



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 285 OF 2009

JOSEPH NJOGU MURIUKI.....PLAINTIFF

VERSUS

JAMES NGARI IBRAHIM GICHOHL.....DEFENDANT

RULING

(Application to amend order in judgment directed at a Land Registrar different from the Land Registrar now in charge of the register and titles in issue; application allowed)

1. The application before me is that dated 26 March 2019 filed by the plaintiff. The application is said to be brought pursuant to the provisions of Section 3A and 99 of the Civil Procedure Act, Cap 21 Laws of Kenya, and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The principal order sought in the application is for this court to correct what is said to be an error in the judgment delivered on 17 March 2011, and direct that it is the District Land Registrar, Laikipia, and not the District Land Registrar, Nyahururu, who is to cancel the title of the defendant and issue one in the name of the plaintiff. The application is supported by the affidavit of the applicant and despite being served the respondent has not filed anything towards the application.

2. I have gone through the pleadings and the judgment in issue. This suit was commenced through a plaint which was filed on 9 October 2009. In the plaint, the applicant pleaded that he was a member of Kieni East Cooperative Limited, a land buying company, and by virtue of his shareholding, he became registered as the owner of the land parcel Laikipia/Salama Muruku Block 4/790 and was issued with title in his name in the year 2000. The respondent then lodged a dispute at the Land Disputes Tribunal, challenging the applicant's ownership of the suit land, which tribunal proceeded to order a cancellation of the title of the applicant. In this suit, the applicant contended that the Tribunal did not have the requisite jurisdiction to order a cancellation of his title, and he sought for orders directed at the Land Registrar, Nyahururu Land Registry to recall and cancel the title issued to the respondent.

3. The matter was heard by Maraga J (as he then was, currently the Chief Justice and President of the Supreme Court), and he delivered judgment on 17 March 2011. He held that the decision of the tribunal was null and void for the tribunal had no jurisdiction to adjudicate the matter. He further directed the District Land Registrar, Nyahururu, to cancel the defendant's title and issue one in the name of the plaintiff.

4. In this application, the applicant avers that he proceeded to forward the decree to the District Land Registrar, Nyahururu, but the information received is that the land is in Laikipia, and therefore the District Land Registrar, Laikipia, should be the one to effect the order. He has explained that at the time he filed suit, the District Land Registrar used to sit in Nyahururu, and there was no designated office for the District Land Registrar in Laikipia, and that is why in his suit, he sought orders directed to the District Land Registrar, Nyahururu. He has mentioned that he cannot now execute the decree.

5. I have considered the application. Under Section 99 of the Civil Procedure Act, the court has power to amend judgments decrees or orders. The said provision is drawn as follows :-

99. 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.

6. I do not think that in the instance of this case, we are dealing with a clerical or arithmetic mistake in a judgment or decree. It will be noted that in his plaint, the applicant did seek for orders directed at the Land Registrar, Nyahururu, and that is precisely what the court granted to him. It is not that the applicant sought orders directed at one Land Registrar, and the court granted orders directed at a different Land Registrar. I therefore do not think that Section 99 is applicable to the applicant.

7. However, the court has wide powers to do justice to the parties, under Section 3A of the Civil Procedure Act, which provides as follows :-

3A. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

8. It will be seen from the above that the court has unfettered discretion to ensure that the ends of justice are met and make orders that would prevent the abuse of the process of court. These wide powers must certainly encompass the power to ensure that its decree is effected. The applicant has already litigated against the respondent and it has already been held that it is the applicant who is entitled to be the proprietor of the suit land. The applicant is however facing difficulty because the land is situated in a different district and under a different Land Registrar, from the one that he pleaded in his plaint. It is in the interests of justice that the plaintiff does get title in his name and I think it will be unfair to the plaintiff to decline to grant him the orders that he has sought because doing so will mean that he holds a judgment which he can never benefit from.

9. Using the court's discretionary powers under Section 3A above, I do order that the judgment and decree herein be deemed as amended so as to read, the Land Registrar, Laikipia, instead of the Land Registrar, Nyaururu. Further, the Land Registrar, Laikipia, is hereby ordered to effect the changes in the land register of the land parcel Laikipia/Salama Muruku Block 4/790, and cancel the title of James Ngari Ibrahim Gichohi, and in place, register the applicant, Joseph Njogu Muriuki, as the proprietor thereof and issue him with a title deed.

10. I make no orders as to costs.

Dated, signed and delivered in open court at Nakuru this 18th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Komu for the applicant.

No appearance for the respondent.

Court Assistants: Nelima Janepher/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU