



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MILIMANI
CIVIL SUIT ELC NO 2076 OF 2001

JAMES WAIGWA.....PLAINTIFF/APPLICANT

= VERSUS =

THE HON. ATTORNEY GENERAL & 3 OTHERS.....DEFENDANT/RESPONDENT

AND

PETER MBUGUA MUTURI & ANOTHER.....INTERESTED PARTIES/RESPONDENTS

RULING

1. This is a ruling in respect of a Notice of Motion dated 13th August 2015, which seeks review or variation of the Judgement and decree herein. In a further amended Plaint dated 29th July 2014, the Plaintiff in prayer **(d)** had prayed for an order directing the 3rd Defendant to cancel the title to **LR No. Nyandarua/Ol'joro Orok Salient/1840** held by the 2nd Defendant and in its place thereof the title be issued to the Plaintiff.
2. The third defendant in the case is the Director of Land Adjudication and Settlement. In a Judgement delivered on 15th May 2015, Justice Mutungi granted prayers **(a)**, **(b)** **(c)** and **(d)**. The judge further directed that if the interested parties had taken possession of the suit property, they were to vacate the same within 60 days from the date of Judgement.
3. A decree was subsequently extracted in accordance with the Judgement. It has now turned out that the decree cannot be implemented as it is directed at the Director of Land Adjudication and settlement who does not have power to cancel titles. That power rests with the District Land Registrar who is the fourth defendant in this suit. This is the basis upon which the Plaintiff/Applicant has moved the court for review and or variation of the decree and judgement to direct that the cancellation should be done by the fourth defendant.
4. The applicant's application is opposed by the interested parties through a Replying affidavit filed in court on 3rd August 2016. The interested parties contend that the applicant's application is fatally defective and bad in law. That this court is functus officio and that the applicant is seeking to amend pleadings after the Judgement. That the second defendant died on 21st September 2015 and has not been substituted.
5. I have gone through the applicant's application, the opposition thereto by the interested parties as well as the submissions by the applicant. It is clear that the judgement and decree extracted thereafter cannot

be implemented the way they are . This is because the Director of Land Adjudication and Settlement cannot cancel title. The only person who can cancel title is the District Registrar where the land is situated. The only issue which then emerges for determination is whether a review or variation of Judgement and decree can be granted.

6. Order 21 Rule 3(3) of the Civil Procedure Rules provides as follows:-

“A Judgment once signed shall not afterwards be altered or added to save as provided by Section 99 of the Act or on review”.

7. Section 99 of the Civil procedure Act 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”.

8. In the instant case, it is apparent that the Judge who wrote the judgement stated that he had granted certain prayers among them prayer (d). Prayer (d) referred to the third Defendant. The judge may not have known that the third Defendant was the Director of Land Adjudication and Settlement who has no power to cancel a title. There was clearly an omission on the part of the judge and this omission is one of the grounds for a review of a judgement or decree under Section 99 of the Civil Procedure Act. One does not require to go on appeal to rectify a simple thing like this apparent omission. I accordingly allow the application for review with the result that the judgement delivered on 15th May 2015 is altered to read that the order of cancellation of title is directed to the 4th Defendant instead of the 3rd Defendant. Any subsequent decree arising therefrom shall accordingly reflect that alteration. I make no order as to costs.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** this **21st** day of **March 2017**.

E.O .OBAGA

JUDGE

In the Presence of;-

Mr Kamere for the Plaintiff/Applicant

No appearance for the Defendant/Respondents

Mr Kiongera for Mr Mwaniki for the Interested Parties/Respondents

Court Assistant:Kevin

E.O .OBAGA

JUDGE