Estate of Achilla (Represented by Erick Obina & Akunaya Janet) v Estate of Aradi (Represented by John Agulinda & Mudii Fanuel Aradi) (Environment and Land Case 47 of 2019) [2025] KEELC 4753 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4753 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND CASE 47 OF 2019

FO NYAGAKA, J

JUNE 18, 2025

BETWEEN

THE ESTATE OF DISHON BOCKY ACHILLA (REPRESENTED BY ERICK OBINA & AKUNAYA JANET) ..... PLAINTIFF

AND

THE ESTATE OF IMBUGWA ARADI (REPRESENTED BY JOHN AGULINDA & MUDII FANUEL ARADI) ..... DEFENDANT

RULING

1. This is a ruling which determines two applications that came hot on the heels of the other following the delivery herein of judgment, on 27th April 2024. Following the judgment then the Defendants filed a Notice of Appeal against the judgment and filed the application dated 22nd May 2024. Before the Court could determine the application, the Plaintiffs then brought the Notice of Motion dated 8th June 2024. Amongst the prayers sought was that the latter application be determined at the same the as the former. The Plaintiffs brought the latter application under Sections 3A and 99 of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules. They sought the following orders:-

    1. ...Spent

    2. That the application be consolidated and heard together with the application dated 22/5/2024 filed by the defendants.

    3. That this honorable court be pleased to correct an accidental error in paragraphs (d) and (e) in the final orders in the Judgment read on 27th April 2024. The suit land should read part of LR. No. 8815 (and not LR No. 8815).

2. The application was based on the ground set out in its body. Briefly, they were that it was clear from the entire judgement that part (d) and (e) in the final orders should have read part of LR. No. 8815

and not LR No. 8815. The parcel No. LR. 8815 was owned by Bidii Farm Company Limited. The late Robert Amutabi Achilla owned shares in the said company. The ownership entitled his Estate to some land being part of LR. No. 8815. The correction of the accidental error would make it possible to execute the judgment without affecting the people who are not parties to the suit.

3. The application was supported by two Affidavits sworn by Eric Obina Achilla on 8th June 2024. He repeated the contents of the grounds, but in deposition form. He deposed that he was one of the two representatives of the Estate of his late father Dishon Rocky Achilla. He added that his grandfather, Robert Edward Amutabi Achilla, owned shares in parcel L.R. No. 8815 which was owned by Bidii Farm Company Limited which shares entitled him to part of the said land. In paragraph 5 of the judgment the learned judge well captured the fact that the late Robert Amutabi Achilla owned some of the land in the said larger parcel. In the final orders of the judgment the learned judge referred, in paragraphs (d) and (e) referred to the suit land as LR. No. 8815 instead of part LR. No. 8815. It was necessary to make the correction of the accidental error to ensure that no other person who was not a party to the suit was affected by the judgment. The application ought to be consolidated with the applicant's dated 22/05/2025 and heard together.

4. The deponent swore also another Affidavit on the same date. It was in response to the Application dated 22/05/2025 filed by the Defendant. He deposed that he had filed this application, inviting the court to correct an accidental error in the judgment. The Estate of Imbuguah Kiziiri Aradi was, as per the judgment, ordered to move out of the land comprising parcel numbers Kitale Municipality Block 17/Bidii/ 34 and 31 both totaling to an acreage of 75. The Estate of Robert Edward Amutabi and Dishon Rocky Achila was entitled to the fruit of the judgment. The court cancelled the respective titles in respect of parcel Nos. 31 and 34 and reverted the land back to the Estate of his grandfather. The applicants had not shown any substantiated any substantial loss they would suffer if their application was granted. The corrected judgment would enable the Plaintiff's to execute the judgment without affecting persons who were not parties to the suit.

5. The Estate of Imbuguah Kiziiri Aradi was ordered to move out of the parcel Nos. Kitale Municipality/ Block 17/(Bidii)/ 31 and 34 both totaling to 75 acres. The Estate of Robert Edward Amutabi and Dishon Rocky Achilla were entitled to the fruits of the judgment. There was no substantial loss the applicants (Defendants) would suffer if the order was not granted.

6. Further, the estate of Robert Edward Amutabi Achilla had lost user of the 75 acres since 1999 and if the applicants continued to use the land, then the decree holders would be the ones to suffer. Justice demanded that vacant possession of the 75 acres of land be given to the decree holder and title instruments be prepared in the name of the Estate of Robert Edward Amutabi Achill and deposited in court. The essence of an order of stay pending appeal would be the preservation of the subject matter and avoiding a situation where the decree holder gets only a paper judgment. If possession was given to the decree holder, the deponent and the co representatives they would undertake the not to waste it in any way as they awaited the outcome of their appeal.

7. He deposed further that he was aware that leasing of land in the area cost Kenya Shillings 20,000 per acre per year hence the 75 acres leasing would yield a sum of 1,500,000 per year. Therefore, if the land was leased for three years, which the appeal would take to be finalized that would translate to KShs 4, 500, 000 yet the applicants had not offered security to deposit a sum of Kenya Shillings 5 Million as security. It was in the interests of both parties that the decree holders were entitled to benefit from the judgment.

8. The Defendant opposed the application through a Replying Affidavit sworn by John Agulinda Aradi on 5th October, 2024. In it, he deposed by stating that the judgment was delivered via e-mail at 4:01 PM

on the 29th April 2024. He perused it and formed an opinion that he filed an appeal. He reproduced the grounds of appeal which he had listed in the draft Memorandum of Appeal. They were 22 in total. Further, he had already filed a Notice of Appeal after which the plaintiff filed the instant application under Section 3A and 99 of the *Civil Procedure Act*. In the application, the Plaintiff stated that there was an accidental slip or error wherein the judgment should have read that the parcel of land was "part of LR. No. 8815: rather than "LR. Bo. 8215".

9. He deposed further that the Court could only apply the slip rule where it is satisfied that it was giving in effect to its intention at the time the judgment was given or where there was a matter which was overlooked, or the court was satisfied beyond doubt as to the order which it would have made. He added that it was not permissible under section 99 of the Act to ask the court to sit on appeal on its own decision or change the decision where the amendment required the exercise of independent discretion, or a real difference of opinion or it required argument and deliberation.

10. He added that the expression "mistake or error apparent on the face of record" refers to an evident error which did not require extraneous matters to show its incorrectness. He then stated that the error in the judgment was not accidental, but arising from an erroneous finding, to which the estate of Imbuguah Kiziiri Aradi had appealed. It was not an accidental slip. He added that allowing the changes proposed would require the court to change its opinion and finding of the judgment and the deliberation as to what the description "part of LR. No. 8815" is. He added that if the change was made it would not bring clarity to the judgment of the court as that would mean anywhere on the parcel of the land in question. He added that since the claim by the late Dishon Rocky Achilla and the late Imbuguah K. Aradi were dismissed by the judgment it meant that there was insufficient representation in the matter to conclusively determine the said description "part of LR. No. 8815". Further, parcel numbers Kitali Municipality/Block 17 (Bidii)/31 and 34 that were cancelled by the court in the Judgment were claimed by the plaintiff who had not preferred any appeal from the judgment. The results of divisions had also been cancelled by the judgment. Additionally, both parcel numbers Kitale Municipality/ Block 17/(Bidii)/221 and 223 were not 75 acres in total as indicated and intended description of "part of LR. No. 8815". The estate of the late Kziiri Aradi already ran the risk of being evicted from land parcels that are not part of these proceedings. Further, the two parcels of land stated immediately above were combined with another land outside the disputed 75 acres, being Kitale Municipality/ Block/17(Bidii) 21, 22, 30 and 219 to form parcel No. 224. Further, parcel No. 224 was closed on subdivision to give rise to numbers 225, 226, 227, 228, 229, 230 and 231. Again, that parcel No. 226 was closed upon subdivision to give rise to parcel numbers Kitale Municipality/Block 17 (Bidii)769 to 828.

11. He deposed further that parcel No. 229 was transferred to Mr. Malesi Ben Mugodo who on 25th November 2013 subdivided it into a number of parcels, namely Kitale Municipality/ Block 12 (Bidii)/538 up to 567.

12. The defendant disposed further that the plaintiff had failed to disclose that the 75 acres registered in the name of the late Dishon Rocky Achilla as Kitale Municipality/Block 17 (Bidii)/220 and 222 was completely sold out by the same person. and more than 100 title deeds issued to third parties. He was apprehensive that if the judgment was amended, the plaintiff would opt to enforce the same on parts of LR. No. 8815 that did not form part of the proceedings. He added that once parcel Nos. Kitale Municipality/Block 17(Bidii)/31 and 34 were cancelled the land did reverting back to the Bidii Company to be claimed by either the estate of the plaintiff or the defendant as shares of the company. He had relied on Section 75 of the repealed *Companies Act*, Chapter 486, Laws of Kenya about shares, and section 323 of the *Companies Act*, *Act No. 17 of 2015* about shares of a member being transferable.

13. His further deposition was that the application of Section 82(2) of the Law of Succession was limited by the law when the interest in a Company was land subsequently registered in the members of a company. He added that the dispute in the matter was purely a commercial dispute which should have been resolved by the High Court. Further than the Court could not determine the instant application or at all the entitlement of Robert Edwards Amutabi Achilla at the Bidii Company Limited. He emphasized that the error was not a mere error that could be rectified under section 99 but by way of a cross appeal. His view was that proposed correction would not in any way perfect the judgment. The only way the error in the judgement would be corrected was to allow the appeal to proceed and a substantive rectification made. None of the parties would be prejudiced if the orders sought were disallowed. That the application was just a fabricated case by the plaintiff to unjustifiably frustrate the agreement between the late Robert Amutabi Achilla and Imbuguah K. Aradi.

The First Application

14. On their part, the defendants filed a notice of Motion dated 22nd May 20254. They bought it under Sections 1A1B and 63 E of the *Civil Procedure Act*, Chapter 21, Laws of Kenya. Order 22 Rule 22 of the Civil Procedure Rules 2010, Sections 152B, 152C, 152E, 152F and 152G of the *Land Act* No. 6 of 2012 and all other enabling provisions of the law. They sought the following orders.:

    1. ...Spent.

    2. That this honorable court be pleased to stay the execution of the decree that issued in respect of the judgment entered herein on 29th April 2024, or stay any other order that may be issued pursuant thereto pending appeal.

    3. That cost of this application be provided for.

15. The Application was based on eight (8) grounds which were summarized as follows. That judgment was delivered on 29th April 2024. It ordered that LR. No. 8815 reverts to the estate of the late Robert Edwards Amutabi Achilla and the estate of Imbuguah Kiziiri Aradi does move out of the parcels of land within 90 days, in default of which anybody claiming under or through them would be evicted. The disputed parcel of land was 75 acres only which was an undisputed fact between the applicants and the respondents. These formed part of the land parcel LR. No. 8815. Essentially, the judgment gave the estate of Robert Edwards Amutabi Achilla the entire 8815, measuring 1652 acres and which belonged to the Bidii Company Limited of which Imbuguah Kiziiri Aradi owned other parcels of land.

16. If the orders of stay of execution were not granted, the appeal would be rendered nugatory. The applicant as well as other people, in hundreds or almost 1000, would suffer irreparable damage. The resultant titles that arose as a consequence of the surrender, conversion, and subdivision of LR. No. 8815 were over 1100 in number, and the judgment of the Court cancelled. The applicant was ready and willing to comply with the conditions that would ensure the preservation of the land subject matter pending the appeal. The application was made in the interest of justice and fairness and without unreasonable delay.

17. The application was supported by the Affidavit sworn by John Agulinda Aradi on 22nd May 2022. It repeated the contents of the grounds in deposition form. He added an annexure. JAA1 being a copy of the judgment and JAA 2 being a copy of the e-mail that shared the judgment to the parties. He added that a resolution had been arrived by the estate of Imbuguah Kiziiri Aradi that the appeal against the judgment. They had filed a Notice of Appeal which was marked JAA 3 and annexed a draft Memorandum of Appeal which they marked JAA 4. Further, the Defendant prepared a decree and sent it to the Plaintiffs' Advocates seeking concurrence thereof. He marked it annexture JAA 5. The appeal

was arguable. The estate of the late Imbuguah Kiziiri Aradi and the late Robert Edwards Amutabi Achilla were both shareholders in the land buying company known as Bidii Company Limited which owned parcel LR. No. 8815 measuring 1652 acres. The disputed parcel of land was 75 acres. The parcel LR. No 8815 had since been subdivided into various parcels through the directors of the Bidii Company Limited. This was done upon surrender, conversion and subdivision of the same to its shareholders on or about 2nd August 1994.

18. In that process, the son of the late Robert Edward Amutabi Achilla who was known as Dishon Rocky Achilla and the wife, Phoebe K. Achilla objected to the estate of Imbuguah Kiziiri Aradi being given part of the land. The matter was processed by the Kibomet Land Disputes Tribunal and determined. The said Tribunal was seized with jurisdiction to hear and determine the dispute over the disputed portion.

19. The Court, by its judgment, directed the Estate of the late Imbuguah Kiziiri Aradi to be evicted from the suit land. If the reliefs were effected and the prayers not granted the estate of Imbuguah K. Aradi would be evicted from the 75 acres and other parcels of land that they owned inside the larger parcel LR. No. 8815. That would cause a substantial loss to the beneficiaries of the estate. It was in the interest of justice that the orders be granted.

20. The Applications were disposed of by way of written submissions. On 6th June 2024 the Defendant/ Applicant filed an undated and unsigned document which he titled "Defendant's/Respondent's Submission". This Court will discuss its import as it analyzes the application hereafter.

Issue, Anaysis And Determination

21. The Court has considered the two applications, the law and the submissions of the parties. It is of the humble opinion that the two applications raise a number of issues for determination. This Court summarizes as follows:

    1. Whether the judgment contains an error which can be amended under the "slip rule".

    2. Whether the Defendant has satisfied the conditions for the grant of stay of execution.

    3. Who to bear the costs of either or both of the applications.

22. The Court embarks on the determining the issues sequentially. The first issue is whether the judgment contains an error capable of correction through the "slip rule." The correction of any error in a judgment or ruling under the slip rule is provided for under Section 99 of the Civil Procedure Rules. It 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."

23. An error that falls within the category envisioned by the provision is one that does not change the reasoning and outcome of the judge or judicial officer. Otherwise, the court would either be sitting on its own decision by way of appeal which is not permissible in law or review which step would require the Court to be moved formally under Order 45 of the Civil Procedure Rules upon a party bringing himself or herself within the parameters given by the Order. None of the two situations obtain herein. The applicant contends that the court made an error in the final disposition by giving one of the reliefs

that the Plaintiffs were entitled to be given land parcel LR. No. 8815 instead of reading, "part of LR. No. 8815". On his part the Defendant contends that the Plaintiff's view of what constituted an error was not one but a finding of the court which was already appealed against by the Defendant. He argued that the Applicant should leave that to the Court of Appeal to deal with at its judgment in the intended appeal. He added that by the Court granting the orders sought it would be sitting on appeal on its decision.

24. The above being the contention, it obligates to refer to the Judgment and the final disposition thereof. The Court is not supposed and should not sit on its own judgment. It can only correct the error that arises from and accidental slip (of the pen) and no more. It should not alter the thought flow and final decision of the judicial officer as to elicit controversy. Thus, in Fredrick Otieno Outa v Jared Odoyo Okello and 3 others [2017] eKLR, the Supreme Court held that:

> " By its nature, the slip rule permits a court of law to correct errors that are apparent on the face of the judgment, ruling or order of the court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the judgment or decision of the court. By the same token, such errors must be of such nature that their correction would not change the substance of the judgment or alter the clear intention of the court. In other words, the slip rule does not confer upon a court any jurisdiction or powers to sit on appeal over its own judgment, or, to extensively review such judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior court demonstrates, this is the true import of the slip rule."

25. With the guidance of the decision above, this Court now turns to the contention herein. I agree with the Defendants'/Respondents' submissions and the deposition in the Replying Affidavit at paragraphs *6* and *7* that an error that can be corrected under the slip rule if it involves an issue that was overlooked, and it is satisfied beyond doubt that in so doing it is giving effect its intention. Further, that the court should not redo its case or exercise other independent discretion or bring about a difference in opinion or the change to require argument.

26. I have looked at the Judgment, particularly, the final disposition in the paragraphs in issue (that is to say) at paragraphs (d) and (e). In those paragraphs the judgment read that the parcel No. LR. 8815 upon the cancellation of the parcels of land Kitale Municipality Bock 7(Bidii)/31 and 34 the same would revert to parcel No. LR. 8815. It is clear that when those paragraphs are read in context, particularly, as captured at paragraphs *5*, *15*, *18*, among others, the intention of this Court was to indicate in the final reliefs granted that the two paragraphs should have read "part of LR. No. 8815" in the respective parts since this was also what the parties knew was in contention. In any event the both parties know, and they have sworn affidavits in relation to the parcel of land in relation to this Application which show that they are in agreement that the suit land in contention is part of the LR. No. 8815. Accordingly, the application dated 8th June 2024 is allowed with no order as to costs. Paragraphs (d) and (e) in the final orders in the Judgment read on 27th April 2024 are to be amended forthwith accordingly.

Second Application

27. Regarding the 2nd Application, this Court is of the following opinion. The main issue between the parties is whether the application is merited. The Court is to determine the application using a sequential manner, which is as follows: The parties ought to ask themselves, the Issue – that is to say, "what are the issues that I have?"), the laid down the provisions that support their issues (Rule – by asking, "what are the provisions of law that relate to my issues?") and even case law on the same and the (relevant) facts of their case that apply to the rule (Application – by asking, "how does my case/

facts that I have apply to the law?") and then give their proposed result (Conclusion – by answering, "what do I make of the above three steps and hence the Court should do/give?"). This simple method of using the Issue, Rule, Application and Conclusion (IRAC) disposes of disputes easily.

28. First, issue between the parties is that the Defendants had prayed for this Court stay the execution of the decree that issued in respect of the judgment entered herein on 29th April 2024, or stay execution of any other order that may be issued pursuant thereto pending appeal.

29. The law or rule on the above issue is laid down under Order 42 of the Civil Procedure Rules. The relevant provisions in it are that where an appeal has been preferred from the judgment or decision of this Court to the Court of Appeal, this Court can for sufficient cause order a stay of execution of that order or decree in issue. As for appeals from this Court to the Court of Appeal, the signal that there is appeal preferred is the filing of a Notice of Appeal by a party. In this matter the Applicant has already filed such a Notice. Thus, I find that for the purposes of this application he satisfied this court that there is an appeal in place and that the application was filed without unreasonable delay. I hold so because in terms of Rule 2(2) of the *Appellate Jurisdiction Act*/ Court of Appeal Rules an ""appeal", in relation to appeals to the Court, includes an intended appeal;...". Further, as stated in Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] eKLR, an appeal is deemed to have been filed once a notice thereof has been filed in the appropriate registry.

30. The above being the position, on the merits of the application, this Court finds that the grounds for the grant of an order for stay of execution pending appeal are to be found in Order 42 Rule 6(2). The provision states as follows:-

> " No order for stay of execution shall be made under sub-rule (1) unless-
>
> a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
>
> b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

31. The provision gives three requirements to be satisfied by an Applicant in order to be granted an Order for stay of execution. They are that the Applicant ought to show that he:-

i. is likely to suffer substantial loss

ii. has moved the court without undue delay

iii. is ready to furnish security.

32. However, under Rule 6(1) the Court may for sufficient cause order a stay of execution of a decree or order appealed from. Sufficient cause has been explained to mean bona fide and more than inaction on the part of a party. In The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others the Court of Appeal in Tanzania expressed itself to the effect that there is difficulty in bringing out the clear meaning of the phrase "sufficient cause". However, in Parimal v. Veena, (2011) 3 SCC 545, the Supreme Court of India observed that:-

> " sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose

intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously".

33. This imports the idea of good faith, honesty, blamelessness and diligence in action. Thus, in the case of Halal & Another -vs- Thornton & Turpin [1963] Ltd [1990] eKLR the Court of Appeal has held that:

> " ....thus the superior court's discretion is fettered by three conditions. Firstly, the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must of course, be made without unreasonable delay."
>
> In addition, the applicant must demonstrate that the intended appeal will be rendered nugatory if stay is not granted as was held in the case of Hassan Guyo Wakalo -vs- Straman EA Ltd (2013) as follows:
>
> "In addition, the Applicant must prove that if the orders sought are not granted and his appeal eventually succeeds, then the same shall be rendered nugatory."
>
> These two principles go hand in hand and failure to prove one dislodges the other."

34. The applicants have offered to deposit any security that may be ordered by the court. On their part the Respondents argue that if the Court grants the same, it should be on condition that the security for the due performance of the decree be KShs. 5, 000,000=. Indeed, the applicants have shown that there is a likelihood of the substantial loss occurring if there is not stay execution of the decree. Thus, the Application dated 22nd May 2024 is allowed by way of an order being issued for the stay of execution of the decree herein, granted, on condition that the Applicants deposit in a joint interest earning account to be opened in the names of the parties' advocates' law firms, a sum of Kenya Shillings four million (KShs 4,000,000/=) within the next twenty one (21) days, in default execution to proceed. The Applicant to initiate the process.

35. The costs of the application to be to the Respondent.

36. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 18TH DAY IF JUNE, 2025.

HON. DR. IUR NYAGAKA

JUDGE.

In the presence of,

Kiarie Advocate for the Plaintiffs

D. Wanyama Advocate for the Defendants.