

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO 352 OF 2011[OS]**

**DESMOND PATRICK**

**MAINA MUTHEMBA.....1<sup>st</sup> APPLICANT**

**DOREEN WANGARE MUTHEMBA.....2<sup>nd</sup> APPLICANT**

**[Both suing as the duly appointed guardians and  
Managers of the Estate of ROSE WARUINU MUTHEMBA]**

**VERSUS**

**ROSALYNA DOLA OUKO.....1<sup>st</sup> RESPONDENT**

**JOHN AARON TAFARI OUKO.....2<sup>nd</sup> RESPONDENT**

**ANDREW ATINDA OUKO**

**[Sued on behalf and as administrators  
of the Estate of JASON ATINDA OUKO-DCD] .....3<sup>rd</sup> RESPONDENT**

**RULING**

1. Vide the Notice of Motion dated the 7<sup>th</sup> August, 2025, brought under the provisions of **Sections 1A, 1B, 3A, 99 & 100** of the **Civil Procedure Act, Order 9 Rule 9, Order 45 Rule 1 & Order 51 Rule 1** of the **Civil Procedure Rules, 2010**, the Applicants seek the following orders:

- i. *Spent***
- ii. That this Honourable Court be pleased to grant leave to the firm of Murgor & Murgor Advocates to come on record for the Plaintiffs/Applicants after judgment, for purposes of pursuing amendment and facilitating execution of the Decree dated 29<sup>th</sup> September, 2020.**
- iii. That this Honourable Court be pleased to amend the Decree dated 29<sup>th</sup> September, 2020 by substituting the land reference described as Plot No 44 being a portion of L.R No 3589/6 Lang'ata, Nairobi (specifically referenced as L.R No 3589/44 in Gazette Notice No 4493 measuring 2.029 hectares with the converted land reference Nairobi Block 149/1877 pursuant to the systematic land registration conversion conducted under the Land Registration Act, 2012 as published in Kenya Gazette Notice No 4493 dated 20<sup>th</sup> April, 2022, Vol CXXIV-No 68.**
- iv. That in the alternative to prayer 3, this Honourable Court be pleased to review the Decree dated 29<sup>th</sup> September, 2020 by substituting the land reference described as Plot No 44 being a portion of L.R No 3589/6 Lang'ata Nairobi(Specifically referenced as L.R No 3589/44 in Gazzette Notice No 4493)**

measuring 2.029 hectares with the converted land reference Nairobi Block 149/1877, pursuant to the systematic land registration conversion conducted under the Land Registration Act, 2012 and as published in Kenya Gazette Notice No 4493 dated 20<sup>th</sup> April, 2022, Vol CXXIV-No 68.

- v. That this Honourable Court be pleased to direct the Deputy Registrar to authorize the Lands Registrar to undertake manual registration of the transfer in respect of the subject property Nairobi Block 149/1877, to facilitate proper execution of the decretal orders of this Honourable Court dated 29<sup>th</sup> September, 2020.
- vi. That this Honourable Court be pleased to direct that all references to the land parcel in the amended decree be deemed to refer to Nairobi Block 149/1877, for all purposes of facilitation of proper execution of the decretal orders of this Honourable Court dated the 29<sup>th</sup> September, 2020.
- vii. That the costs of this application be awarded to the Applicants.

2. The Application is based on the grounds on the face of the Motion and is supported by the Affidavit of Desmond Patrick Maina Muthemba, the 1<sup>st</sup>

Applicant and the duly appointed guardian and manager of the estate of Rose Warui Muthemba of an even date.

3. He averred that judgment in this matter was delivered on 5<sup>th</sup> May 2020, pursuant to which the court issued a Decree dated 29<sup>th</sup> September 2020 declaring that the Applicants had acquired by way of adverse possession, the title to Plot No. 44, being a portion of L.R. No. 3589/6, Lang'ata, Nairobi, and directing the Respondents to transfer the said parcel to them upon subdivision. He stated that the Decree further authorized the Deputy Registrar to execute the transfer documents in default of compliance by the Defendants.
4. According to the Deponent, despite the clarity of the judgment and decree, and despite numerous requests and follow-ups spanning over four years, the Respondents have willfully neglected and refused to comply with the court's orders. He explained that their conduct was deliberate and calculated to frustrate execution of the decree and to deprive the Plaintiffs of the fruits of their judgment.
5. He stated that he is aware that the subject parcel of land referenced in the decree as Plot No 44 being a portion of L.R No 3589/6 was also formerly referred to as L.R No 3589/44 and is a portion of the land parcel L.R No 3589/6.

6. Further, he deposed that subsequent to the said judgment and decree, the Cabinet Secretary for Lands and Physical Planning, pursuant to **Regulation 4(4) Of the Land Registration(Registration Units) Order, 2017**, having received from the Registrar the conversion list and cadastral maps in respect of Nairobi Land Registration Unit, issued a notice under Gazette Notice No 4493 dated 20<sup>th</sup> April, 2022, notifying the general public that the land reference numbers listed in the said Gazette had been converted to new parcel numbers as specified. Plot 44, specifically referenced as L.R 3589/44 was officially converted to Nairobi Block 149/1877.
7. According to Mr. Muthemba, as a result of the Respondents continued refusal to effect the transfer, their Counsel wrote to the Deputy Registrar pursuant to Order 3 of the decree which authorized him/her to transfer the parcel. Vide her response, she noted the discrepancy between the land reference number cited in the decree as Plot 44 and the current official reference *to wit* Nairobi Block 149/1877 due to the conversion process and was unable to execute the transfer documents.
8. The Deponent asserted that the variance between the land reference number previously cited and the current designation does not constitute an error in the conventional sense but a consequential administrative change pursuant to

a lawful implementation of the Land Registration Act, 2012 necessitating the amendment of the decree pursuant to **Section 99** of the **Civil Procedure Act**.

9. He emphasized that the Applicants have been diligent in pursuing execution, but that their efforts had been frustrated by the Respondents' persistent non-compliance and by technical hurdles arising from the registration conversion process. He averred that unless the court intervenes to align the decree with the current land reference number and issue appropriate administrative directions, the execution of the judgment will be rendered futile. He urged that the interests of justice are in favour of granting the Motion.

10. In response to the Motion, the 2<sup>nd</sup> Respondent, and co-Administrator of the Estate of Jason Atinda Ouko, Aaron Tafari Ouko, filed a Replying Affidavit sworn on the 15<sup>th</sup> October, 2025.

11. He deponed that the Motion is baseless, misleading, and intended to misdirect the court, and ought to be dismissed at the outset. He acknowledged that judgment in the matter was delivered on 5<sup>th</sup> May, 2020 in which the Applicants' suit was allowed with costs. However, he explained, being aggrieved by the said judgment and the resultant decree, they instructed their Advocates who filed **Nairobi Civil Appeal No. E611 of 2022-Rosalyna Dola Ouko and John Aaron Tafari Ouko & another**

**versus Rose Warui Muthemba (sued on behalf of and as administrator of the estate of Louis Juguna Muthemba, deceased).**

12. On 13<sup>th</sup> December, 2022, he stated that the Court of Appeal issued directions for the filing of written submissions, with which both parties have duly complied. Subsequently, on 30<sup>th</sup> January, 2024, their Counsel wrote to the court seeking that the appeal be fixed for hearing.
13. In response, the Deputy Registrar of the Court of Appeal, by an email dated 19<sup>th</sup> February, 2024, advised that the appeal had been queued together with matters filed in 2022 and that a case management date would be communicated in due course, upon which the court would certify the appeal as ready for hearing after confirmation of the record.
14. On the basis of the foregoing, he asserted, the Court of Appeal is now seized of the matter, and it would therefore be prudent for this court to halt the proceedings herein so as to avoid the risk of the appeal being rendered moot or overtaken by events in the event that it succeeds.
15. He maintained that the present application is intended to defeat or undermine the pending appeal stating that as the Applicants remain in possession of the property, they stand to suffer no prejudice and should await the outcome of the appellate process.

16. The 2<sup>nd</sup> Respondent further stated, on advice of Counsel, that the plea for amendment of the decree cannot be sustained under **Section 99** of the **Civil Procedure Act**, which only permits correction of clerical or arithmetical mistakes or errors arising from accidental slips or omissions. Similarly, a review of a decree alone is not sustainable under **Section 80** of the **Civil Procedure Act** and **Order 45** of the **Civil Procedure Rules**.

17. He maintained that a decree cannot be amended in a manner that varies or departs from the judgment itself, and that any such attempt would necessarily require a review of the judgment. He contends that the application is futile as the evidence sought to be introduced would not alter the outcome of the case, nor would it have had a material influence on the result had it been produced at trial.

18. He stated that the Gazette Notice No. 4493 relating to the conversion of Sub-Plot No. 44 into Nairobi Block 149/1877 had only come to his attention through the present application, and that the Applicants had never sought the requisite information from him concerning the suit property. He further averred that the estate had never undertaken the conversion process pursuant to the Gazette Notice, partly due to the ongoing litigation over the mother titles and existing injunctions affecting the properties.

19. He asserted that while the Applicants seek manual registration of Nairobi Block 149/1877, there is no record of any title deed or certificate of title issued in respect of that parcel upon which a lawful transfer can be undertaken. He added, on advice of Counsel, that the Ministry of Lands had nonetheless been undertaking manual registration of properties notwithstanding the Gazette Notice on conversions. He further contended that the Applicants lacked *locus standi* to bring the present application.
20. The Applicants, through Mr Muthemba filed a Supplementary Affidavit sworn on the 6<sup>th</sup> November, 2025. He reiterated the averments set out in his previous Affidavit, further stating that the Respondents have not filed any motion for stay orders. He avers that since no stay has been issued by either this court or the Court of Appeal, nothing prevents the court from granting the administrative reliefs presently sought.
21. He explained that contrary to the Respondents' assertions, they do not seek to review, vary, alter or set aside any final determination or substantive order made by the judge. Rather, they seek a purely administrative amendment to reflect the change in the land reference number.
22. In response to the contention that there is no record of a title deed or certificate of title for Nairobi Block 149/1877, the Applicant stated that

official correspondence from the Land Registrar and the Director of Surveys dated 13<sup>th</sup> May, 2023 confirms that the conversion was duly undertaken.

23. He explained that the order sought directing the Deputy Registrar to authorize manual registration flows directly from Order 3 of the decree and the practical reality that the Respondents retain exclusive control over Ardhi Sasa and have demonstrated over four years persistent refusal to co-operate with the transfer process.

24. The parties did not file submissions as at 3<sup>rd</sup> February 2026 so the application is considered on the facts contained in the pleadings.

**ANALYSIS & DETERMINATION:**

25. I have framed the following issues for determination:

- i. Whether leave should be granted to the firm of Murgor & Murgor Advocates to come on record for the Applicants?**
- ii. Whether the plea for amendment or, in the alternative, review of the decree dated 29<sup>th</sup> September, 2020 is merited?**

**I. Whether leave should be granted**

26. The guiding provisions of law with regards to granting of leave for an Advocate to come on record after entry of judgment is to be found in the provisions of **Order 9 Rule 9** of the **Civil Procedure Rules, 2010 (CPR)**.

27. The rule requires that for any change of Advocates after judgment has been entered to be affected, there must be an order of the court upon application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. The reasoning behind the provision was well articulated in the case of *S. K. Tarwadi v Veronica Muehlmann [2019] eKLR* where the judge observed as follows:

**“...In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him....”**

28. From the application on record, together with the Affidavit of Service sworn on 19<sup>th</sup> August, 2025, by Kevin Kyalo Philip, it is evident that the firm of MKN & Company Advocates, being the Applicants’ former Counsel, was duly served. The said Advocates having been properly notified, and no justifiable reason having been advanced to warrant the refusal of the leave sought, leave is hereby granted for the Applicant firm to come on record.

## **II. Whether the application is merited:**

29. The court’s power to correct errors in its judgments and decrees is expressly anchored in **Section 99** of the **Civil Procedure Act**, which permits the

correction of clerical or arithmetical mistakes, as well as errors arising from accidental slips or omissions. It provides:

**“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.”**

30. Speaking to this provision, the Court of Appeal in the case of *Leonard Mambo Kuria v Ann Wanjiru Mambo [2017] KECA 782 (KLR)* stated thus:

**“It is the relevant one in this matter as it relates to ‘judgments, decrees or orders’. This Court examined the mechanics of its application in the case of Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR, stating:-**

**“27. It is a codification of the common law doctrine dubbed ‘the Slip Rule’, the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which would otherwise become functus officio upon issuing a**

judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

28. Some of the applications of the rule are fairly obvious and common place and are easily discernible like clerical errors, arithmetical mistakes, calculations of interest, wrong figures or dates. Each case will, of course, depend on its own facts, but the rule will also apply where the correction of the slip is to give effect to the actual intention of the Judge and/or ensure that the judgment/order does not have a consequence which the Judge intended to avoid adjudicating on.

The Australian Civil Procedure has provisions in pari materia with section 99. As was stated in the case of Newmont Yandal Operations Pty Ltd v The J. Aron Corp & The Goldman Sachs Group Inc [2007] 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended.

29. ....

A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which

**was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.**

**30. What is certainly not permissible in the application of section 99, is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order”.**

31. What is apparent from the foregoing is that the application of **Section 99** otherwise known as the “*slip rule*” applies to give effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.

32. In the present application, the amendment of the decree sought is limited to substituting the description of the suit property from Plot No. 44 (also referenced as L.R. No. 3589/44), Lang’ata with the converted reference number Nairobi Block 149/1877, as published in Kenya Gazette Notice No.

4493 of 20<sup>th</sup> April, 2022. They further ask that the Deputy Registrar authorizes the Land Registrar to undertake manual registration.

33. The Respondents contend that the Court of Appeal is seized of Nairobi Civil Appeal No. E611 of 2022, an appeal from the judgment of this court, hence, the amendment of the decree would undermine or render the appeal nugatory. They further contend that **Section 99** of the **Civil Procedure Act** is inapplicable, as the amendment sought is not clerical or arithmetical in nature. That a decree cannot be amended in a manner that departs from the judgment.

34. **Order 42(6)(1)** of the CPR states that the pendency of an appeal, without a stay of execution, does not in itself bar execution or deprive this court of jurisdiction to facilitate implementation of its decree. It is common ground that no order of stay has been obtained either before this court or the Court of Appeal.

35. From the contents of the replying affidavit, the Respondents do not dispute that Plot No. 44 (also referenced as L.R. No. 3589/44), being a portion of L.R. No. 3589/6, Nairobi, which the court adjudged to belong to the Applicants on the 5<sup>th</sup> May, 2020, is the same parcel now designated as Nairobi Block 149/1877. The conversion was effected through Kenya

Gazette Notice No. 4493 pursuant to **Regulation 4(4)** of the **Land Registration (Registration Units) Order, 2017**.

36. The application is premised not only on section **99** but also on the overriding sections **1A, 1B, 3A** of the Civil Procedure Act. Therefore, the application of section 99 being limited to empowering the court to rectify error in the proceedings or judgement does not render this court powerless to exercise her discretion under the overriding principles to give effect to the judgment.

37. The conversion occurred by operation of law upon publication of the conversion lists and cadastral maps, and was not dependent on the discretion or action of individual proprietors. In these circumstances, amending the decree to reflect Nairobi Block 149/1877 does not vary the decree but gives effect to it. It does not amount to the grant of fresh substantive rights hence, I find no justification to decline the request.

38. The Applicants further seek an order directing the Deputy Registrar to authorize the Lands Registrar to undertake manual registration of the transfer in respect of the subject property, Nairobi Block 149/1877, in order to facilitate proper execution of the decree. This plea is purely facilitative and administrative in nature, intended to give effect to an unstayed decree

where execution has been impeded by limitations within the electronic registration system and the Respondents' persistent non-cooperation.

39. As regards the plea for a direction that all references to the land parcel in the amended decree be deemed to refer to Nairobi Block 149/1877 for purposes of execution, the court notes that the amendment of the decree adequately addresses this concern. Once the decree is amended to substitute the land reference, all references therein necessarily speak to the amended description, and no further order is necessary.

40. In the end, the court finds the application dated 7<sup>th</sup> August, 2025, merited and allow it as follows:

- i. Leave be and is hereby granted to the firm of Murgor & Murgor Advocates to come on record for the Plaintiffs/Applicants.**
- ii. The Decree dated 29<sup>th</sup> September, 2020 is hereby amended by substituting the land reference described as Plot No 44 being a portion of L.R No 3589/6 Lang'ata, Nairobi, referenced as L.R No 3589/44 in Gazette Notice No 4493 measuring 2.029 hectares with the converted land reference Nairobi Block 149/1877 pursuant to the land registration conversion as published in Kenya Gazette Notice No 4493 dated 20<sup>th</sup> April, 2022, Vol CXXIV-No 68.**

**iii.** The Deputy Registrar is hereby directed to authorize the Lands Registrar to undertake manual registration of the transfer in respect of the subject property Nairobi Block 149/1877, to facilitate proper execution of the decretal orders of this court dated 29<sup>th</sup> September, 2020.

**iv.** The Respondents shall bear the costs of the Motion.

**Dated, signed and delivered at Kisii virtually this 5<sup>th</sup> of February, 2026**

**A. OMOLLO**  
**JUDGE**