



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MURANG'A
ELC NO 35 OF 2017

PRISCILA WAIRIMU NDEGWA.....PLAINTIFF /APPLICANT

VS

JANE WAIRIMU NG'ANG'A NDUNGU.....1ST DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR MURANG'A...2ND DEFENDANT/RESPONDENT

RULING

1. On the 19/1/2019 the Plaintiff/Applicant filed an application under Order 45 of the Civil Procedure Rules 2010 and all other enabling provisions of the law seeking the following orders;

- a. That Judgment be reviewed and further amended to capture the particulars of the suit parcel as LOC 4/NGARARIA/2043 instead of LOC 4/NGARARIA/2403.
- b. That the Court makes final orders in regard to the Defendant's Counterclaim.
- c. Costs of the suit

2. The application is based on the Supporting Affidavit of Mr T. M Njoroge Advocate for the Plaintiff and further grounds on the face of the application. The Plaintiff avers that there is error apparent on the record. That the suit land was described in the judgement of the Court delivered on the 7/5/18 as LOC 4/NGARARIA/2043 instead of LOC 4/NGARARIA/2403. That further the Court did not make final orders on the Counterclaim.

3. The Applicant maintains that these are errors apparent on the face of the record and no prejudice shall be visited on the Respondent.

4. The Defendant did not oppose the application despite being duly served according to the affidavit of service on record dated 17/1/19.

5. The application was argued orally before me on the 30/1/2019 wherein Counsel for the Applicant Mr T M Njoroge relied on the grounds annexed to the application as well as his supporting affidavit sworn on the 14/1/2019, whose import has been captured in para 2 and 3 above.

6. Section 99 of the Civil Procedure Act gives the Court the power to correct errors in judgements or orders either suo moto or on application by a party. It 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.”

7. Order 45 of the Civil Procedure Rules provides as follows;

“(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.

8. In *Nuh Nassir Abdi Vs Ali Wario & 2 Others (2013) eKLR*, the Court held that a decision whether or not to vary, set aside or review earlier orders is an exercise of judicial discretion and the Court ought only to exercise such discretions if to do so would serve a useful purpose.

9. I have reviewed the record and in particular the copy of the title deed on record and note that indeed the subject matter of the suit is LOC 4/NGARARIA/2403. I have also reviewed the judgment of this Court delivered on the 12/4/18 and indeed it is true that there is an apparent error on the description of the subject matter. It is erroneously described as LOC 4/NGARARIA/2043 throughout the judgment.

10. In the circumstances, there was a typographical error that led to misrepresentation of facts of the suit land in the final determination of the Court. The effect of the Judgment is that it refers to a different parcel of land all together that contradicts the substratum of the suit. The Court agrees with the Applicant that there is an error which ought to be amended by the Court and that the error be cured by correcting the land parcel Number to read LOC 4/NGARARIA/2403. The explanation of the error is not argumentative or is not premised on a different interpretation of facts and/or the law by the Court which would be a good ground for appeal.

11. The Court finds and holds that there is an error apparent on the face of the record and exercises its powers under section 99 of the Civil Procedure Act and Order 45 (1) b to correct the error.

12. The second limb of the application is that the Court be pleased to make final orders on the Counterclaim. The Court is satisfied that it pronounced itself fully on the Counterclaim which was premised on Adverse Possession in Paras 19-24. Under Para 24 the Court stated as thus;

“given the reasons advanced above the Court finds and holds that the claim of Adverse Possession is not founded and the Counterclaim fails”.

13. The determination was clear and unambiguous. The bone of contention of the Applicant is that the Court did not include this in the final orders and this is what has triggered the application. The final determination on the Counterclaim is stated at Para 24. I do not see any prejudice in conceding to this prayer.

14. In the interest of completeness of the orders the Court will include Para 24 in the final orders to the effect that the Counterclaim failed and is dismissed. It reads as follows;

“31. In the upshot the Plaintiffs case succeeds and the following orders are proper;

a. The Counterclaim fails and is dismissed.

b. It is hereby declared that the Plaintiff is the legitimate owner of parcel No LOC 4 /NGARARIA/2403.

c. The 2nd Defendant is hereby ordered to forthwith remove the caution registered on LOC4 /NGARARIA/2403

d. The 1st Defendant is restrained from encroaching onto the land of the Plaintiff or interfering with the Plaintiff's quiet possession of LOC4/NGARARIA/2403.”

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28TH DAY OF FEBRUARY, 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

T M Njoroge for the Plaintiff/Applicant

Defendants/Respondents – Absent

Njeri and Irene, Court Assistants