



**Chebon v Makan A Transporters & 3 others; Asanyo & 2 others (Third party)
(Civil Appeal 254 of 2000) [2024] KEHC 2158 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 254 OF 2000
PN GICHOHI, J
MARCH 6, 2024**

BETWEEN

JOB KIPNANDI CHEBON PLAINTIFF

AND

MAKAN A TRANSPORTERS DEFENDANT

AND

TRUST BANK LIMITED RESPONDENT

AND

GARAM INVESTMENT 1ST DEFENDANT

**MK MWANGI & MARY WANGUI KIRUMBIT/A FANITA COMMERCIAL
AGENCIES 2ND DEFENDANT**

AND

GEOFFERY MAKANA ASANYO THIRD PARTY

TABITHA MORAA ASANYO THIRD PARTY

COMMISSIONER OF LANDS THIRD PARTY

RULING

1. Before this Court is the Plaintiff's Notice of Motion Application dated 12/06/2023 and filed on 19/06/2023 through the firm of Kiplenge , Adama & Makau Advocates. It is brought under a certificate of urgency and under Section 99 of the [Civil Procedure Act](#) and Order 51 of the [Civil Procedure Rules](#) and the Applicant prays for orders:-

1. Spent.



2. That this Court be pleased to rectify the order issued vide a ruling dated and delivered on the 21st October 2021 to read 'Amount of indemnity to be paid by the 3rd Third Party to the Plaintiff is assessed at Kshs. 60,304,111/= (Sixty million three hundred and four thousand one hundred and eleven shillings only).'
 3. That the costs of this Application be provided for.
2. The grounds are on the face of the application supported by the Affidavit sworn by Mutai K. Owen Advocate in conduct of the matter on behalf of the Plaintiff/Application mainly that the learned Judge referred to the 3rd defendant as the party to indemnify the Plaintiff/Applicant rather than the 3rd Third Party as ordered in the judgment. Further, he depones that indemnity assesses in words differ from the award captured in figures.
 3. Though served, the 3rd Third Party did not file any response and did not attend Court.
 4. The genesis of this Application is that Ouko J (as he then was) delivered a judgment in this suit on 27th January 2012 thus:-

“... There can be no doubt that the plaintiff has suffered damage as a result of the state of affairs in the registration process created by the commissioner of lands. For this, the plaintiff is entitled to indemnity by the Government in terms of Section 145 of the *Registered Land Act*.

The confusion around the allotment of an unidentified parcel to the plaintiff, his failure to accept the offer in writing and pay the charges within thirty (30) days and the question whether the title was to issue under the *Registration of Titles Act* perhaps contributed to the confusion. But I emphasise that the plaintiff bears no blame for the state of the register. It is not even suggested that there was fraud on his part.

In view of the matters stated earlier, the 2nd and 3rd defendants' counterclaim against the 1st defendant is spent. The action against the defendants and the third parties, except the 3rd party- the Commissioner of Lands, fails and is dismissed.

There will, however, be judgment against the Commissioner of Lands for indemnity as explained earlier. He has failed to controvert the allegations against him in the plaint.

I award costs to all the parties who have participated to be borne by the Commissioner of Lands. [Emphasis added]

5. Pursuant to that judgment, it became necessary for this Court to consider and assess the quantum of indemnity due to the Plaintiff/Applicant herein. The Plaintiff therefore filed a Notice of Motion application dated 19th April 2013 for that purpose. This led to the ruling dated 21st October 2021, where Rachel Ngetich J, held:-

“From the foregoing I allow compensation to the tune of Kshs. 60,000,000 plus Kshs. 304,111 being the amount incurred by the Applicant for processing the title deed in respect of the plot.

Final Orders:-

1. Amount of indemnity to be paid by the 3rd defendant to the plaintiff is assessed at Kshs. 60,304,111 (Sixty million three hundred thousand one hundred and eleven shillings only).



2. Costs of this suit to the applicant.”
6. This Court has been moved under Section 99 of the Civil Procedure Act which provides that:-

“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.”
7. For this Court to apply the slip rule, errors must so obvious that their correction cannot give rise to any controversy in regard to the said judgment delivered herein on 27th January 2012. From the judgment herein it is very clear that the Plaintiff was to be indemnified by the 3rd Third Party and that is the Commissioner of Lands.
8. As highlighted herein, it is obvious that the error did occur in the ruling delivered on 21/10/2021 indicating that the indemnity was to be paid by the 3rd Defendant.
9. Further, from the body of the said ruling, it is obvious that the property had been valued at Kshs. 60,000,000/= being the market value of the property. The amount incurred for acquiring title deed was stated as Kshs. 304,111/= making a total of Kshs. 60,304,111/=. That total in words should be Sixty million three hundred and four thousand one hundred and eleven shillings only and not Sixty million three hundred thousand one hundred and eleven shillings only as stated in the ruling.
10. In the circumstances , this Court finds the Application dated 12/06/2023 merited and therefore allowed.
11. For avoidance of doubt the errors in the said ruling are rectified so as to read that:-
 1. Amount of indemnity to be paid by the 3rd Third Party to the plaintiff is assessed at Kshs. 60,304,111 (Sixty million three hundred and four thousand one hundred and eleven shillings only).
 2. There will be no orders as to costs in regard to this Application.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH MARCH ,2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

N/A for Applicant

N/A for Respondent

Ruto, Court Assistant

