



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 49 OF 2015

JAMES MURIITHI KAREU (Substituted Party for

KAREU NDEBU (Deceased).....PLAINTIFF/APPLICANT

VERSUS

NDEGE NDEBUDEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant has moved this Court vide a Notice Motion dated 12th October, 2021 whereby he is seeking the following prayers:
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(a) That this Honourable Court be pleased to review the judgment/decree made on 29th May, 2020.

(b) That costs of this application be provided for.

2. The applicant premised his application on the following grounds on the face of the application: -

a. The substituted Plaintiff/Applicant's father KAREU NDEBU filed a plaint dated 22nd April, 2015 asking for half share out of land parcel Baragwe/Raimu/237 which land belongs to the Defendant herein.

b. That when the court delivered its judgment on 29th May, 2020, the Court awarded the plaintiff half share out of Baragwe/Raimu/237 also described as Baragwe/Raimu/223.

c. That this is an error apparent in the final orders in the judgment delivered on 29th May, 2020.

d. That when the applicant herein went to register the decree issued by this Honourable Court, the Land Registrar directed that the decree be amended to show exactly which parcel of land the court is referring to.

e. That the Plaintiff's claim was in Baragwe/Raimu/237 and not Baragwe/Raimu/223 and it is in the interests of justice that the decree/judgment be reviewed so as to reflect the correct land parcel.

f. That no prejudice will be occasioned to the Defendant if this application is allowed.

3. The plaintiff further swore an Affidavit on 12th October, 2021 in support of the said application.

4. In the said affidavit she reiterated the grounds above mentioned.

5. He annexed a certificate of official search of Baragwe/Raimu/237 as evidence that the same belonged to the Defendant.

6. He also annexed a copy of this Honourable Court's Judgment and decree to show that this Honourable Court delivered judgment in his favour that his deceased father be awarded half share out of Baragwe/Raimu/237 also described as Baragwe/Raimu/223.

7. He deponed that she went to register the decree on 5/10/2021 however the registrar directed that the same be amended to reflect the exact parcel of land being shared out. She attached a copy of the note of the note of the registrar as evidence thereof.

8. He prayed that his application be allowed as clearly there is an error apparent on the face of the record that needs to be rectified.

ANALYSIS

- 9. I have considered the instant application, the supporting affidavit and also the annexures attached thereto.
- 10. The applicant has brought his application under **Order 45 Rule 1 of the Civil Procedure Rules** which provides as follows: -

“Any person considering himself aggrieved — (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay”.

11. The basis of the applicant’s case is that there is some mistake or error apparent on the face of the record in that this Honourable Court delivered its judgment on 29th May, 2020 awarding the plaintiff half share out of Baragwe/Raimu/237 also described as Baragwe/Raimu/223 whereas in his plaint he had claimed half share out of Baragwe/Raimu/237.

12. In the case of **Republic Vs Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] e KLR**, the Honourable Court held as follows pertaining the definition of a mistake or error apparent on the face of the record: -

“18. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. To put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

13. I have perused the plaint dated 22nd April, 2015 and filed on 23rd April, 2015. Indeed, the plaintiff was seeking Land parcel Baragwe/Raimu/237 and not Baragwe/Raimu/237 also described as Baragwe/Raimu/223.

14. I thus find there was an error in the impugned judgment which falls squarely within the meaning of some mistake or error apparent on the face of the record as described under **Order 45 Rule 1 of the Civil Procedure Rules** as described in the case of **Republic Vs Advocates Disciplinary Tribunal Ex-parte Apollo Mboya [2019] e KLR** (supra).

CONCLUSION

15. In the circumstances it is my view that the applicant’s application has merit and the same is hereby allowed as follows: -

- (a) **Orders (1) and (2) issued in the Judgment delivered in this matter on 29th May, 2020 be reviewed to read as follows:**
 - i. **A declaration that the defendant holds land parcel No. Baragwe/Raimu/237 measuring 2.34 Ha. in trust for himself and the plaintiff.**
 - ii. **The Land Registrar Kirinyaga County do conduct subdivision of the said land parcel Baragwe/Raimu/237 into two equal portions and the Land Registrar do rectify the Register accordingly.**
- (b) **Each party to bear its own costs.**

RULING READ, DELIVERED IN OPEN COURT AT KERUGOYA AND SIGNED THIS 12TH DAY OF NOVEMBER, 2021.

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E.C. CHERONO

ELC JUDGE

IN THE PRESENCE OF:-

- 1. WANJIRU WAWERU FOR APPLICANT - PRESENT**
- 2. RESPONDENT/ADVOCATE – ABSENT**
- 3. KABUTA, COURT CLERK – PRESENT.**