



**Mbugua v Maruga (Succession Cause E082 of 2021)
[2024] KEHC 13396 (KLR) (Family) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E082 OF 2021
SN RIECHI, J
OCTOBER 3, 2024**

BETWEEN

MAGDALENE NJOKI MBUGUA PLAINTIFF

AND

PETER MARUGA DEFENDANT

JUDGMENT

1. The applicant in an originating summons dated 13th October 2021 filed an application against the respondent seeking order that a declaration be made that the Title No. Ngong/Ngong/37643 is not matrimonial property and that the same is the sole property of the applicant among other prayers.
2. The applicant’s case was that the parties herein were married on 17.8.02 and the marriage was subsequently dissolved on 9.7.2021. The applicant stated that she purchased the property Title No. Ngong/Ngong/37643 through a loan from Standard Chartered Bank. She urged the court to declare her a sole owner of the property.
3. The respondent though served he did not participate in the proceedings herein. Subsequently upon hearing the application this court delivered a judgment in favour of the applicant on 23rd September 2022. In paragraph 20 of that said judgment it was stated:

In the end, after taking into consideration the totality of the evidence adduced in this case and the applicable law as analyzed herein, I make the following orders:

i. Title No.Ngong/Ngong/37643 is the sole property of the applicant”
4. Consequently, the plaintiff has moved this court by Notice of Motion application dated 30th April 2024 seeking the following order:



1. That the judgement delivered on 23rd September 2022 be reviewed to correct the typographical error at paragraph 20 of the judgement which reads Ngong/Ngong/37643 as opposed to Ngong/Ngong/37463.
2. Costs be provided for.
5. The plaintiff application is premised on the grounds that;
 - i. There is apparent error on the judgement delivered on 23rd September 2022.
 - ii. Paragraph 20 of the judgement describes the property as Ngong/Ngong/37643 as opposed to Ngong/Ngong/37463. The latter is the correct number.
 - iii. The reference to Ngong/Ngong/37643 is a typographical error.
 - iv. The error was discovered in mid April 2024 at the time of effecting the necessary changes at the land offices when the plaintiff was to transfer the land to an intended buyer.
 - v. Such error ought to be rectified to give effect to the judgement, without which the judgement becomes superfluous.
 - vi. There is no prejudice to be occasioned to the respondent as he did not participate in the proceedings nor defend and the matter proceeded in his absence.
 - vii. The court has jurisdiction to correct typographical errors.
6. The respondent herein despite been served with the application he did not file a response.
7. The main issue before this court for determination is whether or not this court should review paragraph 20 of the judgment dated 23rd September 2022.
8. I will refer to Section 99 and 100 of the *Civil Procedure Act* and section 99 of the Act provides:-

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.”
9. The above section can be invoked to correct “clerical or arithmetical mistake in judgments, decrees or orders, or errors arising therein from an accidental slip or omission.” The court can either evoke the provisions of section 99 on its own motion or an application.
10. Section 100 provides as follows:-

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 by or depending on the proceeding.”
11. The court of appeal in the case Leonard Mambo Kuria v Ann Wanjiru Mambo (2017) eKLR extensively discussed section 99 and 100 of the *Civil Procedure Act*.
12. The purpose of amendment is to “determine the real question or issue raised by or depending on the proceeding “and it can be done“at any time” which must mean from the time the suit is filed to final disposition. This Court will refer to the case in Lakhamsi Brothers Ltd v R. Raja & Sons [1966] EA 313 which endorsed 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.

13. I have perused the originating summons dated 11.10.2021 and I note that in the said application the applicant sought orders;

i. That this honourable court be pleased to declare that the parcel of land being L.R.NO.Ngong/Ngong/37643 is sole property of the applicant and the same does not in any way constitute matrimonial property.

14. Upon hearing the application the court delivered judgement dated 23rd September 2022 and under paragraph 20 ordered as follows;

In the end, after taking into consideration the totality of the evidence adduced in this case and the applicable law as analyzed herein, I make the following orders:

i. Title No.Ngong/Ngong/37643 is the sole property of the applicant”

15. Subsequently, the applicant has now filed this instant application seeking orders that this court do review the said judgement under paragraph20 in terms of the title number to read Ngong/Ngong/376463 as opposed to Ngong/Ngong/37643. The applicant stated that there is an apparent error on the face of the judgement and that the error was discovered mid-April 2024 at the time of effecting transfer by the applicant to an intended buyer.

16. The applicant stated that the correct number is Ngong/Ngong/376463 but the judgement describes the property as Ngong/Ngong/37643. The applicant has annexed to the application a copy of the title deed to the subject property which indicate the property title number is Ngong/Ngong/37463.

17. Having considered the application and evidence on record I find that there is an apparent error on record in respect of paragraph 20 of the said judgement. I further note that the error has been sufficiently explained by the applicant and no prejudice will be occasion to the respondent. I find merit in the application and the prayer shall be granted as sought. I therefore grant the following orders;

i. The judgement dated 23.9.2022 is rectified to read;

18. In the end, after taking into consideration the totality of the evidence adduced in this case and the applicable law as analyzed herein, I make the following orders:

Title No. Ngong/Ngong/37463 is the sole property of the applicant.

ii. There shall be no costs to the Notice of Motion dated 30th April 2024.

DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024.

S. N. RIECHI

JUDGE

