead of letter (2) for the suit property to read LR No. Ruiru/Rwarera/2447 instead of LR No. Ruiru/Rwarera/2247. To my mind, the mistake, as pointed out by the plaintiff, started with the initial pleadings and was carried over to the judgment. In the evidence tendered by PW 1, the court proceedings correctly captured the suit property as indicated in P. Exh No's (1) & (4).
7. Consequently, this was an inadvertent and genuine mistake curable under Sections 99 and 100 of the *Civil Procedure Act*. The application is allowed, and an amended judgment shall be issued reflecting the change in paragraphs 1, 6, and 13 of the judgment dated 2.11.2022. There will be no order as to costs.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 11<sup>TH</sup> DAY OF OCTOBER 2023**

In presence of

C.A Kananu

No appearance

**HON. CK NZILI**

**ELC JUDGE**

