



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 349 OF 2010 (O.S)**

**IN THE MATTER OF A VENDOR AND PURCHASER**

**AND**

**IN THE MATTER OF EXECUTION OF TRANSFER OF LAND DOCUMENTS AND DELIVERY OF THE ORIGINAL DOCUMENTS OF TITLE TO LAND**

**AND**

**IN THE MATTER OF PLOT NO. 5691 BEING PART OF TITLE NO.**

**DAGORETTI/RIRUTA/1591**

**NANCY WANJIRU GITHUA NJAAGA.....PLAINTIFF**

**VERSUS**

**MARGARET NJOKI MUKIRAI.....DEFENDANT**

**RULING**

The Plaintiff brought the application dated 17/5/2019 seeking to have the judgement delivered by this court on 18/9/2017 together with the decree issued on 11/10/2017 reviewed to have the name Margaret Njeri Mukirai replaced with Margaret Njoki Mukirai. Further the Plaintiff seeks to have another decree issued in the name of Margaret Njoki Mukirai and for it to be registered against L.R. No. Dagoretti/Riruta/1591. The application was made on the grounds that after judgement was entered in favour of the Plaintiff, she extracted a copy of the decree and noted an error apparent on the face of the judgement and the decree in the Defendant's middle name which was wrongly entered as Njeri instead of Njoki. As a result of this mistake, the Plaintiff stated that she was unable to execute the decree and have it registered against the title over the suit land. The application was supported by the Plaintiff's affidavit to which she annexed a copy of the judgement and decree.

The Defendant filed grounds in opposition to the application. The Defendant urged that there was no error apparent on the face of the judgment or decree as the parties in the judgement and decree were the same parties in the pleadings, and that the pleadings bore the name of the Defendant indicated in the judgment. She contended that the application was for amendment of pleadings yet the court is already *functus officio*.

Parties filed submissions which the court has considered. The Plaintiff's advocate submitted that they made a mistake on the face of the Originating Summons but that the supporting affidavit gave the Defendant's correct name. It submitted further that all the documents produced in evidence bore the name Margaret Njoki Mukirai. The Plaintiff argued that if an error is noted after a judgement has been delivered, then a party can only apply for review. The Plaintiff added that the Defendant was not disputing that the Plaintiff sued the right person. She urged that Order 45 allows the court to review matters for purposes of correcting errors apparent on the record.

The Defendant submitted that the Plaintiff could not have altered the Defendant's name without leave of the court. She added that there was no mistake in the Defendant's name as it appeared in the judgement and decree. The Defendant added that Margaret Njeri Mukirai and Margaret Njoki Mukirai are two different persons and that there was need to call evidence outside the record of the proceedings to prove this. The Defendant submitted that the review sought is for purposes of introducing a different Defendant from the named Defendant in the pleadings and contended that this ought to have been done through amendment of the pleadings before judgment was delivered.

The Defendant relied on Order 8 Rule 3(3) in urging that the court's power to amend can be invoked to correct the name of a Defendant if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause reasonable doubt as to the identity of the person intended to be sued. The Defendant submitted that the Plaintiff had not explained the delay of seven years in seeking to change the Defendant's name from the date she filed the Originating Summons and the delay of almost two years after entry of judgement. The Defendant urged the court not to exercise its discretion in favour of the Plaintiff. The Defendant added that the court

is *functus officio* since judgment has already been delivered.

The Originating Summons was taken out against Margaret Njeri Mukirai while the supporting affidavit named Margaret Njoki Mukirai as the Defendant. The copy of the land certificate dated 25/4/1979 attached to the affidavit gives the proprietor's name as Margaret Njoki Mukirai. The sale agreement and the summons to attend the chief's office bear the names of Margaret Njoki Mukirai. These documents were served upon the Defendant.

The court notes that the Defendant filed a notice of appeal on 28/9/2017 indicating that she was appealing against the whole decision of this court. The Plaintiff explained that she noted the error on the Defendant's name when she went to register the decree against the Suit Property. The Defendant has not demonstrated that the person sued in these proceedings is different from the person whom the Plaintiff sued and entered into a sale agreement with.

The court is satisfied that the Plaintiff made a genuine mistake in the Defendant's name, and in the interest of justice allows the application for amendment to correct the error apparent on the Defendant's name. The Defendant is awarded the costs of this application.

Dated and delivered at Nairobi this 29<sup>th</sup> day of January 2020.

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. W. Echesa holding brief for Mr. M. Njenga for the Plaintiff

Ms. T. Kinyua holding brief for M. Mureithi for the Defendant

Mr. V. Owuor- Court Assistant