



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**IN THE HIGH COURT AT NYERI**  
**HIGH CIVIL CASE NO. 3 OF 1990**

**MARK KARIUKI KAIGANAINE.....APPLICANT/2ND DEFENDANT**

**VS**

**NDIRANGU JOSEPH KARAIGUA.....RESPONDENT/PLAINTIFF**

**AND**

**THE HON. ATTORNEY GENERAL.....1ST PLAINTIFF**

**RULING**

The application dated 28/4/2011 seeks orders that this court does amend that part of the extracted decree issued on 18/3/2008 giving costs of the suit to the plaintiff on grounds that the decree is an adoption of the report of the District Land Registrar, Nyeri dated 24th April, 1997 which did not award any costs to either party and that part of the decree awarding costs to the Plaintiff is an accidental slip or omission and may be corrected by the Court at any time. Moreover that it is in the interest of justice that the omission be corrected to avoid mischief and failure of justice as the plaintiff is using the same to file an astronomical Bill of Costs against the Second Defendant.

The application is supported by the affidavit of Mark Kariuki Kaiganaine who states that on 18th July, 1996 the matter in dispute herein was by consent referred to the District Land Registrar, Nyeri who visited the disputed parcels of land and on 12th May, 1997 filed his report dated 24th April, 1997. That the said report was on 11th July, 2000 adopted as Judgment of the court and does not award costs of the suit to either party. However, on 18th March, 2008 the plaintiff extracted a decree in which costs of the suit are purportedly awarded to the plaintiff. That this is an accidental slip or omission which this court should correct to avoid mischief or injustice. The plaintiff is using the said decree to file an astronomical bill of costs against him drawn at Kshs.295,311/- and it is therefore in the interest of justice that the error be corrected by the court.

The application is opposed by the respondent Ndirangu Joseph Karaigua who

states that his advocate on record has advised him which advice he believes to be true that this application is misconceived and an abuse of the process of the law. He filed this suit because the District Land Registrar had shifted their common boundary with the applicant without any justification. That in effect the District Land Registrar had by his decision illegally given the applicant herein part of his land. His suit was seeking orders to reinstate their common boundary and restore that part of his land and among his six prayers, he had sought for costs of the suit against the applicant and first defendant. When they agreed to have the Land Registrar visit the dispute, this suit was not removed from the court because

he was supposed only to determine whether there existed a boundary dispute when the previous land registrar shifted the boundary. That the District Land Registrar confirmed that the shifting of the boundary by his predecessor was not justified and was wrong. His report was read to parties in court and thereafter the plaintiff's advocate by an application dated 25th May 1999 applied for Judgment to be entered in terms of the report. In which application his advocate also applied for costs of the application and the suit. That inspite of strong opposition from the applicant, the Honourable Court awarded him costs as prayed in the application but the applicant did not apply to set aside the order and did not prefer an appeal against it. That the order for costs was not a defect or an omission because he applied for it and the same was granted. That this suit was determined by the Land Registrar's report and his application for costs when he was applying for judgment was in order. He has been advised by his advocate on record which advice he believes to be true that costs follow the event and since he won the case he was entitled to the same. That that part of the decree awarding him the costs is properly on record because they were awarded after being requested. Lastly that the applicant is determined not to pay what he is rightly entitled to inspite of having all the chances to file an appeal which he chose not to.

I have read the judgment on court record and I produce it as follows:

11/7/2000

**Coram J.R.O Juma Judge**

**Mutali CC**

**Mr. Wachira for applicant**

**M/s Mukuha for 2nd Respondent.**

**MR. WACHIRA: Application dated 25/5/1999 is to enter Judgment in terms of the award. No objection proceedings filed to date.**

**M/S Mukuha :- I have no instructions.**

**Court:- Judgment entered in terms of the award plus costs of the suit and Judge.**

I do find that the award of costs of this suit and application was not an accidental slip or omission of the court as it was prayed for in the plaint. Moreover, the applicants remedy only way is applying for review of the Judgment under the provision of Order 46 of the Civil Procedure Rules and not amendment.

It was the Judge's duty to award costs as he did and not the Land Registrar hence the argument that the Land Registrar did not award costs is not valid as he had no jurisdiction to do so.

The upshot of the above is that the application is dismissed with costs.

**DATED AND SIGNED AT ELDORET THIS .....DAY OF..... 2015**

**OMBWAYO ANTONY**

**JUDGE**

**DELIVERED AND SIGNED AT NYERI THIS 3<sup>RD</sup> DAY OF FEBRUARY,2015**

**LUCY WAITHAKA**

**JUDGE**