



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT GARISSA**

**ELC CASE NO. 16 OF 2017**

**MWENZIA KIMWELE.....APPELLANT**

**-VERSUS**

**KITHOME KIBORA.....1<sup>ST</sup> RESPONDENT**

**IBRAHIM MUSONGA.....2<sup>ND</sup> RESPONDENT**

**RULING**

The 2<sup>nd</sup> Defendant/Applicant moved this Honourable Court vide a Notice of Motion under Section 99 of the Civil Procedure Act for the following orders;

**1. Spent.**

**2. THAT this Honourable court be pleased to amend the judgement delivered on the 28<sup>th</sup> day of May, 2021 as follows;**

- a. Page 2 line 3 be amended to read 70 hectares in place of acres.**
- b. Page 2 line 18 be amended to read 70 hectares in place of acres**
- c. Page 2 the last line be amended to read 70 hectares in place of acres**
- d. Page 3 line 1 be amended to read 65.953 hectares in place of 60 acres.**
- e. Page 3 line 5 be amended to read 65.953 hectares in place of 60 acres.**
- f. Page 3 line 22 be amended to read 70 hectares in place of acres.**
- g. Page 4 the 3line be amended to read 70 hectares in place of acres.**
- h. Page 4 the line 7 be amended to read 65.953 hectares in place of 60 acres.**
- i. Page 4 the line 13 be amended to read 65.953 hectares out of the 70 hectares in place of 60 acres out of the 70 acres.**

**GROUND IN SUPPORT OF THE APPLICATION**

- A. On the 28<sup>th</sup> day of May, 2021 this court entered judgement as prayed in my counterclaim.**
- B. There are seven clerical errors on the judgement which require to be amended by this Honourable Court.**
- C. It is in the interest of justice that the orders sought in this application are granted.**

**APPLICANT'S SUMMARY OF FACTS**

The application is premised on the ground shown herein above and the affidavit of the Applicant shown on 28<sup>th</sup> June, 2021 where he deponed as follows;

1. THAT I am the 2<sup>nd</sup> Defendant hence competent to swear this affidavit.
2. THAT on my prayers as pleaded on my counterclaim I had sought the following:
  - a. An order directing the Plaintiff to vacate the 2<sup>nd</sup> Defendant's land to the extent of 65.953 hectares.
  - b. An order directing the Plaintiff to vacate the 2<sup>nd</sup> Defendant's land to the extent of the remaining 10 acres for 4.047 hectares for reason that the Plaintiff never paid the 2<sup>nd</sup> Defendant's father the consideration for the purchase.
  - c. The Plaintiff to pay the 2<sup>nd</sup> Defendant mesne profits for loss of use of the 65.953 hectares since the year 2010.
3. THAT on the 28<sup>th</sup> day of May, 2021 this court entered judgment as prayed in my counter claim.
4. THAT when I read the judgment I noticed several arithmetic and clerical errors on the judgment and wish that the same be amended as follows;
  - a. Page 2 line 3 be amended to read 70 hectares in place of acres.
  - b. Page 2 line 18 be amended to read 70 hectares in place of acres.
  - c. Page 2 the last line be amended to read 70 hectares in place of acres.
  - d. Page 3 line 1 be amended to read 65.953 hectares in place of 60 acres.
  - e. Page 3 line 5 be amended to read 65.953 hectares in place of 60 acres
  - f. Page 3 the line 22 be amended to read 70 hectares in place of acres.
  - g. Page 4 the 3 line be amended to read 70 hectares in place of acres.
  - h. Page 4 the line 7 be amended to read 65.953 hectares in place of 60 acres.
  - i. Page 4 the line 13 be amended to read 65.953 hectares out of the 70 hectares in place of 60 hectares out of the 70 acres.

### **ANALYSIS AND DECISION**

I have considered the Notice of Motion, the supporting affidavit and the annexures thereto. I have also looked at the pleadings particularly the 2<sup>nd</sup> Defendant/applicant's amended defence and counterclaim dated 4<sup>th</sup> August, 2017. This Honourable Court delivered judgment in respect of the dispute between the parties on 28<sup>th</sup> May, 2021 which is the subject of the application herein.

Section 99 of the Civil Procedure Act Cap 21 Laws of Kenya provides;

**“Clerical or arithmetical mistakes in judgment, 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.”**

Section 100 of the same Act provides;

**“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 or depending on the proceeding.”**

In the case of **Republic Vs Attorney General & 15 Others, Ex parte Kenya Seed Company Limited & 5 Others (2010) e KLR**, the court stated;

**“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 a 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 *inparimateria* with Section 99. As was stated in the case of Newmont Yandal Operations Pty Ltd v The J. Aron Corp & 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 Ltd v R. Raja & 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 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”.

In respect to the Notice of motion dated 22<sup>nd</sup> June, 2021, I find merit in the same and the prayers sought are hereby granted. Consequently, this court’s judgment dated 28<sup>th</sup> May, 2021 is amended under Section 99 CPA as proposed in the application. There shall be no order to costs.

**DATED, DELIVERED VIRTUALLY AND SIGNED AT GARISSA THIS 1<sup>ST</sup> DAY OCTOBER, 2021**

.....

**E.C. CHERONO**

**ELC JUDGE**

**In the presence of:**

1. Applicant: Absent
2. Respondents: Absent
3. Fardowsa: Court Assistant.