Masila & 2 others v Krotonite Enterprises Limited (Miscellaneous Application 31 of 2018) [2025] KEELC 4621 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4621 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

MISCELLANEOUS APPLICATION 31 OF 2018

LL NAIKUNI, J

JUNE 20, 2025

BETWEEN

HUSSEIN SULEIMAN MASILA .... 1ST PLAINTIFF

LILIAN KAVUTI MUSYOKA .... 2ND PLAINTIFF

IBRAHIM LUGUSA ALUDA .... 3RD PLAINTIFF

AND

KROTONITE ENTERPRISES LIMITED .... DEFENDANT

RULING

I. Introduction

1. This Honorable Court was tasked to make a determination on the filed Notice of Motion application dated 26th March, 2025 by Hussein Suleiman Masila, Lillian Kavuti Musyoka and Ibrahim Lugusa Aluda, the Plaintiffs/Applicants herein. It was brought under the dint of Section 99 of the *Civil Procedure Act*, Cap. 21 Order 45 Rule 1 of the Civil Procedure Rules, 2010 and all other Enabling Provisions of the Law.

2. Upon service of the application, the Defendant/Respondent through its director, ABDULKARIM SALEH MUHSIN opposed the Application by filing a 6 paragraphed Replying Affidavit sworn on 3rd April, 2025. Subsequently, as a rejoinder, the Plaintiffs/Applicants through HUSSEIN SULEIMAN MASILA, 1st Plaintiff and with the leave of Court filed a 4 Paragraphed Supplementary affidavit sworn on 10th April, 2025.

II. The Plaintiffs/Applicants' case

3. The Plaintiffs/Applicants sought for the following orders: -

a. That the trial court be pleased to review and/or correct its Judgement delivered on 18th September, 2024 to correct an apparent error/mistake on the face of the record.

b. That the costs of this Application be provided for.

4. The application by the Applicants herein was premised on the grounds, testimonial facts and averments made out under the 12 Paragraphed Supporting Affidavit of – HUSSEIN SULEIMAN MASILA, the 1st Plaintiff herein sworn and dated the same day with the application. The Deponent averred that:

a. On the 18th September, 2024, the Honourable Court delivered a Judgement in this matter. Annexed in the affidavit and marked as "HM - 1" was a true Photostat copy of the said Judgement.

b. Upon scrutiny of the said Judgment and the Decree thereto it had come to their attention that there was an apparent error/ mistake on the face of the Judgment and more particularly at paragraph 70 Order (d) where the Honorable Court directed the Land Registrar to register the Plaintiffs as absolute owners of parcel Numbers 2717/V/MN, 2718/V/MN and 2719/V/MN instead of parcel Nos. MN/III/10211, MN/III/10212 and MN/III/10213.

c. From the record the Parcel Numbers as captured by the Honorable Court do not feature in the Plaintiffs or Defendant's pleadings. The correct sub - divisions were found in the Respondent's final submissions dated 30th April, 2024 at page 2 and being parcel Nos. MN/III/10211, MN/ III,10212 and MN/III/10213.

d. It was therefore clear that this was a typographical error and/or an onerous mistake and the Plaintiff/Applicant sought the Honourable Court to correct the same to read parcel Nos. MN/ III/10211, MN/III/10212 and MN/III/10213 respectively.

e. The said error/ mistake was apparent and its rectification did not affect the substance of the Judgment.

f. The Respondent carried out the sub - division of the mother title during the pendency of the suit herein and hence the confusion.

g. This application was made in good made in good faith and without undue delay.

h. No prejudice would be suffered by the Respondent if orders sought were granted.

i. It was in the interest of justice that this Honourable Court do correct the error to allow the Land Register the suit property in the names of the Plaintiffs/Applicants.

II. The Defendant/Respondent's response

5. The Defendant/Respondent through its director, ABDULKARIM SALEH MUHSIN opposed the Application through a 6 Paragraphed Replying Affidavit sworn on 3rd April, 2025. The Deponent averred that: -

i. The Plaintiffs/Respondent filed suit claiming land adverse possession of all that parcel of land known as L.R. Number MN/III/5612 - the suit premises.

ii. The Plaintiffs/Applicants never sought any claim to all that parcel of land known as Land Reference Numbers MN/III/10211, MN/III/10212, and MN/III/10213 and could not

therefore ask the court to correct the Judgement and award them title of property that they did not claim by land adverse possession.

iii. The provisions of Order 37 Rule 7(2) of Civil Procedure Rules, 2010 requires that any party applying for adverse possession of any property must file a certified extract of title to the land in question. The Plaintiffs did not file any extract of titles to all that parcel of land known as LR Nos. MN/II/10211, MN/II/10212 and MN/10213 hence they did not claim those titles.

II. The Plaintiffs' supplementary Affidavit

6. The Plaintiffs through HUSSEIN SULEIMAN MASILA, 1st Plaintiff filed a 4 paragraphed supplementary affidavit to the Application sworn on 10th April, 2025 where he averred that: -

a. In response to the contents of Paragraph 4 of the Replying Affidavit dated 3rd April, 2025, the Deponent responded as follows;-

i. The Defendant/Respondent on 24th December, 2018 filed a Notice of Motion Application Under a Certificate of Urgency and in which prayer No. 4 read as follows:

> "That in the meantime pending the hearing and determination of this application an order of inhibition do issue inhibiting the registration of any dealing with the suit premises namely L.R NO. MN/III/5612".

On the 27th December, 2018, the said application was allowed in terms of prayers 1 & 4 by Hon. J. Olola and confirmed by Justice C. Yano through his ruling dated 20th May, 2019. Annexed hereto and marked as "HM – 1" in a bundle were true Photostat copies of the application dated 24th December, 2018 and the certified copy of the proceedings.

ii. From the record the original mother title to the suit premises was all that parcel of land known as Land reference numbers MN/III/5612 and to which a copy of title formed part of the Plaintiffs documents at inception of this suit and at which time no submission had been done.

iii. The Respondent having obtained the inhibition order inhibiting any registration or dealings on the suit premises, no sub - division could have been feasible without lifting or vacating of that order by the Honourable court.

iv. The Respondent was being disingenuous to the fact that LR.NO.MN/111/5612 was the mother title and any subsequent subdivisions done thereto after were clandestinely done and the same must be cancelled/revoked and registered in the names of the Plaintiffs.

b. There was an error apparent on the face of the record and that the Honourable Court should proceed to correct the same. The Respondent should stop using the delaying tactics to deny the Applicant the fruits of their judgement.

II. Submissions

7. On 4th April, 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 26th March, 2025 be disposed of by way of written submissions. Pursuant to that, the Honourable Court was only able to access the submissions by the Plaintiffs/Applicant herein. Subsequently, the ruling was deferred 20th June, 2025 accordingly.

A. The Written Submissions by the Plaintiffs/Applicants

8. The Plaintiffs/Applicants through the Law firm of Messrs. Oduor Siminyu & Co. Advocates field their written submission dated 10th April, 2025. Mr. Siminyu submitted that before the Court for hearing and determination was the Notice of Motion application dated 26th March, 2025 seeking the afore stated orders.

9. The Learned Counsel averred that the Application was supported by an affidavit of Hussein Suleiman Masila and a supplementary affidavit filed with leave of the court. The said application was opposed through a Replying Affidavit sworn by one Abdulkarim Saleh Muhsin and dated 3rd April, 2025. The Application was basically grounded under the provision of Section 99 of the *Civil Procedure Act*. Section 99 statues as follows:-

> " Clerical or arithmetical mistake in judgement, decree or order, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of it's own motion or on the application of any of the parties."

10. The application sought to amend, correct or rectify specifically paragraph 70(d) of the Judgement whereby the Honourable Court directed the Land Registrar to register the Plaintiffs as absolute owners of parcel numbers 2717/V/MN, 2718/V/MN and 2719/V/MN instead of parcel numbers MN/III/10211, MN/III/10212 and MN/III/10213.

11. The Application was for correction of an apparent error on its face and thus court is seized with the discretionary powers to grant the orders sought. The orders sought are crucial in implementation of paragraph 70 (d) of this courts orders. The Land parcel in dispute in this suit is L.R.NO. MN/III/5612. The mother title to the parcel (suit property) was clearly shown by the applicants in their documents attached to the originating summons at the time of filing suit and the Respondent in their own documents and more particularly the application on record dated 24th December, 2018. The court correctly found so at paragraph 70 (b) of its judgement and which was never varied of set aside.

12. The Defendants/Respondents from their own application dated 24th December, 2018 sought for inhibition orders stopping any registration on parcel No.MN/III/5612 which orders were confirmed by the Honourable Court though differently constituted. How they were able to go round the order and sub-divide the said land without lifting or vacating that order remained a mystery. The Sub-division was carried out by the Defendants/Respondents during the pendency of the suit being Land reference Numbers MN/III/10211, MN/III/10212 & MN/III/10213 were only meant to take the suit property away from the Applicants' reach and try to defeat justice. Apparently, the Counsel opined that the Defendant/Respondent mentioned of the sub - divisions in their final submissions dated 30th April, 2024 at page 2. To buttress his point, the Counsel relied on the of "Republic – Versus - Attorney General & 15 others, ex-parte Kenya Seed Company Ltd & 5 others (2010) eKLR" stated as follows;-

> " 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 judgement 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

interests, 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 judgement/orders does not have a consequence which the judge intended to avoid adjudicating on".

13. Further, the Learned Counsel also cited the East Africa Court of Appeal case of "Vallabhdas Karsandas Raniga – Versus - Mansukhlial Jisraj and others (1965) E.A 780" held as follows:-

> "Section 3(2) of the *Appellate jurisdiction Act* confers on the court of Appeal the same jurisdiction to amend judgement, decrees and orders that the High Court has under Section 99 of the *Civil Procedure Act* making it unnecessary to look to the inherent powers of the court. The word 'at any time' in Section 99 clearly allow the power of amendment to be exercised after the issue of a formal order.......... 'slip orders' are made to rectify omissions resulting from the failure of counsel to ask for costs and other matters to which their clients are entitled......A court will only apply the slip rules where it is fully satisfied that it is giving effect to the intention of the court all the time when judgement 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......."

14. The Learned Counsel submitted that it was no doubt that the resultant sub – divisions to MN/III/5612 by the Respondents were MN/111/10211, MN/III/10212 and MN/III/10213 and not 2717/V/MN, 2718/V/MN and 2719/V/MN. In the entire record there was no reference or mention to sub - divisions 2717/V/MN, 2718/V/MN and 2719/V/MN which could have availed itself to be considered and allowed by the court. The reference to parcel numbers not in the file and not claimed by anybody is thus clearly an anomaly resulting from an accidental or just typographical slip and amenable to correction by the court. The inclusion of parcel numbers 2717/V/MN, 2718/V/MN and 2719/V/MN which did not come from the Plaintiffs/Applicants nor the Defendants/Respondents was a slip and/or a clerical error on the part of the Honorable Court. Thus, the provision of Section 99 of the *Civil Procedure Act*, Cap. 21 provides for correction of clerical errors in Judgement and this is one of the instances.

15. It was apparent from the Judgment that Paragraph 70 (d) of the court's orders dated 18th September, 2024 may not be executed and/or implemented by the Land Registrar-Mombasa without this courts further orders or correction. The Learned Counsel made reliance on the case of "Steve Onyango – Versus - Techspa General Supplies Limited & 2 others (2020) eKLR" Justice Mary Kasango (as she then was) had this to say:-

> "Section 99 of the *Civil Procedure Act* can be invoked to correct 'clerical or arithmetical mistake in judgement, decrees or orders, errors arising therein from an accidental slip or omission'. The court can either evoke the provisions of the Section on its own motion or an application."

16. According to the Learned Counsel, the mistake was occasioned inadvertently by human error by stating wrong parcel numbers presumed to be sub - divisions of parcel number MN/III/5612.

17. In conclusion, the Learned Counsel submitted that from the foregoing and the court record, it is evidently clear that the parcel numbers mentioned at paragraph 70 (d) of the judgement is not what the court intended registered in the Plaintiff/Applicant's names. This was a clerical error that should be

corrected. It was their humble submission therefore that the Court found the application with merit and allow the same.

II. Analysis & Determination.

18. I have carefully read and considered the pleadings herein, the written submissions and the cited authorities by the Learned Counsels and the relevant provisions of *the Constitution* of Kenya, 2010 and the statures.

19. In order to arrive at an informed, just, fair and reasonable decision, the Honorable Court has crafted two (2) following salient issues for its determination.

    a. Whether the Notice of Motion application date 26th March, 2025 by the Plaintiffs/ Applicants has made out a case of the review and setting aside its Judgment dated 18th September, 2024 to amend the paragraph 70 Order (d) where the Honorable Court directed the Land Registrar to register the Plaintiffs as absolute owners of parcel Nos. 2717/V/MN, 2718/V/MN and 2719/V/MN instead of parcel Nos. MN/III/10211, MN/III/10212 and MN/III/10213?

    b. Who meets the costs of the Notice of Motion application dated 26th March, 2025?

ISSUE No. a) Whether the Notice of Motion application date 26th March, 2025 by the Plaintiffs/ Applicants has made out a case of the review and setting aside its Judgment dated 18th September, 2024 to amend the paragraph 70 Order (d) where the Honorable Court directed the Land Registrar to register the Plaintiffs as absolute owners of parcel Nos. 2717/V/MN, 2718/V/MN and 2719/V/MN instead of parcel Nos. MN/III/10211, MN/III/10212 and MN/III/10213.

20. Under this Sub – heading, the main substratum is on causing the Honourable Court to consider review, setting aside, varying and/or discharging orders made in the Judgment dated 18th September, 2024 to amend the Order on Costs. The Honourable Court has noted with great exception the citation upon which the Court was moved. Apparently and with due respect to the Plaintiffs/Applicants, the application was brought under the provisions of Section 99 of the *Civil Procedure Act*, Order 45 Rule 1 of the Civil Procedure Rules, 2010. Ideally, the Court would have expected to be moved under the provision of Section 80 of the *Civil Procedure Act*, Cap. 21. The Honourable Court shall be demonstrating the distinction in due course. The provision of Section 80 of the *Civil Procedure Act* as read together with Order 45 Rule 1 of the Civil Procedure Rules governs the law on review and sets out the conditions therein.

21. But as provided for under Order 2 Rule 6 of the Civil Procedure Rules, 2010, parties are bound by their own pleadings.

22. Be that as it may, the provision of Section 99 of the *Civil Procedure Act* Cap 21 provides as follows: -

> " 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."

23. While the provision of Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

> " 1.
>
> (1) 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."

24. Briefly, and prior to proceeding further, the Honourable Court wishes to extrapolate on a few caselaw on this subject matter. In the case of:- "Republic – Versus - Public Procurement Administrative Review Board & 2 others [2018] eKLR" it was held:

> " Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds;
>
> (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
>
> (b) on account of some mistake or error apparent on the face of the record, or
>
> (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay."

25. Explaining the court's inherent power to recall its own judgment, Sir Charles Newbold P held in the case of "Lakshmi Brothers Ltd – Versus - R. Raja & Sons (1966) EA 313" at page 315 as follows:-

> " Indeed, there has been a multitude of decisions by this court, on what is known generally as the slip rule, in which the inherent jurisdiction of the court to recall a judgment in order to give effect to its manifest intention has been held to exist. The circumstances, however, of the exercise of any such jurisdiction are very clearly circumscribed. Broadly these circumstances are where the court is asked in the application subsequent to the judgment 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. I would here refer to the words of this court given in Raniga case (2) (1965) E.A. at p. 703 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."

These are the circumstances in which this court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter."

26. The Court of Appeal had earlier on held as follows in "Vallabhdas Karsandas Raniga – Versus - Mansukhlal Jivraj and Others (1965) 1 EA 700(CAN)": -

> " It appears to us that s.3(2) of the *Appellate Jurisdiction Act*, 1962 (NO. 38 of 1962) confers on this court the same jurisdiction to amend judgment, decrees and orders that the High Court has under s. 99 of the *civil procedure act*, making it unnecessary to look to the inherent powers of the court….It appears to us further that the words "at any time" in s. 99 clearly allow the power of amendments to be exercised after the issue of a formal order…."slip orders" may be made to rectify omissions resulting from the failure of counsel to ask for costs and other matters to which their clients are entitled ………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 the 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 before the court when judgment was given on the appeal, the court would, on application or indeed of its own motion, have made the order for refund now sought, which was, in our opinion, necessarily consequential on the decision on the main issues."

27. From the stated provisions, it is quite clear that the powers to cause any review, variation or setting aside a Court's decision are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably. To qualify for being granted the orders for review, varying and/or setting aside a Court order under the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required.

    a. There should be a person who considers himself aggrieved by a Decree or order;

    b. The Decree or Order from which an appeal is allowed but from which no appeal has been preferred;

    c. A decree or order from which no appeal is allowed by this Act;

    d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or

    e. 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.

    f. The review is by the Court which passed the decree or made the order without unreasonable delay.

28. The Plaintiffs/Applicants contended that while in the process of implementing the decree when it came to their attention that there was an apparent error/mistake on the face of the judgment and more particularly at Paragraph 70 Order (d) caused by either clerical, arithmetic or typographical error where the Honorable Court directed the Land Registrar to register the Plaintiffs/Applicants as

absolute owners of parcel Nos. 2717/V/MN, 2718/V/MN and 2719/V/MN instead of parcel Nos. MN/III/10211, MN/III/10212 and MN/III/10213.

29. While opposing the application, the Defendant/Respondent, the Plaintiffs filed suit claiming land adverse possession of L.R. Number MN/III/5612 (the suit premises). According to them the Plaintiffs/Applicants did not claim LR Numbers MN/III/10211, MN/III/10212, and MN/III/10213 and could not therefore ask the court to correct the Judgement and award them title of property that they did not claim by adverse possession. Indeed, they held that the Plaintiffs/Applicants failed to comply with the mandatory provision of Order 37 (7) (2) of the Civil Procedure Rules, 2010. The provision holds as follows:

    1. "Any application under Section 38 of the Limitations Act shall be made by Originating Summons.

    2. The Summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.

30. In all fairness, taking the it's the Judgement of this Honourable Court that is under attack, I will refer back to the Judgment. At Part II of the said Judgement where while noting down the Plaintiffs/Applicants' case I opined verbatim as follows: -

    " 4. From the filed pleadings, the Applicants sought to be declared owners of the suit land by way of Land adverse possession. This was to be done through the determination of the following questions:-

        a) Whether the Applicants be declared to had become entitled by virtue of adverse possession of 17 years ALL That PIECE OF LAND known as L.R NO. MN/III/5612 registered as CR. 58960 situate in South Takaungu Township in Kilifi County containing by measurement 8.616 Hectares or thereabouts (hereinafter "the property") registered under the name of the Respondent.

        b) Whether the Applicants were entitled to be duly registered forthwith as proprietor of the property by virtue of adverse possession

        c) Whether the Honourable Court be pleased to order that the Land Registrar, Mombasa Lands Registry deletes the name of KROTONITE ENTERPRISES LIMITED the Respondent herein and register the names of the Applicants herein in place thereof absolutely and at no cost.

        d) Whether the Honourable Court be pleased to order that the Registrar in Charge, Mombasa Lands Registry to reconstruct the parcel file in respect of the property in case the original file cannot be traced.

        e) Whether the Honourable Court be pleased to order that after reconstruction of the parcel file; the Registrar in Charge to issue a provisional title in favour of the Applicants

f) Whether the Honourable Court be pleased to order that the Applicant be released from any obligation to pay outstanding rates in respect of the property and the County Rates department to alter its records to reflect the names of the Applicants to be the rate payers

g) Costs be in the cause

5. The Application was based on the following grounds on the face of it:-

a) The Applicants had since the year 1993 been in peaceful, uninterrupted and open occupation of the property for a period exceeding 12 years.

b) Having lived on the suit property for the forgoing period of time, the Applicant acquired prescriptive rights and the Respondent had never upset that status."

31. Apparently and as already indicated, in the present case the Plaintiffs/Applicants are not seeking to review the Judgment of the court as expected in law. Instead, but rightfully, they have raised an error that was indeed caused from ".......clerical, arithmetic and typographical errors meted by court.." by this Honourable Court under Paragraph 70 (d) by inserting numbers parcel Nos. 2717/V/MN, 2718/V/MN and 2719/V/MN that were unknown from the Title Number supposedly arising from the sub - division of the suit property. Nonetheless, from the above cited pleadings by the Plaintiffs/Applicants, this was not a prayer they made in the Originating Summons dated 9th February, 2018. Indeed, the Plaintiffs/Applicants have not annexed the certified copy of the said sub – divisions as required by law – Order 37 (7) (2) of the *Civil procedure Act*, Cap. 21. Right from the onset and during the whole of the proceedings, it is not in dispute that the suit property known to the Plaintiffs/Applicants and the Defendant/Respondents was L.R NO. MN/III/5612 registered as CR. 58960. The record does not show that the suit property was sub divided. It is only at Paragraph 20 that the issue of sub division arose when DW - 1 stated that: -

" 20. They had already sub divided the suit land and therefore the original land did not exist. Their title deed was issued on 25th January, 2013. By then it had a typographical error instead of read "Kryptonite" it was issued in the names of "Krozonite". Hence they applied for rectification which was successful. They wrote a letter to show there were discrepancies. Before they got the title to the land, it belonged to the Government of Kenya. He strongly refuted that the Plaintiffs had been on the land for many years and hence they were entitled to it."

32. The amendment sought is consequential to the courts Judgment that legal title to also counter the sub divided suit properties. The Amendment sought will change the entire Judgment and/or the subject and will not give effect to the clear intention of the Court. Prejudice will be occasioned to the Defendant/Respondent if the parcel Nos. 2717/V/MN, 2718/V/MN and 2719/V/MN are changed instead of parcel Nos. MN/III/10211, MN/III/10212 and MN/III/10213.

33. The question therefore is, does this court have jurisdiction to amend its own Judgment. Certainly, that is an illegality and wrongful. The Civil Procedure Rules provides under Order 21 Rule 3 (3) that: -

> " A judgment once signed shall not afterwards be altered or added to save as provided by section 99 of the Act or on review."

34. The Australian Civil Procedure has provisions in "pari materia" with section 99. As was stated in the case of "Newmont Yandal Operations Pty Limited – Versus - 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. 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.

35. 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. This was the reason the Court found the Application to amend by the Plaintiffs unmerited because their request was seemingly one seeking to have this Court sit on appeal of its own decision.

36. In the circumstances and in associating with the decisions herein above and the legal provision cited above, I am satisfied that the amendment will not give full effect to the intention of the court when Judgment was delivered. In all fairness, and the Court states in the umpteenth times, that what the Plaintiffs/Applicant should have considered was to move Court under the provision of Section 80 of the *Civil Procedure Act*, Cap. 21 read with Order 45 of the Civil procedure Rules, 2010 on the new discovery arising from the sub – divisions to the mother title. But in the meantime, I find that the Application dated 26th March, 2025 is not merited to the extend that the Plaintiffs wants the Court to add a new prayer they never sought in their originating summons.

37. Thus, I hold that the Honourable Court made a mistake by putting up Paragraph 70 (d) and proceed to have the same deleted suo moto completely. This Court has jurisdiction to rectify an error apparent on the face of its judgment.

ISSUE No. b). Who will bear the Costs of Notice of motion application dated 26th March, 2025

38. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of "Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and "Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of "Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

39. In the present case, the Honourable Court elects to have each party bear their own costs.

I. Conclusion & Disposition

40. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards the balance of convenience. Clearly, the Plaintiffs/Applicants have only partially made out their case as per the Notice of Motion applications dated 26th March, 2025.

41. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-

    a. That the Notice of Motion application dated 26th March, 2025 be and is hereby found to partially allowed in as far as causing the deletion of the contents of Clause No. 70 (d) of the Judgement is concerned.

    b. That a mention notice is hereby issued for the 18th June, 2025 to enable the Court delete from the Judgment delivered on 18th September, 2024 Paragraph 70 (d) suo moto.

    c. That each party to bear their own costs of the Notice of Motion application dated 26th March, 2025.

    It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS ......20TH ....DAY OF ....JUNE..........2025.

..

HON. MR. JUSTICE L. L. NAIKUNI,

ENVIRONMENT AND LAND COURT

AT MOMBASA

Ruling delivered in the presence of:

a. M/s. Firdaus Mbula, Court Assistant.

b. Mr. Odongo holding brief for Mr. Siminyu Advocate for the Plaintiffs/Applicants.

c. No appearance for the Defendant/Respondent.