



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT NAIROBI

ELC SUIT NO. 365 OF 2017

(FORMERLY HCC 1871 OF 1992)

OLUM ONDU & 127 OTHERS.....PLAINTIFFS

=VERSUS=

NAIROBI CITY COUNCIL & 3 OTHERS.....DEFENDANTS

RULING

What is before me is the plaintiffs' application brought by way of Notice of Motion dated 4th December, 2018 seeking the following order:

“THAT the consent order dated 10th March, 2000 and filed in court on 13th March, 2000 be amended to include the correct L.R No. 12010 instead of L.R No. 2010.”

The application was brought on the grounds that there was an error on the face of the said order and that the amendment sought would not cause any prejudice. I have perused the court record. I have noted that the original court file got lost and was not traced. The present file was reconstituted on 7th September, 2001. The original copy of the consent letter dated 10th March, 2000 signed by C. W. Ngala & Company Advocates for the plaintiffs and Oronga Esonga & Company Advocates for the 1st defendant said to have been filed in court on 13th March, 2000 is not in the court file. The minutes by the Deputy Registrar endorsing the said consent as an order of the court is also not in the court file. I believe that these documents were in the original court file that got lost.

I have noted further that there are two (2) sets of orders in the court file arising from the said consent letter dated 13th March, 2000. The first order was issued on 23rd March, 2000. Paragraph 2 of this order refers to L.R No. 209/2010. The second order was issued on 8th August, 2002. This order refers to L.R. No. 209/12010 in paragraph 2 thereof. The Consent letter dated 10th March, 2000 filed in court on 13th March, 2000 which I have referred to earlier referred to L.R No. 209/12010 in paragraph 2 thereof. Following the adoption of the contents of the said consent letter as an order of the court, a formal order was supposed to be extracted in accordance with the terms thereof. The order extracted from the said consent letter should have referred to L.R No. 209/12010 as the parcel of land from which the plaintiffs were not to be evicted pursuant to paragraph 2 of the said consent letter and not L.R No. 209/2010.

As I have mentioned earlier, paragraph 2 of the order issued on 23rd March, 2000 refers to L.R No. 209/ 2010. It was not disputed that this order does not reflect the correct parcel number of land that was contained in the consent letter dated 10th March, 2000 signed by the advocates for the plaintiffs and the 1st defendant. It was in acknowledgment of this error that a subsequent order was issued on 8th August, 2002 with the correct parcel number, L.R No. 209/12010. The problem with the order of 8th August, 2002 was that it was issued irregularly. That order of 8th August, 2002 amended the first order issued on 23rd March, 2000 without leave of the court. In the present application, the plaintiffs have sought to correct that anomaly.

Although the original court file got lost, there was no dispute that the plaintiffs and the 1st defendant entered into a consent which they reduced into writing and filed in court on 13th March, 2000. There was also no dispute that the said consent was recorded as an order of the court. Again, there was no dispute that following the adoption of the said consent as an order of the court, a formal order was extracted on 23rd March, 2000 and that the order did not contain the correct land reference number that was in the parties' consent letter dated 10th March, 2000 that was filed in court on 13th March, 2000.

The plaintiffs' application was served upon the 1st defendant's advocate. When the application came up for hearing on 19th March, 2019, the advocate who appeared for the 1st defendant informed the court that the 1st defendant had no objection to the application.

I am satisfied that the order of 23rd March, 2000 was validly issued and that it contains a clerical mistake. This court has power under Section 99 of the Civil Procedure Act, Chapter 21 Laws of Kenya to amend clerical or arithmetical mistakes in decrees and orders. For the

reasons that I have given above, I am persuaded that this is an appropriate case for the exercise of the said power.

In conclusion, the plaintiffs' application dated 4th December, 2018 is allowed on the following terms:

1. The consent order issued on 23rd March, 2000 is amended in paragraph 2 thereof by deleting L.R No. 209/2010 and inserting in place thereof L.R No. 209/12010.
2. An amended order shall issue accordingly.
3. The costs of the application to be in the cause.

Delivered and Dated at Nairobi this 30th day of April 2019

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

Mrs. Gulenywa for the Plaintiffs

Ms. Okoth h/b for Mr. Mugoye for the Defendants

C. Nyokabi-Court Assistant