



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

CONSTITUTIONAL PETITION NO. 18 OF 2018

IN THE MATTER OF ARTICLES 2,3,10,19,20,21,22,23,24,27,29,35,39,40,43,47,48,50(1),60,

64,159,160,238,239,243,244,258,259 AND 260 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF THE CONTRAVENTION OF THE CONSTITUTION AT ARTICLES 10,19,20,21,24,27,29,39,40,47,50(1),
238,239,244 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

AND

IN THE MATTER OF THE AFRICAN (BANJUL) CHARTER ON

HUMAN RIGHTS AND PEOPLE'S RIGHTS (1981)

AND

IN THE MATTER OF THE INTERNATIONAL COVENANT

ON CIVIL AND POLITICAL RIGHTS (1966)

BETWEEN

NGURUMAN LIMITED..... PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

CABINET SECRETARY OF INTERIOR AND

COORDINATION OF NATIONAL GOVERNMENT.....2ND RESPONDENT

RULING

A. INTRODUCTION

1. By a Notice of motion dated 1st September, 2021, the Petitioner/ Applicant sought the following orders; -

a) Spent.

b) **THAT** the Judgment dated and delivered by Honourable Justice Kullow on 28th July, 2021 in the instant Petition be rectified as follows:

(i) At Page 9, lines 8 and 9 to read, “(f) Compensation for land LR No. Narok/ Nguruman/ Kamorora/ 1 for Kshs. 33,350,000,000 being the value of the land”;

(ii) At Page 20, lines 11-13 to read, “(b) That an Order of Compensation of Land Reference Narok/ Nguruman/Kamorora/1 of Kshs. 33,350,000,000 is hereby issued.”;

c) **THAT** the costs of the Application be provided for.

2. The Application is based on the grounds thereof and the Supporting Affidavit sworn by MARTIN RICHARD STEYN on 1.09.2021. The applicant avers that the Prayers as set out in the Petition dated 17.10.2018, included among others, a prayer for compensation for the subject land L.R. No. Narok/ Nguruman/ Kamorora/ 1 of Kenya Shillings Thirty- Three Billion Three Hundred Fifty and Fifty Million (Kshs. 33,350,000,000/-) being the value of the suit property; having relied on the valuation report prepared by Messrs. COG Consultants Limited which valued the property at the said sum.

3. It is the Applicant’s assertion that Judgement was delivered by this Honourable Court on 28.07.2021 whereby the court held that based on the valuation report which was not controverted by the Respondents, an Order of compensation for the subject property was issued for the sum of Kenya Shillings Thirty-Three Million Three Hundred Fifty Thousand (Kshs. 33,350,000/-) which is an error.

4. It is the Applicant’s contention that the said judgment contains clerical and/or arithmetical errors, which are apparent on the on the face of the record, in respect of both the value of the suit property and the prayer seeking compensation for the suit property, which mistakes appear to have been occasioned inadvertently by human error.

5. That the mistake erroneously quoted the prayer sought and valuation of the land as being Kenya Shillings Thirty-Three Million Three Hundred Fifty Thousand (Kshs. 33,350,000/-) when in fact the prayer sought and the valuation of the property is Kenya Shillings Thirty-Three Billion Three Hundred Fifty Million (**Kshs. 33,350,000,000/=**)

6. It is their position that the intended rectification seeks to bring out what the trial court actually intended and decided.

7. The Applicant further invoked Section 99 of the Civil Procedure Act which gives the court the jurisdiction to cure such defects or clerical mistakes and/or errors arising in a judgment from any accidental slip or omission. They maintained that if the said error is not corrected, it will be gravely detrimental to them.

8. The application was opposed. The Respondent filed Grounds of Opposition in response to the Application dated 01.09.2021. It is the Respondent’s assertion that the allegations by the Applicant do not amount to clerical errors apparent on the face of the record and as such the Application which is an abuse of the court process should be dismissed with costs.

9. Further, he did contend that the orders sought in the Application seeks to substitute the intention of the Applicant with that of the Court in order to direct the judgement in his favor. The Application was disposed by way of written submissions.

10. I have read and considered the Notice of Motion Application and the responses thereto and the submissions in this case together with the authorities cited in support of the respective cases and I have taken the same into account in arriving at my decision.

B. DETERMINATION AND ANALYSIS

11. I am of the considered opinion that the sole issue for determination arising from the Application is: -

i. Whether the Judgment issued on the 28th July, 2021 should be amended and/or rectified.

A. Whether the Judgment issued on the 28th July, 2021 can be amended and/or rectified.

12. **Section 99** of the Civil Procedure Act on amendment of judgments, decrees or orders, provides as follows: -

“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.”

13. The Court of Appeal Judges in Leonard Mambo Kuria v Ann Wanjiru Mambo [2017] eKLR cited with approval the case of **Jersey Evening Post Limited vs. Ai Thani [2002] JLR 542 at 550** where the court stated as follows: -

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available”.

14. The Court of Appeal examined the mechanics of the application of Section 99 of the Civil Procedure Act in the case of **Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR**, stating 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 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 *in pari materia* 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”.

15. Justice M. Kasango in *Steve Onyango v Techspa General Supplies Ltd & 2 others* [2020] eKLR also relied in the Court of Appeal decision in *Leonard Mambo Kuria vs Anne Wanjiru Mambo (supra)* in allowing an Application seeking to amend an error in the judgment pursuant to section 99 of the Civil Procedure Act.

16. The Courts have set out guidelines which govern the circumstances under which the exercise of the jurisdiction to correct clerical or arithmetical mistakes in judgments, decrees or orders is made. In **Vallabhdas Karsandas Raniga Vs. Mansukhlal Jivraj and Others [1965] EA 780**, the East African Court of Appeal held:

“Section 3(2) of the Appellate Jurisdiction Act confers on the Court of Appeal the same jurisdiction to amend judgments, decrees and orders that the High Court has under section 99 of the Civil Procedure Act, making it unnecessary to look to the inherent powers of the court. The words “at any time” in section 99 clearly allow the power of amendment to be exercised after the issue of a formal order.... “Slip orders” are made to rectify omissions resulting from the failure of counsel to ask for costs and other matters to which their clients are entitled.....A court will only apply the slip rules 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. In the present case, if the facts had been before the court when judgment was given on appeal, the court would, on application or indeed of its own motion, have made the order for refund, now sought, which was necessarily consequential on the decision on the main issues.”

17. A court will only correct a defect where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given.

18. It is my considered view that the errors alleged, are clerical error owing to an accidental slip which if corrected, would not affect the substance of the judgment. The intention of this Court was to grant the Petitioner/ Applicant compensation equivalent to the value of the subject land as captured in the unchallenged valuation report filed by the Petitioner.

19. In arriving at the said figures/amounts, this court made reference and was guided by the Valuation Report filed in court by the Petitioner/ Applicant from the firm of Messrs. COG Consultants Limited; confirming that the value of the suit land parcel was Kenya Shilling Thirty-three Billion, Three Hundred and Fifty million. The said report was not challenged by the Respondents on its authenticity or admissibility and therefore the same stood uncontroverted.

20. In the circumstances and in associating myself with the above decisions, as well as relying on the legal provisions cited, I am fully satisfied that the amendments sought will give the full effect of the intention of this court when judgment was delivered.

21. Further, the said amendment which seeks to rectify the amount of Compensation for land payable to the Petitioner/Applicant to reflect the value of the subject property as correctly captured in the Valuation Report is pertinent and will not change the Judgement but will give effect to the clear intention of the court.

CONCLUSION

22. The Upshot is that the Notice of Motion dated 1st September, 2021 is merited and is hereby allowed in the following terms:-

1. The Judgment of this Honorable Court issued on 28th July, 2021 is hereby rectified as follows, the judgment is rectified as herein:

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i) A compensation for Land Reference No. Narok/ Nguruman/Kamorora/1 for Kshs. 33,350,000,000/= (Thirty-three Billion, Three Hundred and Fifty Million).

ii) Each party shall bear their own costs of the Application herein.

iii) Certified copy of the Ruling be availed to both parties.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI THIS 8TH DAY OF NOVEMBER, 2021.

MOHAMMED N. KULLOW

JUDGE

In presence of; -

.....Applicant/ Petitioner

.....Respondent

Tom Maurice – Court Assistant