

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. E021 OF 2023

**ANNEMARIE MTONYI MECCA
SAMUEL WANYONYI MECCA-----
PLAINTIFFS
(Suing on behalf of the Estate of
ELIZABETH NASIMIYU NYONGESA)**

VERSUS

**COUNTY GOVERNMENT OF
TRANS
NZOIA-----
DEFENDANT**

RULING

- 1.** Through an application dated **9/12/2025**, the plaintiffs seek the court to invoke **Section 99** of the Civil Procedure Act and correct patent, accidental slips, errors, and omissions on special damages awarded in the judgment delivered on **26/11/2025**.
- 2.** The applicants' grounds are that the errors result in the plaintiffs being grossly under-compensated, contrary to the court's own findings that the special damages were pleaded and proven through unchallenged expert reports.
- 3.** The specific corrections sought by the plaintiffs are:

- (a) Award in paragraph 215 of the judgment as Kshs. 21,650,000/= to read Kshs. 73,894,227.20 being the proven cost of reconstruction/reinstatement as per PW1's evidence in paragraph 47 of the judgment and on page 76 of the plaintiff's further list of documents dated 5/2/2025.**
- (b) Varying total award for professional fees, costs, and VAT of Kshs. 211,695/- as per paragraph 215 of the judgment, to reflect Kshs. 11,084,134.08 as professional fees, Kshs. 1,773,461.45, VAT on professional fees, Kshs. 111,695/- as Valuation Report and Search, and Kshs. 6,000,000/- contingency sum and fees of Kshs. 120,000/- as contained in the QS, final summary of reinstatement costs and QS fees as per the final fee note on page 78 of the further plaintiffs' list of documents dated 5/2/2025.**
- (c) Computing and awarding of rental income between 1/1/2024 and the date of the award, which, though noted in paragraph No. 50 in the judgment, the court omitted to compute and award.**
- (d) Varying the loss of income awarded in paragraph 215 from Kshs. 1,255,500/= to include the loss of rental income during construction (12 months) of Kshs. 1,674,000/= as detailed in the final reinstatement costs for a total of**

Kshs.2,929,500/=, in addition to the amount computed under Order 3(c) above.

4. In a supporting affidavit of AnnMarie Mtonyi Mecca sworn on **1/2/2025**, on behalf of her co-plaintiff, the plaintiffs depose that though the court awarded the claim for special damages, the computation and award of the special damages was not in line with the priced Bill of Quantities, and the attendant final summary of the reinstatement costs from the quantity surveyor, PW1 the annexures **AMM-(3)** and **(4)** in the further amended plaint dated **12/6/2025** and further list of documents dated **5/2/2025**.
5. The plaintiffs depose that though at paragraphs **67**, **68**, and **81** of the judgment, it was noted that the defendant failed to call witnesses, making the plaintiffs' case stand unchallenged, and that on paragraph **204**, the court found special damages as pleaded, proved, or unchallenged by any expert evidence, leading to allowing them in paragraph **215**; in paragraph **215**, it is proceed to allow:
 - (a) ***Kshs. 21,650,000/- from an earlier valuer's report of 19/4/2023 as per PW2, and not based on the vacant one of January 2025 of PW1 for Kshs. 73,894,227.20.***

(b) Kshs. 211,695/-, only represented the basic professional fees, VAT on professional fees, cost of valuation report and search, contingency sum, and the quantity surveyor's fees, all amounting to Kshs. 19,069,290.53.

(c) Loss of rental income of Kshs.1,674,000/- for 12 months.

(d) Loss of rent income between 1/1/2024 and the date of the award.

6. The plaintiffs depose that all these figures were captured in the PW1 QS final summary as an item for the court's determination. Falling under the ambit of the stop rule, the court, in essence, relied on the wrong expert figure. The plaintiffs depose that the corrections sought are purely arithmetical and necessary to correctly reflect the proven and uncontroverted special damages as found by the court on paragraph **204** of the judgment.

7. The initial plaintiff approached the court through a plaint dated **18/4/2023**. She sought a permanent injunction and, in the alternative, special damages or compensation of the market value or price of the suit property. The plaintiff had not pleaded particulars of any special damages. Later, the initial plaintiff filed a list of documents dated **4/4/2024**, introducing **P. Exhibit No. (7)**, a valuation report, **P. Exhibit No. 8(a)**, fee note receipt, **P. Exhibit**

No. 8(b). thereafter the plaintiff filed an amended plaint dated **4/4/2024** introducing paragraphs **13-26**, prayers **(b), (c), (d), (e), (f), and (g)** and an alternative prayer to prayer (f) seeking **Kshs.118,535,115/-** damages or compensation of the current market value and price of the suit property, including the buildings and structures, and loss of income suffered totaling **Kshs.140,709,195/-**.

- 8.** From the Case Tracking System (CTS), an amended electronically uploaded on **5/4/2024** with no legal repayments made plaint appears. Other than the court stamp of **8/4/2024**, there is no evidence that the initial plaintiff paid filing fees for the added reliefs generally and in particular, special damages of **Kshs.118,535,195/-** or the alternative prayer of **Kshs. 140,709,195/-**, additionally, the particulars of special damages as pleaded in paragraph **22** of the amended plaint did not capture the figures, dates, and particulars as those arrived at based on the expert report of either a quantity surveyor, valuer, or any other qualified officer in the field.
- 9.** Thereafter, the initial plaintiff filed a further list of documents dated **6/2/2025**. It is through this list that the initial plaintiff introduced some of the proposed development plan, approved development plan, current bill of quantity for **January 2025**,

summary of relevant costs, proforma invoice receipts dated **5/2/2025**, valuation report, derived monthly rental income dated **17/4/2023**, valuation report dated **19/4/2023**, valuation report receipt, all produced as **P. Exhibit No. (1), (2), (3), (4), (5), PMFI-(6), and (7)**. All those exhibits from the CTS were not paid for. It is from the said pleadings that the plaintiff filed a list of issues dated **12/2/2025**.

10. By an application dated **3/5/2025**, the plaintiff sought to amend the plaintiff's further after the initial plaintiff passed on. Upon the leave being granted, a further amended plaint dated **12/6/2025** was uploaded in the CTS system. There is no evidence that the one appearing in the CTS was ever paid for generally.

11. In the application for leave and the leave granted, the only contemplated issue was to bring on board the legal representatives of the deceased plaintiff as at the time the suit was part-heard. From the further amended plaint, the plaintiffs, without leave of court, made changes to paragraph **22** of the amended plaint dated **4/4/2024**, added Clause **(F)**, amended **Kshs. 118,535,195/-** to **Kshs. 118,635,195/-** in paragraph **22**, and also in the reliefs sought for special damages.

- 12.** More importantly, there is no evidence that after the changes, legal fees for the added reliefs, including special damages, were paid for going by electronically uploaded further amended plaint on **19/6/2025**. Additionally, the plaintiffs, after the changes were made, did not seek to recall the expert witnesses to testify as to special damages in view of the changes to the pleadings.
- 13.** The defendant in the amended defence and counterclaim dated **30/6/2025** at paragraph **14** had put the plaintiffs to strict proof as regards paragraphs **21** and **22** of the further amended plaint on special damages. Equally, in paragraph **17**, the development approvals of the suit property had been refuted.
- 14.** Having set the nature of the pleadings, the court is asked to invoke **Section 99** of the Civil Procedure Act and find that there were patent, accidental slips, errors, or omission on special damages which have led to the plaintiffs being grossly undercompensated as regards special damages requiring corrections.
- 15.** The parameters of the doctrine of the slip rule were discussed in **Waweru & Others -vs- Attorney General & Others Petition Appl. No. 26 of 2019 [2023] KESC [KLR] (24th April 2023) (Ruling)**. After the judgment was delivered, the court was

blamed for not awarding interest on the damages awarded. The court had been asked to review its judgment and amend it to include an award of damages. The court said that the scope of the slip rule is limited to correcting errors that are apparent on the face of the judgment or order of the court, which, if corrected, will not generate any controversy or change the substance of the judgment or alter the clear intention of the court, since to do otherwise, would be the court sitting on appeal of its own judgment as to substantially alter it.

16. In *Margaret Nabuin Lomatong -vs- Sylvia Abei Kosiae & Another [2026] KEELC 511 [KLR] (4th February 2026) (Ruling)*, that by its very nature, the slip rule permits a court of law to correct its errors that are apparent on the face of the record, which are so obvious that their correction cannot generate any controversy, would not change the substance of the judgment or alter the clear intention of the court or amount to sitting on appeal of its judgment or substantially or extensively alter it.

17. In *Hussein Khalid & Others -vs- Attorney General & Others SCOK Appl. No 32 of 2019*, the court said that the slip rule power should be

used sparingly and exceptionally. As the court pronounces its judgment, it becomes *functus officio*.

18. In **William Musembi & Others -vs- Moi Educational Centre & Others Appl. No. E019 of 2021**, the court said that while it can correct errors arising from any accidental slips or omissions, or vary the judgment to give effect to its intention, or steer a judgment towards its logical or clerical perfection, the error must relate to an oversight or clerical error of computing for the ends of justice to be met or to prevent abuse of the court process. See also **Karanja -vs- Murigi [2025] KECA 517 [KLR] (21st March 2025) (Judgment)**.

19. In **Raniga -vs- Jivalji & Another [1965] EA 100**, the court said that it will only apply the slip rule where it is fully satisfied that it was giving effect to the intention of the court at the time the judgment was given, or in the case of a matter which was overlooked, or where it is satisfied beyond doubt as to the order it would have made had the matter been brought to its attention.

20. What the plaintiffs submit to have been omitted by the court in its judgment falls under special damages. The law is that special damages must be specifically pleaded and strictly proved, as held in **Hahn -vs- Singh [1985] KECA 129 [KLR]**. A party seeking special damages must demonstrate

that they actually made payments or suffered loss on injury or damage before compensation. Actual receipt is what the law requires. An invoice or a proforma invoice sent to a party is not proof of payment. A claim of loss of user refers to compensation.

- 21.** In **David Bagine -vs- Martin Bundi [1997] eKLR**, the court said that loss of user is what a claimant specifically suffers and has to be strictly proved. The court cited **Mariam Maghema Ali -vs- Jackson M. Nyambu T/A Sisera Store Civil Appeal No. 5 of 1990** and **Idi Ayub Sahbani -vs- City Council of Nairobi [1982-88] IKAR 68**, the special damages, in addition to being pleaded, must be strictly proved.
- 22.** In **Bonham Carter -vs- Hyde Park Hotel [1948] 64 TLR 177**, the court said that to prove damage, it is not enough to write down the particulars and throw them at the head of the court without proving them.
- 23.** In **Mwige -vs- Kiguta & Others [2015] KECA 334 [KLR]**, the court said that a witness must produce the document, tender it in evidence, and lay a foundation of its authenticity and relevance to the facts in the case. The court said that admissibility and proof of a document are determined at the time of production of the

document as an exhibit. The court said that a document becomes proved, not proved or disapproved, when the court applies its judicial mind to determine the relevance and veracity of its contents, not alone, but while considering all facts and evidence on record.

24. Starting with the claim of reconstruction, reinstatement of **Kshs.73,894,227.20, P. Exhibit No. (3)**, a summary of reinstatement costs is headed proposed development or priced bill of quantities. It is not based on any approved building plans, drawings, or construction contract between the plaintiffs and a contractor, and or agreements for construction fees, charges, or otherwise, per the established procedures in building construction works.

25. A bill of quantities is defined in *Lexis Nexis* as one that lists out the items of work, labour, and materials to complete works.

26. It has to be pleaded and proved. See **Tetu Housing Co-operative Society Ltd -vs- Peter Njoroge Ngahu Civil Appeal No. 243 of 2008.**

The Architects, quantity surveyors, and the project managers were not called to produce the documents. Their curriculum vitae, fees, expertise, and scope of works, period of works, and agreements were not attached to the exhibits.

- 27.** Evidence of payment of professional fees of **Kshs.11,084,134.08** was not before the court, costs of construction, and finance of **Kshs. 7,281,009.31** was not substantiated. Loss of rental income for nine and **12** months was not substantiated with landlord records, rent book, bank statements, and allied documents.
- 28.** Contingency sum of **Kshs. 6 million** was not authenticated or verified by PW1. The same case applies to VAT at **16%**, for **Kshs. 16,347,844.33**. **PMFI-(6)** other than being marked was not produced as an exhibit to substantiate the cost of the materials in the proposed reinstatement costs produced as **P. Exhibit No. (3)**. As held in ***Mwige - vs- Kiguta*** (*supra*), a document marked for identification does not count as an exhibit. A fee note is also not a payment receipt.
- 29.** As regards loss of future earnings from **1/1/2024** till the end of the lease captured in paragraph **22(d)** of the further amended plaint for **57** years, making a total of **Kshs.95,4189,000/-**.
- 30.** The court discounted the figure, given that it had declared the plaintiffs as owners of the land. The subtraction of that figure from **Kshs. 118,635,195/=** as pleaded to be the total leaves the court with the figure that it awarded in the judgment. From the plaintiffs' own pleadings,

paragraph **22**, page 6 of the further amended
plaint, did not capture **Kshs. 73,894,227.20**.

31. It is a trite law that parties are bound by their pleadings and issues for the court's determination that arise from the pleadings. In **Raila Amolo Odinga & Another -vs- IEBC & Others [2017] eKLR**, the court said that a party cannot travel beyond its pleadings. In **Methodist Church of Kenya -vs- Fugicha [2019] 59 [KLR] (23rd January 2019) (Judgment)**, the court said that referring to issues through oral arguments did not account for formal pleadings in response to those issues. The court said that when a party seeks redress from the court, he ought to have the matter properly instituted, issues canvassed and determined competently.

32. In **Mohamed Fugicha -vs- Methodist Church of Kenya [2016] eKLR**, the court held that the primary purpose of pleadings is to communicate with an appreciable degree of certainty and clarity the complaint that a pleader brings before the court and to serve as sufficient notice to the party impleaded to enable him to know what case to answer.

33. **Order 2 Rule 2** of the Civil Procedure Rules provides that a pleading must contain material facts and not evidence. In **CMC Aviation Ltd -vs-**

Kenya Airways Ltd (Cruisair Ltd) [1978 [1978] KLR 103, the court said that evidence denotes the means by which the alleged matter of fact, the trust of which is submitted for investigation, is established.

34. The plaintiffs are mistaken that what PW1 said is what the amended plaint pleaded. PW1 was just their expert witness who said with respect to **P. Exhibit No. (3)** needed to be pleaded as a matter of fact in the body of the plaint right from inception to the conclusion of the evidence.

35. In an adversarial system, it is the parties who set the agenda of the trial by their pleadings. A court cannot grant a relief that is not pleaded and not proven. In **Attorney General -vs- Okoiti & Others [2025] KECA 309 [KLR] (21st February 2025) (Judgment)**, the court held that a party, through pleadings, puts forward to the court its entire case to allow the court and the other side to answer to the same. Through pleadings, a party sets forth the facts upon which he seeks legal relief or challenges a claim, but not the evidence.

36. In **Salim Said Mtomekela vs Mohamed Abdallah Mohamed (Civil Appeal No 149 of 2019) 2023 TZCA 15 (15 February 2023)**, the court said that any evidence produced by any of the

parties that is not supportive or is not in variance with what is pleaded must be ignored.

37. In *John Mungai Murango & another -vs- Jeremiah Kiarie Mukoma [2015] eKLR*, the court held that a party cannot be allowed to recite from its pleadings without due amendments, to ensure that litigation is conducted in a framework that will guarantee fair play without prolixity and needless escalation of litigation costs. The same position was taken in *IEBC & Others -vs- Mutinda Mule [2014] eKLR*, that any evidence led that does not support the averments in the pleadings is to be disregarded and goes to no issue.

38. Turning to paragraph **204** of the judgment, the plaintiffs are being selective. The following line states that expert evidence must also be considered alongside other evidence and tested against known facts. Allowing the claim for special damages at paragraph **205** of the judgment did not mean that the court had to ignore the pleadings, the authenticity, relevance, credibility, and admissibility of the exhibits tendered.

39. The court had to strictly scrutinize all the evidence and pleadings in context. It was not out of error, mistake, or omission as the plaintiffs want the court to believe. The court looked at paragraph **22(a), (b), (c), (d), (e), (f), and (g)** of the further

amended plaintiff against **prayers No. (a), (b), (c), (d), (e), (f), (g), and (h)**. It allowed **prayers. (a), (b), (c), (d), and (f)** only to the extent pleaded and proved, with tangible and cogent evidence. A relief of loss of further earnings was dismissed. Once it was removed as per paragraph No. 22 of the further amended plaintiff, the only other items are **(A),(B), (C), (D), (E), (F), and (G)**, since special damages must be specifically pleaded and proved.

40. Prayer No. (j) was pleaded as an alternative to **prayer No. (f)**. In a prayer pleaded in the alternative, a court must choose between the main prayer and the alternative prayer and give reasons. It cannot give a party both prayers. Once the plaintiffs were decreed the land and issued a permanent injunction, it goes without saying that they were not entitled to the loss of future income for **57 years** since the land shall remain theirs.

41. Needless to say, I have already held that a court cannot whimsically award relief outside those pleaded and proved. See in **Caltex Oil (K) Ltd - vs- Rono Ltd [2016] eKLR**. It is not the function of a court in civil litigation to speculate or surmise as to the nature of the plaintiff's claim. Pleadings must be deployed to serve their function, namely to inform the other party and the court with sufficient

clarity what their case is, and for the issues for determination by the court to be clear.

42. In **General & Finance Facilities Ltd -vs- Cooks**

Bar (Romford) Ltd [1963] 2 ALLER 314, Lord Diplock said that remedies in a claim founded on tort of detinue take the form of the value of the chattel as assessed for its detention or the return of the chattel or its value, as from the date of judgment and damages.

43. In **Sande -vs- KCC [1992] LLR 314**, the court held

that a claim for award of damages on loss of profits had to be specifically pleaded and proved. The court gave the land back to the plaintiffs. It issued a permanent injunction. On top of that, it granted **Kshs.21,650,000/-** for the demolition as per the valuation report, **Kshs. 1,255,500/-** for loss of rental income for the period pleaded, cost of fencing valuation, etc., general damages for trespass, aggravated damages, willful and malicious destruction, aggravated exemplary and punitive damages, all totaling to **Kshs. 30,000,000/-**. To expect the court to grant more than that would be far-fetched.

44. The upshot is that I find the application dated **9/12/2025** lacking merit. It is dismissed with no order as to costs.

45. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **24th** day of **March 2026**.

In the presence of:

Court Assistant - Dennis

No appearance

A handwritten signature in blue ink, appearing to read 'C.K. Nzili', is written over a large, light gray watermark that says 'ORIGINAL COPY' diagonally across the page.

**HON. C.K. NZILI
JUDGE, ELC KITALE.**