



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
MISC. CIVIL APPLICATION NO 1531 OF 2005 (O.S.)

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER
SECTIONS 70 (C), 84 (1) & (20 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

BETWEEN

**ABDUL WAHEED SHEIKH AND ABDUL HAMEED SHEIKH AS TRUSTEES OF THE
SHEIKH FAZAL ILAHI NOORDIN CHARITABLE TRUST.....PLAINTIFF/APPLICANT**

VERSUS

THE COMMISSIONER OF LANDS.....FIRST DEFENDANT/RESPONDENT

THE MINISTER FOR LANDS & HOUSING.....SECOND DEFENDANT/RESPONDENT

THE MINISTER FOR FINANCE.....THIRD DEFENDANT/RESPONDENT

THE REGISTRAR OF TITLES..... FOURTH DEFENDANT/RESPONDENT

HON. ATTORNEY GENERAL.....FIFTH DEFENDANT/RESPONDENT

RULING

By a notice of motion dated 16th January 2017 expressed under the provisions of sections 1A, 1B, 3A and 99 of the Civil Procedure Act[1], the plaintiffs/applicants state that the judgement rendered by Lenaola J on 18th May 2012 has clerical errors occasioned through typographical mistakes which errors were reflected in the decree dated 18th May 2012 and as a consequence the applicants seek orders to amend the judgement and decree by amending the date erroneously shown as 23rd March 2003 to read 21st March 2003 so as to tally with the date in the letter of Allotment. Further, the applicants pray that the decree issued pursuant to the said judgement be rectified so as to correct the date erroneously shown in the decree as 23rd March 2003 to read 21st March 2003 and that the said amendments be deemed to take effect from the date of the judgement which is 18th May 2012.

Section 99 of the Civil Procedure Act[2] 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."

Section 99 of the Civil Procedure Code[3] empowers the Court to correct its own error in a judgment, decree or order from any accidental slip or omission. The principle behind the said provision is *actus curiae nemesis gravabit*, i.e., nobody shall be prejudiced by an act of court.

In my view, the court is not powerless to grant relief when the ends of justice and equity so demand, because the powers vested in the court are of a wide scope and ambit.[4] The inherent power, as observed by the Supreme Court of India[5] "has not been conferred on the court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it." Lord Cairns[6] stated as follows:-

"One of the first and highest duties of all, Courts is to take care that the act of the court does no injury to any of the suitors and when the expression 'Act of the court' is used it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole from the lowest court which entertains jurisdiction over the matters up to the highest court which finally disposes of the case."

The fundamental duty of the court is to do justice between the parties. Discussing the nature and objects of the inherent powers of the court, Sir Dinshah Mulla[7] observes that:-

*"..... The court has, therefore, in many cases, where the circumstances so require, acted upon the assumption of the possession of an inherent power to act **ex debito justitiae**, and to do real and substantial justice for the administration, for which alone, it exists."*

The Civil Procedure Act[8] recognizes the inherent power of the court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 99 but also inherent power in general. The courts also have duty to see that the records are true and present the correct state of affairs. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so as to correct errors in its judgment and decree. A judgment/ may, therefore, be corrected by the Court in exercise of its power under Section 99. Such a power of the court is well recognized.[9]

Since the court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for sub-serving the cause of justice. The principle behind the provision is that no party should suffer due to *bona fide* mistake. Whatever is intended by the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the courts should not bind itself by the shackles of technicalities.

Every Court, therefore, has an inherent power over its own records, so long as those records are within its powers, and it can set right any mistake in them. In *Hatton v. Haris*,[10] Lord Watson said:-

"When an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened, which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the Judge obviously meant to pronounce."

Where, however, the decree or order as drawn up represents the real decision of the Court, it has no jurisdiction to re-hear or alter it. There are, however, only two cases in which the Court can amend or vary a decree or order after it is drawn up and signed, namely,

(1) under its inherent power when the decree or order does not correctly state what the Court actually decided and intended; and,

(2) Under Section 99, where there has been a clerical or arithmetical mistake, or an error arising from an accidental slip or omission.

I find that the application before me is well founded and that this court has powers to grant the orders

sought. Accordingly, I hereby allow the application dated 16th January 2017 and order as follows:-

a) ***That*** the judgement dated 18th May 2012 be and is hereby amended by correcting the date shown therein as 23rd March 2003 to read 21st March 2003 so as to tally with the date reflected in the letter of Allotment.

b) ***That*** the decree given under the seal of the court on 18th May 2012 be and is hereby amended by correcting the date erroneously shown therein as 23rd March 2003 to read 21st March 2003 so as to tally with the correct date in the letter of Allotment.

c) ***That*** the corrections effected pursuant to prayers (a) and (b) above be and are hereby ordered to take effect from form the date of the said judgement which is 18th May 2012.

e) No orders as to costs

Orders accordingly

Dated at **Nairobi** this 15th day of **February**, 2017

John M. Mativo

Judge

[1] Cap 21, Laws of Kenya

[2] Ibid

[3] Ibid

[4] See Mamraj vs Sabri Devi, AIR 1999 P & H 96

[5] In Raj Bahadur Ras Raja vs Seth Hiralal AIR {1962} AC 527

[6] In Roger Vs Comptoir D' Escompts De Paris

[7] The Code of Civil Procedure 18th Edition Reprint 2012

[8] Supra

[9] R.Srinivasan v. M.Thambusamy [1996 (2) CTC 66]

[10] {1892} AC 547, at page 560