



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MIGORI

ELC APPEAL CASE NO. 3 OF 2020

OSIMBA OYOYO.....PLAINTIFF/APPLICANT

Versus

HELLEN OPIYO OYOYO.....1ST RESPONDENT

ISMAEL OYOYO.....2ND RESPONDENT

ABIUD OOKO KAWAWO.....3RD RESPONDENT

RULING

1. The instant ruling is in regard to a Notice of motion dated 8th December 2020 under certificate of urgency duly filed in court today. The applicant/appellant, **OSIMBA OYOYO** through M/s Nyauke and Company advocates, is seeking orders infra:-

- a) **THAT** this application be certified urgent and dispensed in the first instance.
- b) **THAT** upon hearing of this application, the honourable court be pleased to review and or vary its order delivered on the 28th October 2020 as to reflect the correct case number in the subordinate court.
- c) **THAT** the costs of this application be provided for.

2. The motion is anchored on the applicant's 9-paragraphed supporting affidavit sworn on even date and grounds 1 to 4 set out on it's face. I find it superfluous to reproduce the contents of the affidavit and the grounds which are noted herein accordingly.

3. The motion is initiated pursuant to provisions of the law, inter alia, Order 51 Rules 1 and 2, orders 5, Rule 1 of the Civil Procedure rules, 2010 sections 80, 1A, 1B, and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya (the CPA). I take into account the said provisions as well as sections 99 and 100 of the CPA on amendments of Judgments, decrees, orders and general power of the court to amend any defect or error in any proceeding in a suit.

4. It is trite law that the court is seized of the power to correct any apparent errors in it's Judgment, ruling and orders; see the Supreme Court of the Republic of Kenya decision in the case of **Charles Karathe Kiarie and 2 others =vs= Administration of the Estate of John Wahase Marathe** (deceased) and **2 others Civil Application number 4 of 2020 (2020) eKLR**.

5. Quite clearly, ground number (1) of the Notice of motion dated ,1st October 2020 which resulted to the order in question, shows the trial court's case as Homa-Bay SPM's court ELC case No. 4 of 2016 and not case no. 6 of 2016 as revealed in the original memorandum of appeal and this court's order given on 5th October 2020 and issued on 8th October 2020 herein.

6. It is noted that the amended memorandum of appeal discerns the correct case number in question. The application is merited of the obtaining scenario.

7. Wherefore, the Notice of motion dated 8th December 2020 be and is hereby allowed in terms of orders 1 and 2 sought therein and stated as orders (a) and (b) in paragraph 1 hereinabove. Costs of the present application be in the cause.

8. For the avoidance of doubt, the order of this court, in particular, order number 2, given on 5th October 2020 duly issued on 8th October 2020, is hereby corrected to read in part, "**ELC case No. 4 of 2016**" in lieu of "**ELC case No. 6 of 2016**"

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 9th day of December 2020.

G.M.A. ONGONDO

JUDGE

In the presence of: -

Mr. Tom Maurice – Court Assistant