



**REPUBLIC OF KENYA**

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

**HCC NO. 123 OF 2007**

**JACKSON R. K. CHEPKWONY .....PLAINTIFF**

**VERSUS**

**MICHAEL KIPKORIR LANGAT.....DEFENDANT**

**RULING**

***(An application seeking amendment of a decree under section 99 of the Civil Procedure Act; decree having a typographical error in the portion narrating the claim; application allowed)***

1. Before the court for determination is plaintiff's Notice of Motion dated 2<sup>nd</sup> December 2017. The application is brought under Section 1A, 1B and 99 of the Civil Procedure Act and seeks the following orders:

**1. Spent.**

**2. That this honourable court be pleased to amend the decree issued by the honourable court on the 13<sup>th</sup> May 2011 to have the property indicated Nakuru/Tinet/Sotik/260 to read Nakuru/Tinet/Sotik/460.**

**3. That this honourable court be pleased to amend the eviction order given by the honourable court on 10<sup>th</sup> April, 2012 to be issued to Tango Auctioneers in place of Kolato Auctioneers.**

**4. That this honourable court be pleased to amend its orders issued on the 22<sup>nd</sup> February 2017 directing the O.C.S Keringet Police Station to offer security to Tango Auctioneers in place of Kolato Auctioneers.**

**5. That the cost of this application be in the cause.**

2. The application is supported by an affidavit sworn by the plaintiff wherein it is deposed that judgment herein was delivered on 22<sup>nd</sup> October 2010 in favour of the plaintiff. Subsequently, a decree was extracted but with a typographical error such that the suit property was captured therein as Nakuru/Tinet/Sotik/260 instead of Nakuru/ Tinet/Sotik/460. The plaintiff thus seeks amendment of the decree so as to accord with the judgment.

3. Though there was evidence that the defendant's advocates had been served with the application, no response has been filed by the defendant. Counsel for the plaintiff abandoned prayers 3 and 4 of the application and urged the court to grant prayers 2 and 5.

4. I have considered the application. From the record, I note that judgment was indeed delivered on 22<sup>nd</sup> October 2010 by Anyara Emukule J. as follows:

**In the result therefore the plaintiff has established proof beyond the bounds of probability that he obtained title to the suit land without any deceit or false representation or fraud. He is on the evidence entitled to the orders in the plaint, namely prayers (a) and (c) thereof.**

**For reasons I have discussed, he is not entitled to prayer (b) of the plaint. There shall be orders accordingly.**

5. So as to better appreciate the judgment, it is necessary to reproduce the prayers in the plaint dated 2<sup>nd</sup> June 2007. The plaintiff sought judgment against the defendant for:

**a. An order of eviction from Tittle No. Nakuru/Tinet/Sotik/460 against the defendant and a perpetual injunction restraining him by himself, his recognized agents, servants and or employees from entering, trespassing, remaining in or in any way howsoever interfering with the plaintiff's parcel of land.**

**b. General damage for trespass and mesne profits.**

**c. Costs of this suit and interest.**

6. On the other hand, the decree issued on 13<sup>th</sup> May 2011 reads that the claim was for:

**a. An order of eviction from Title No. Nakuru/Tinet/Sotik/260 against the defendant and a perpetual injunction restraining him by himself, his recognized agents, servants and or employees from entering, trespassing, remaining in or in any way howsoever interfering with the plaintiff's parcel of land.**

**b. General damage [sic] for trespass and mesne profits.**

**c. Costs of this suit and interest.**

7. Clearly, what was before the court was a claim over Title No. Nakuru/Tinet/ Sotik/460 but the decree erroneously refers to a claim over Title No. Nakuru/Tinet/Sotik/260. There is therefore a typographical error in the portion of the decree as far as narration of the claim is concerned.

8. The application is made, among others, under **section 99** of the **Civil Procedure Act**. The section provides as follows:

**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.**

9. While considering the nature and scope of the court's powers under the **slip rule** as it is generally called, the Court of Appeal stated as follows in **Dominic Alois George Omenye t/a Omenye & Associates v Prime Bank Limited [2017] eKLR**:

**We start by asking ourselves the question, what is the true purpose of Section 99 of the Civil Procedure Act on which the application before Amin, J. was founded? In Raniga v. Jivraj [1965] EA 700, the predecessor of this Court was considering an application to vary its judgment. The Court stated that under section 3(2) of the Appellate jurisdiction Act, it had the same jurisdiction to amend judgments and orders that the High Court has under section 99 of the Civil Procedure**

**Act. Regarding that jurisdiction, the Court was emphatic that the power to correct errors will only be made where the court is fully satisfied that it is giving effect to intention of the court at the time when judgment was given, or in the case where a matter was overlooked, where it is satisfied beyond doubt that as to the order which it would have made had the matter been brought to its attention.**

**Subsequently in Lakhamshi Brothers Ltd v R. Raja & Sons [1966] EA 313, Sir Charles Newbold, P., speaking for a unanimous Court said:**

**“Indeed there has been a multitude of decisions by this Court, on what is known generally as the slip rule, in which the inherent jurisdiction of the court to recall a judgment in order to give effect to its manifest intention has been held to exist. The circumstances however, of the exercise of any such jurisdiction are very clearly circumscribed. Broadly these circumstances are where the court is asked in the application subsequent to judgment to give effect to the intention of the court when it gave its judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted.”**

***Githinji, Ag. J. (as he then was), was of the same mind in Davda v. Ahmed & Others [1978] KLR 665, when he stated that the error or omission under section 99 must be an error in expressing the manifest intention of the Court.***

10. Under **Order 21 rule 7(1)** of the **Civil Procedure Rules 2010**, a decree should among others state the number of the suit, the names and descriptions of the parties, and particulars of the claim, and the relief granted or other determination of the suit.

11. In this case, the error is in the portion of the decree that is supposed to capture particulars of the claim. As a result, the suit property was erroneously captured therein as Nakuru/Tinet/Sotik/260 instead of Nakuru/ Tinet/Sotik/460. I am therefore persuaded that the application should be allowed.

12. In the end, order that:

a. The decree issued by the honourable court on the 13<sup>th</sup> May 2011 is hereby amended to have the property indicated in the section of the decree narrating the particulars of the claim to read to as Nakuru /Tinet /Sotik / 460 instead of Nakuru/ Tinet/Sotik/ 260.

b. There shall be no order as to costs.

**Dated, signed and delivered in open court at Nakuru this 31<sup>st</sup> day of January 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Ikua for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistant: Gichaba