



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 32 OF 2017

MARTA WANGECI KIMANI.....PLAINTIFF/APPLICANT

VERSUS

SAMUEL KIMANI KAROKI.....1<sup>ST</sup> DEFENDANT/RESPONDENT

JAMES IRUNGU KANYUGA ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT

JOSECK IKAI MUKUHA .....3<sup>RD</sup> DEFENDANT/RESPONDENT

UNAITAS SACCO SOCIETY.....4<sup>TH</sup> DEFENDANT/RESPONDENT

LAND REGISTRAR, MURANG'A.....5<sup>TH</sup> DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT/RESPONDENT

RULING

1. The Plaintiff instituted the suit against the Defendant vide a plaint dated 30<sup>th</sup> September, 2014. According to the pleadings the 1<sup>st</sup> Defendant was sued as **Samuel Kimani Karoki**. Judgment was entered in favour of the Plaintiff and a decree extracted as per the names of the parties sued. The Plaintiff then filed the instant application for orders:

a. THAT the judgment of this Honorable Court dated 8<sup>th</sup> November, 2018 and the ensuing decree be corrected to have the name of the 1<sup>st</sup> Defendant read as **Samuel Karoki alias Kimani Karoki**.

b. THAT the cost of this application be provided for.

2. The application is based on four grounds and the averments by the Applicant. It is the Plaintiff's case that she is unable to execute the decree due to the inconsistency of names of the 1<sup>st</sup> Defendant. It is her claim that the name in the pleadings is **Samuel Kimani Karoki**. While his identity card and the title deed is registered in the name **Kimani Karoki**. That it is as a result of the inconsistency that she has not executed the decree. Further that the intended correction does not touch on the merits of the judgment and asks the Court to invoke its inherent powers to make the correction. She avers that the name should be corrected to read **Samuel Kimani Karoki alias Kimani Karoki**.

3. The application was opposed. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their Grounds of Objection. It is their contention that the application cannot issue for the reason that the 1<sup>st</sup> Defendant was declared mentally unfit to handle his affairs. That **Kenneth Kaunda Kimani** was appointed the guardian and ought to have been sued in place of the 1<sup>st</sup> Defendant. Further due to the foregoing the 1<sup>st</sup> Defendant is no longer available for the orders sought.

4. The 4<sup>th</sup> Defendant filed a Replying Affidavit reiterating the issue of mental incapability. It is its averments that the children of the Applicant herein moved Court seeking guardianship over the 1<sup>st</sup> Defendant under the Mental Health Act. That at the time judgment was delivered **Kenneth Kaunda Kimani** had been appointed the guardian of the 1<sup>st</sup> Defendant. That the Applicant is abusing the process of Court by instituting the application whereas the 1<sup>st</sup> Defendant is still mentally unfit.

5. There was no response from the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants. Parties elected to dispense with the application by way written submissions

6. The Plaintiff invited the Court to invoke its inherent powers under sections 99 of the Civil Procedure Act and make orders for correction of the judgement in this case. In submitting that the purpose of section 99 of the CPOWER OF ATTORNEY is to give effect to the intention

of the Court the Plaintiff relied on the foregoing case as well as the decision in **Lakhamshi Brothers Ltd Vs R Raja & Sons {1966} EA 313 and Dominic Alois George Omenye t/a Omenye & Associate vs Prime Bank Limited {2017} eKLR.**

7. The Plaintiff submitted that the Court has the inherent power to correct an error in judgment and decrees to avoid parties suffering from the error. She relied on **Abdul Waheed Sheikh and Abdul Hameed Sheikh as Trustees of the Sheikh Fazal Illahi Noordin Charitable Trust vs Commissioner of Lands & 4 Others {2017} eKLR.** On the issue of mental in of incapacity, the Plaintiff submitted that she amended her pleadings to substitute the 1<sup>st</sup> Defendant. That the substitution did not extinguish the claim and rights in the suit against the said **SAMUEL.** It is her submissions that the Court has the power to correct decrees even where there is no clerical or arithmetic mistake. She cited the case of **Joseph Njogu Muriuki vs James Ngari Ibrahim Gichohi {2019} eKLR.**

8. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants submitted that the amendments by the Plaintiff did not indicate that **Kaunda** was suing in a representative capacity. It is their submission that the 1<sup>st</sup> Defendant was not a party to the suit and cannot be reintroduced to the suit. That the Plaintiff produced a copy of the title deed which read **Kimani Karoki** at the hearing and did not at that point seek to rectify the name. That there being no order discharging the guardian, the 1<sup>st</sup> Defendant is still mentally unfit and cannot manage his affairs.

9. The 4<sup>th</sup> Defendant submitted that there is no error as suggested by the Applicant but the error would be having the name of **SAMUEL.** That a guardian having been appointed, orders can only be issued against the said guardian. It is the 4<sup>th</sup> Respondent's submissions that no proceedings can be brought against **SAMUEL.** That order 32 prohibits institution of suits against a person who has been adjudged mentally unfit thus the guardian shall be in charge.

10. This suit was filed on the 1/10/2014 wherein the Plaintiff sued inter alia Samuel Kimani Karoki as the 1<sup>st</sup> Defendant.

11. In the Plaintiff, the Plaintiff and the 1<sup>st</sup> Defendant are described as wife and husband respectively having been married in 1959.

12. The Plaintiff further averred that the suit land LOC12/SUBLOC1/GAKIRA/T.537 is registered in the name of the 1<sup>st</sup> Defendant. A copy of the said title was adduced in evidence and it reads KIMANI KAROKI ID NO 0901647. The title was registered in his name on the 12/5/2010.

13. Fast-forward, the Plaintiff with the leave of the Court amended the plaintiff and substituted the name of Samuel Kimani Karoki with Kenneth Kaunda Kimani. This pleading was filed on the 21/4/2017.

14. The basis and genesis of the amendment stemmed from the ruling of the High Court in Petition 6 of 2016-Kiambu in the matter of Samuel Kimani Karoki alias Kimani Karoki alias Samuel Kimani (a person suffering from a mental disorder). The Court adjudged Samuel Kimani Karoki mentally incapacitated and appointed Jane Wambui Kimani, Kenneth Kaunda Kimani and George Ngundo Kimani as joint guardians of Samuel and further authorized them to receive and manage the estate of Samuel. See orders dated the 2/2/2017.

15. The matter was mentioned on the 8/5/17 whereupon the Defendants sought to file their pleadings in response to the amended Plaintiff. The parties variously continued to refer to the 1<sup>st</sup> Defendant interchangeably as Kenneth Kaunda Kimani and in other pleadings, the original 1<sup>st</sup> Defendant, Samuel Kimani Karoki.

16. Upon hearing the suit the Court pronounced judgement on the 8/11/2018 and inter alia reverted the title to the 1<sup>st</sup> Defendant.

17. I understand the Applicant's singular prayer to urge the Court to correct the name of the 1<sup>st</sup> Defendant in the said judgment to read as Samuel Kimani Karoki alias Kimani Karoki. The Applicant contends that she is unable to execute the decree due to inconsistency of the names of **Samuel Kimani** and now seeks the Court to correct the same.

18. According to the annexed Identification Card the 1<sup>st</sup> Defendant is referred to as **Kimani Karoki.** None of the Power of parties have challenged the Identification card aforesaid. The title deed and the copy of the title search produced by the Plaintiff, PEX No 2 & PEX No. 4, is registered in the name **Kimani Karoki.** The pleadings reflect the name **Samuel Kimani Karoki.** The Respondents have not objected to the fact that the names belong to one and the same person, their objection is on insanity of **Samuel Kimani Karoki.**

19. Undoubtedly, what we have is a mix of the names of the 1<sup>st</sup> Defendant namely Samuel Kimani Karoki, Kimani Karoki and Samuel Kimani Karoki alias Kimani Karoki. Can this be cured under the slip rule? The slip rule" was developed to enable Courts to recall their judgment to correct errors as embodied in section 99 of Civil Procedure Act.

20. The Supreme Court in Pet. No 6 of 2014 **Fredrick Otieno Outa v Jared Odoyo Okello & 3 others [2017] eKLR** held that;

"By its nature, the *Slip Rule* permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the *Slip Rule* does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior Courts demonstrates, this is the true import of the *Slip Rule.*"

21. Applying the slip rule above there is no controversy that will result if the decree is amended as prayed. In any case it will aid in giving the intent of the judgment which was that the land be reverted to the original owner who is Kimani Karoki.

22. Following this ruling the Plaintiff substituted the 1<sup>st</sup> Defendant Samuel with his son Kenneth Kaunda Kimani. For all purposes of the suit, Kenneth stepped into the shoes of Samuel for purposes of defending the suit. To my mind, defending the suit was part and parcel of the duties of the guardian ad litem which included inter alia managing and administering the estate of Samuel.

23. The estate of Samuel notwithstanding he continued to remain the registered owner of the suit land. In so far as the judgment refers to the title reverting to the 1<sup>st</sup> Defendant, the clear intention of the Court is to revert the title to Samuel for purposes of ownership.

24. Going by the names in the title as well as the identification card (ID) and there being no objection to the names of Samuel from any of parties, it is clear that the correct names of Samuel are Kimani Karoki alias Samuel Kimani Karoki alias Samuel Kimani. It is noteworthy to state that all these names are stated in the ruling of the High Court dated the 2/1/2017. There was therefore no doubt that the names listed above belonged to Kimani Karoki of ID No 0901647. The same ID is disclosed in the title adduced on record.

25. The name being sought to be corrected therefore in the judgement is for the identification of the title and not for defending the suit. For that reasons I wish to disabuse the notion adverted by the Respondents that granting the application amounts to enjoining Samuel to the suit. Far from it. The purpose is to correct the judgment in tandem with the name appearing in the title of the suit land.

26. Kenneth Kaunda Kimani remains the 1<sup>st</sup> Defendant in the case suing as a guardian of Samuel pursuant to the guardianship orders issued by the High Court in Petition 6 of 2016.

27. I see no prejudice that will be visited on the Respondents. At least none has been disclosed.

28. I must add that the confusion at hand springs from inelegant pleadings which would have been settled had the Plaintiff described the 1<sup>st</sup> Defendant as guardian and suing on behalf of Samuel. I find no difficulty in saying so given the ruling of the Court in Kiambu High Court Petition No. 6 of 2016 that was placed before the Court before the amendment of the plaint was granted.

29. To meet the ends of justice and for the reason given above, this Court shall invoke its inherent power and amend the decree to the effect:

a) **THAT** it is hereby declared that the transfer, registration and charge of title of the suit property known as LOC. 12/SUB-LOC.1/GAKIRA/T.537 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants is illegal, null and void.

b) **THAT** the 5<sup>th</sup> Defendant be and is hereby ordered to cancel the transfer and titles of the suit property known as LOC. 12/SUB-LOC.1/GAKIRA/T.537 issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and title to revert to **KIMANI KAROKI alias SAMUEL KIMANI KAROKI**.

c) **THAT** the 5<sup>th</sup> Defendant is ordered to cancel the charge registered against the title of the property known as LOC. 12/SUB-LOC.1/GAKIRA/T.537

d) **THAT** an order of permanent injunction is hereby issued restraining the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their agents or servants from interfering with the property known as LOC. 12/SUB-LOC.1/GAKIRA/T.537

e) **THAT** the Plaintiff shall have the costs of the suit.

30. I order costs in favour of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

31. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 30<sup>TH</sup> DAY OF JULY 2021.**

**J G KEMEI**

**JUDGE**

Delivered online

Ms Kibore Advocate for Appellant

1<sup>st</sup> Respondents - Absent

Ndegwa Advocate present for 2<sup>nd</sup> & 3<sup>rd</sup> Respondents but muted

Wangechi Advocate HB for Gachare for 4<sup>th</sup> Respondent

5<sup>th</sup> & 6<sup>th</sup> Respondents - AG is Absent

