



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 813 OF 2017

(Formerly Nairobi ELC Case No. 955 of 2012)

ESTHER MUTHONI GATHUNGU.....PLAINTIFF

VERSUS

LUCY NJERI (Sued as the administrator of the estate of

KAMAU GATHUNGU MBIRIRI.....DEFENDANT

RULING

By a Notice of Motion dated the 29th January, 2019, brought pursuant to section 99 & 100 of the Civil Procedure Act; Section 79 & 80 of the Land Act; and Order 51 Rule 1 of the Civil Procedure Rules, the Plaintiff seeks for orders for amendment of Judgment dated the 13th December, 2018 due to certain accidental slip/ omissions in the said Judgment.

The application is premised on the summarized grounds that it is necessary to amend the Judgement and the Decree issued on 13th December, 2018 and 10th January, 2019 respectively. Further, that despite presentation of the said Decree and Judgment to the Land Registrar Ngong, he expressed that the said Judgment and Decree does not expressly indicate whether to cancel the title issued to Kamau GATHUNGU (deceased) or transfer ownership of LR No. Ngong/ Ngong/ 55464 from Kamau GATHUNGU (deceased) to the Plaintiff (Esther Muthoni GATHUNGU), Mary Kabura and Hiram Machua (deceased). The Land Registrar has also indicated that the suit property is too small to be further subdivided and recommends that a joint title be issued to the three. Hillam Machua Gathungu (deceased) being the same person as Hiram Machua (deceased) names were captured as Hiram Machua (deceased) as opposed to Hillam Machua Gathungu as per the Death Certificate. The proposed amendment will aid the Land Registrar Ngong to better facilitate the rectification of title. No prejudice will be occasioned to the Defendant.

The application is supported by the affidavit of Plaintiff ESTHER MUTHONI GATHUNGU who is the decree holder herein where she reiterates her claim above.

The Defendant never opposed the application nor filed a replying affidavit.

The Plaintiff filed her submissions, which I have considered.

Analysis and Determination

Upon consideration of the instant application including the supporting affidavit as well as the submissions herein, the only issue for determination is whether Judgment and Decree issued on 13th December, 2018 and 10th January, 2019 respectively should be amended. The Defendant has not opposed the instant application and the Plaintiff's averments remain uncontroverted. The Plaintiff relied on the case of **Vallabhdas Karsandas Raniga Vs Mansukhlal Jivraj and others (1965) EA 780 and Leonard Mambo Kuria V Ann Wanjiru Mambo (2017) eKLR** to support her argument for amendment of Decree and Judgment.

Section 99 of the Civil Procedure Act provides that: ' **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.**' While section 100 of the said Act stipulates that: " **The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.**'

In the current scenario, the Plaintiff seeks to correct the name HIRAM MACHUA (deceased) to HILLAM MACHUA As indicted in the

Death Certificate. Further, that the omission in the Judgment and Decree be amended to indicate that the title to the suit land in the name of KAMAU GATHUNGU be cancelled and the land jointly registered in the names of ESTHER MUTHONI GATHUNGU, MARY KABURA and HILLAM MACHUA GATHUNGU. In the case of **Vallabhdas Karsandas Raniga Vs Mansukhlal Jivraj and others (1965) EA 780** the Court held that: ‘A court will apply the slip rules 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. In the present case, if the facts had been before the court when judgment was given on appeal, the court would, on application or indeed of its own motion, have made the order for refund, now sought, which was necessarily consequential on the decision on the main issued.’

Further in the case of **Leonard Mambo Kuria V Ann Wanjiru Mambo (2017) eKLR** the Court of Appeal held that: ‘ *We stated earlier that an oral application for rectification was made before the trial judge on 24th November 2016 under Section 100 of the CPC. Later on (1st December, 2016) the respondent’s counsel wrote to the Deputy Registrar invoking Sections 99 and 100 to the same effect. The application of these two sections has been considered before in several decisions. They vest a general power to the courts to correct or amend their records. As such they are an exception to the doctrine of ‘functus officio’-- the principle that once a decision has been given, it is (subject to any right of appeal) final and conclusive. It cannot be revoked or varied by the decision-maker. As the court stated in the case of Jersey Evening Post Limited vs. Ai Thani [2002] JLR 542 at 550:-*

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available”.

Section 100 states as follows:-

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

The purpose of amendment is to *“determine the real question or issue raised by or depending on the proceeding”* and it can be done *“at any time”* which must mean *from the time the suit is filed to final disposition.*

Section 99 on the other hand, 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.”

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.’

In the circumstances and in associating myself with the two decisions as well as relying on the legal provisions cited above, I am fully satisfied that the amendments sought will give the full effect to the intention of this court when judgment was delivered. Further, the said amendment which seeks to rectify a name as well as cancel the name of the deceased from the title and allowing the three parties to jointly share the suit land is pertinent and will not change the Judgement but will give effect to the clear intention of the court.

It is against the foregoing that I find the application dated the 29th January, 2019 merited and will proceed to make the following final orders in respect of the Judgement and the Decree issued on 13th December, 2018 and 10th January, 2019 respectively :

- a) That the name HIRAM MACHUA GATHUNGU should be amended to read HILLAM MACHUA GATHUNGU.
- b) That ESTHER MUTHONI GATHUNGU, MARY KABURA and HILLAM MACHUA GATHUNGU be jointly registered as the proprietors of land parcel number NGONG/ NGONG/ 55464 after the cancellation of the name of KAMAU GATHUNGU (deceased) from the said register.
- c) Costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 17th day of July, 2019.

CHRISTINE OCHIENG

JUDGE