



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 156 OF 2015 (OS)**

**ABRAHAM KIBET CHEPKONGA T/A A. K. CHEPKONGA & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**PAUL GICHERU T/A GICHERU & COMPANY ADVOCATES..... RESPONDENT**

**RULING**

The plaintiff has come to court seeking the invocation of the slip rule and correction of the erroneous entries in the judgment dated 24.11.2017 where the court referred to the suit land as Eldoret Municipality/Block 14/543 instead of Eldoret Municipality/Block 13/731. The plaintiff prays for amended decree to read Eldoret Municipality/Block 14/731. The application is based on grounds that the court made an error in the suit parcel quoted in its judgment. The court has jurisdiction to correct the error through the slip rule. The error is delaying execution of judgment. The application is supported by the affidavit of Abraham Kibet Chepkonga who states that the matter revolved on Eldoret Municipality Block 14/731 and not Eldoret Municipality Block 13/543.

In his replying affidavit, Mr. Paul Gicheru states that it is not disputed that the judgment of the court reflects two different properties being Eldoret Municipality Block 14/731 and Eldoret Municipality Block 13/543 at pages 2 and 20 of the Judgment. That it is not disputed that the extracted decree given on 24<sup>th</sup> November, 2017 refers to land parcel number Eldoret Municipality Block 13/543. That he is aware of the court's discretion under the provisions of Section 99 of the Civil Procedure Act to correct clerical or arithmetical errors.

He states that the said section provides inter alia that clerical or arithmetical errors 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 *suo moto* or on application by the parties and that he is aware that at the time the suit was filed, the registered proprietor of Eldoret Municipality Block 14/731 was Mike Kipyego Kipkorir, which is acknowledged at page 17 of the judgment. The said Mike Kipyego Kipkorir was not a party to the suit before the court. The court issued a judgment in respect of land parcel number Eldoret Municipality Block 13/543 of which he is the registered proprietor.

According to counsel, it is inconceivable that an error would lead to the property of an Advocate in a matter being the subject of a judgment in the matter particularly where it does not form part of the pleadings. The description of the two properties is also world's apart and that cannot be a clerical mistake that can be corrected under the provisions of Section 99 of the Civil Procedure Act. He believes that if at all any amendment is made, the same would affect a 3<sup>rd</sup> party who is not subject to the present proceedings hence defeat the principles of natural justice as well as the right to a fair hearing as enshrined in the constitution and that an amendment under the slip rule should not ordinarily have the effect of materially altering the substance of a judgment as is being attempted to be done herein.

I have considered the application, supporting affidavit, the replying affidavit and do find that the dispute revolved on Eldoret Municipality Block 14/731 and not Eldoret Municipality Block 13/543 and therefore reference to the latter was a mistake. I do apply the slip rule and do correct the judgment at page 20 to refer to the property No. Eldoret Municipality Block 14/731 instead of Eldoret Municipality Block 13/543 and do order the decree to be amended to read Eldoret Municipality/Block 14/731. Orders accordingly.

**Dated and delivered at Eldoret this 18<sup>th</sup> day of December, 2018.**

**A. OMBWAYO**

**JUDGE**