



Kalinda & 2 others (All suing as the Legal representatives of the Estate of Kalinda Mwangi - Deceased) v Muthami & 2 others (Environmental and Land Originating Summons E046 of 2022) [2025] KEELC 3886 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3886 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E046 OF 2022
EO OBAGA, J
MAY 15, 2025

BETWEEN

ESTHER WAYUA KALINDA 1ST PLAINTIFF
LAWRENCE MBUVA KALINDA 2ND PLAINTIFF
MUTUA KALINDA 3RD PLAINTIFF
ALL SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF
KALINDA MWANGI - DECEASED

AND

MONICAH MUTHAMI 1ST DEFENDANT
FRANCISKA KATAA 2ND DEFENDANT
PETER MUTINDA MUTHAMI 3RD DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion dated 16th May, 2024 wherein the Applicants seek the following orders to be issued: -
 1. [Spent]
 2. [Spent]
 3. That this honourable court be pleased to issue an order allowing the surveyor to be appointed by the Plaintiffs to carry out a survey of the parcel of land known as Makueni/Kako/189 and subdivide it into two equal shares and further prepare mutations in respect thereof.



4. That this honourable court be pleased to order that the OCS Makueni Police Station do provide security during the survey work to subdivide land Parcel No. Makueni/Kako/189 into two equal shares.
 5. That costs of the survey, subdivision and transfer thereof be borne by the Plaintiffs and the Defendants equally.
 6. That the OCS Makueni Police Station to provide security to ensure compliance with this order.
2. The application is supported by the affidavit of Mutua Kalinda sworn on even date on his behalf and his Co-applicants. He averred that judgment was delivered in favour of the Applicants on 11th October, 2023 and that they had initiated the execution process by extracting the decree since no appeal has been filed by the Respondents.
 3. The Applicant added that since delivery of the judgment, the Respondents went on a tree-cutting spree targeting the area of land where the Applicants are likely to possess. It was averred that the Respondents and their children have displayed hostility towards the Applicants and their livestock. The Applicant further averred that one of their goats was injured by the Respondents and that the incident had been reported Makueni Police Station.
 4. The Applicant contended that due to the acrimonious nature of the matter, the surveyor requires security in subdividing the suit property. It was further contended that it is in the interest of justice that the application be allowed otherwise the judgment would stand defeated.
 5. The Respondents did not file any reply to the application.
 6. The Applicants filed submissions dated 17th July, 2024 in support of their application.
 7. Submitting on prayer 3 of the application, the 3rd Applicant argued that due to the hostility between the Applicants and the Respondents, it has become practically impossible for the two families to agree on a surveyor who can subdivide the suit property into two equal shares as per the judgment herein. That it is only by an order of this court that the same can be done.
 8. On prayers 4 and 6, the Applicant cited the case of Stephen Maina Kimanga & 4 others v Lucy Waithira Mwangi & 2 others [2014] eKLR where the court held as follows: -

“However, where it is apparent that a party is unreasonably and unlawfully attempting to obstruct a lawful process or the cause of justice, a court of law will not hesitate to stamp its seal of authority using the lawful agencies of the state. I am satisfied that the current application for the use of external forces to oversee the execution of this court’s order is merited.”
 9. Submitting on prayer 5, the Applicant contended that they would incur expenses in the survey, subdivision and transfer exercises and that the said expenses should be borne equally by the two families. It was submitted that it is in the interest of justice that the application herein should be allowed.
 10. The sole issue for determination is whether the Applicants have demonstrated merit in their application.
 11. It is indisputable that the judgment of this Court dated 11th October, 2023 effectively entitled both the Plaintiffs and the Defendants to equal shares of the suit property known as LR No. Makueni/Kako/189.



12. Typically, with that determination, the next step in the execution of the ensuing decree is subdivision and registration of the two families as proprietors of their respective portions. In the supporting affidavit, the Applicant has annexed photographs showing the wanton destruction and damage to their property allegedly at the hands of the Respondents. There was no rebuttal from the Respondents. It is therefore clear that orders for survey and subdivision will give full effect to the judgment of this court.
13. In the case of *Vallabhdas Karsandas Raniga v Mansukhlal Jivraj and others* [1965] 1 EA 700 (CAN), the Court of Appeal aptly held as follows: -

“It appears to us that s. 3 (2) of the *Appellate Jurisdiction Act*, 1962 (No. 38 of 1962) confers on this court the same jurisdiction to amend judgments, decrees and orders that the High Court has under s. 99 of the *Civil Procedure Act*, making it unnecessary to look to the inherent powers of the court...It appears to us further that the words “at any time” in s. 99 clearly allow the power of amendment to be exercised after the issue of a formal order...“slip orders” may be 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, 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. In the present case, we feel no doubt that if the facts had been before the court when judgment was given on the appeal, the court would, on application or indeed of its own motion, have made the order for refund now sought, which was, in our opinion, necessarily consequential on the decision on the main issues.”
14. Suffice to say, the application has been made within the confines of the jurisdiction of this Court under Section 3A of the *Civil Procedure Act* and Order 22 Rule 6 of the Civil Procedure Rules. The orders which have been sought are consequential to this Court’s findings in the judgment that half of the suit property should be registered in the name of the estate of Kalinda Mwanga (Deceased). No prejudice will be sustained by the Respondents who in any case have not appealed against the judgment.
15. Explaining the court’s inherent power to recall its own decision and to give effect to its manifest intention, Sir Charles Newbold P held as follows in *Lakhamshi Brothers Limited v R. Raja & Sons* [1966] EA 313 at page 314: -

“I would here refer to the words of this court given in the *Raniga* case (2) [1965] E.A. at p. 703) 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.”

These are the circumstances in which this court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter.”
16. Prayer number 2 of the application is redundant given that it had already been granted as per the court’s judgment herein.



17. In the end, the Applicants have demonstrated merit in the application herein which is allowed in terms of prayers 3, 4, 5 and 6.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 15TH DAY OF MAY, 2025.

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HON. E. O. OBAGA

JUDGE

In The Presence Of:

All Appellants

All Respondents

Court assistant – Steve Musyoki

