



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

CIVIL CASE NO. 6 OF 2018

MBEERE ELDERS ADVISORY WELFARE

GROUP (NGOME).....1ST APPLICANT

ESTON NYAGA NTHIGA.....2ND APPLICANT

JOHN M. KIRONJO.....3RD APPLICANT

SERAPHINO NGARI.....4TH APPLICANT

NICHECK NJANGU.....5TH APPLICANT

HUMPHREY MUTURI MUGERA.....6TH APPLICANT

VERSUS

JUSTIN NYAKI NGURE.....1ST RESPONDENT

EDWARD MOTE NJERU.....2ND RESPONDENT

JUSTIN MUGOIYO.....3RD RESPONDENT

DAVID NJIRU MUTUA.....4TH RESPONDENT

BEN MACHAKI KANYENJI.....5TH RESPONDENT

NJERU MAIRANI.....6TH RESPONDENT

HENRY KITHAKA IRERI.....7TH RESPONDENT

EPHANTUS NJUKU KAMUMO.....8TH RESPONDENT

RUNJI MAGUTA.....9TH RESPONDENT

JOSEPH IRERI NYAGA.....10TH RESPONDENT

IRERI KIURA.....11TH RESPONDENT

ALBERT NYAGA KATHUMBI.....12TH RESPONDENT

DIRECTOR OF CULTURE.....13TH RESPONDENT

ANN KITHAKA T/A

RULING

A. Introduction

1. The respondent in his letter dated 2/05/2019 sought the interpretation of this court's ruling delivered on 3/04/2019.
2. The ruling was in regard to two applications dated 20/11/2018 and 28/11/2018 respectively.
3. In the said ruling the court gave orders to restrain the 1st to the 12th respondents from running the affairs of the 1st applicant the Mbeere Elders Welfare Group.
4. It also ordered the striking out of the name of the 14th respondent Ann Kithaka T/A Njiru Kithaka & Co. Advocates.
5. The 14th respondent sought the intervention of the court on award of costs of the application dated 29/11/2018 which was allowed.

B. Analysis & Determination

6. The necessary order in the ruling delivered on 3/04/2019 in regard to the 14th respondent was order (b) which specifically struck out the 14th respondent's name from the proceedings. Order (c) of the court was in relation to costs which were deemed to be "in the cause." For purposes of emphasis, the court orders emanating from the ruling of 3/4/2019 as set out in paragraph 53 of the ruling were as follows;

"a) That the 1st to 12th respondents whether by themselves, agents, servants or otherwise are hereby restrained from taking and making decisions, giving instructions, writing and signing letters, notices, forms, deeds, minutes, resolutions, returns and any other documents in the name of and/or on behalf of the 1st applicant pending the hearing of the main suit.

b) The name of the 14th respondent is hereby struck off from this suit.

c) That the costs be in the cause."

7. The 14th respondent sought to include the award of costs in her favour in her draft order presented before the court registry and the same was rejected by the registry. The orders that were made on 13th April 2019 were clear. The 14th respondent's name was struck off from the proceedings, the 1st -12th respondents restrained from carrying out any action on behalf of the 1st applicant and costs were deemed to be in the cause.

8. **Sections 99 and 100 of the Civil Procedure Code** vest a general power to the courts to correct or amend their records.

9. **Section 100** states 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."

10. 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.

11. **Section 99** on the other hand, 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."

12. It is the relevant one in this matter as it relates to 'judgments, decrees or orders'. The Court of Appeal examined the mechanics of its application in the case of Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR, stating:-

"27. It is a codification of the common law doctrine dubbed 'the Slip Rule', the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which would otherwise become functus officio upon issuing a judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

28. Some of the applications of the rule are fairly obvious and common place and are easily discernible like clerical errors, arithmetical mistakes, calculations of interest, wrong figures or dates. Each case will, of course, depend on its own facts, but the rule will also apply where the correction of the slip is to give effect to the actual intention of the Judge and/or ensure that the

judgment/order does not have a consequence which the Judge intended to avoid adjudicating on.

The Australian Civil Procedure has provisions in pari materia with section 99. As was stated in the case of Newmont Yandal Operations Pty Ltd v The J. Aron Corp & The Goldman Sachs Group Inc [2007] 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended.

29. *Nearer home the predecessor of this Court in Lakhamshi Brothers Ltd v R. Raja & Sons [1966] EA 313 endorsed that 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. Spry JA in Raniga Case (supra) also stated as follows: -*

A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.

30. *What is certainly not permissible in the application of section 99, is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order”.*

13. The court in its ruling awarded costs in favour of the applicants in the two application when it stated: -

That costs be in the cause.

14. However, this order served the applicants well in that they remain as parties in the suit which is yet to be heard and determined.

15. As for the 14th respondent who exited the suit by the striking out of its name, the order of costs created some ambiguity in its wording. I say this because, it is clear that costs of the application was awarded to both parties but under an oversight that the 14th respondent was still a party upon striking out its name.

16. It was therefore, the intention of the court to award costs to the 14th respondent in its ruling since its application was successful. It is therefore, necessary to grant costs to the 14th respondent in regard to its successful application as it exits the suit.

17. I am satisfied that the 14th respondent has made a case for clarification of the court's order on costs.

18. The court hereby amends **paragraph (c)** of its ruling delivered on 3/04/2019 as follows: -

i. That costs to the applicant to be in the cause.

ii. That the 14th respondent be paid costs of its application dated 29/11/2018 by the applicants.

DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF JULY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Mr. Ithiga for Kamunda for Applicants/Plaintiffs

Mr. Siro for 13th Respondent