



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL APPEAL NO. 5 OF 2009**

**KIDHEKA AMUTISYA NGATA.....APPELLANT**

**=VERSUS=**

- 1. EMMANUEL NGADE NYOKA.....RESPONDENT**
- 2. SCHEWARZ HELDI SIEGLINDE &**

**NDILIMA MAINGI NGUNDA**

- 3. GEORGE WINJIRA**
- 4. CHARO KITSAO TITO.....INTERESTED PARTIES**

**RULING**

**Introduction:**

1. What is before me is the Application by the Appellant dated 30<sup>th</sup> July 2014 seeking for the following orders:

(a) **That prayer (b) of the Judgment of this court made on 19<sup>th</sup> December 2013 be rectified to read as follows;**

**“b] The register in regard to Kilifi/Kijipwa 173 be rectified by cancellation of Titles Kilifi/Kijipwa/1333, Kilifi/Kijipwa 1334 and Kilifi/Kijipwa/1335 and parcel land number 173 be restored in the name of Kidheka Mutsya Ngata”**

(b) **That this Honourable Court be pleased to review and set aside its orders of 30<sup>th</sup> May, 2014 staying the Judgment delivered by this Honourable Court on 19<sup>th</sup> December 2013.**

(c) **THAT costs of this Application be provided for.**

2. The Application is premised on the ground that one of the orders granted in the Judgment of the court delivered on 19<sup>th</sup> December 2013 has an error arising from an accidental slip on the title number of the suit property; that this court has the jurisdiction to rectify the error and that the Intended Appellants have exclusively failed to commence the process of Appeal against the said decision.

3. In his Replying Affidavit, the Respondent deponed that there is no decree to be rectified and that this court has no power to rectify its own Judgment after a lapse of one year.
4. On the issue of the delay in filing the Record of Appeal, the Respondent deponed that he did write to the Deputy Registrar vide a letter dated 14<sup>th</sup> February, 2014 and requested for the copies of the proceedings and Judgment.
5. The Applicant's advocate appeared before me on 24<sup>th</sup> February 2015 and made oral submissions.
6. The Judgment delivered in this court on 19<sup>th</sup> December 2013 was in respect to an appeal from the Judgment of Hon. J. Ndwiria in Kilifi SPMCC NO. 188 of 2005.
7. In my Judgment, I directed that the Register in respect of Kilifi/Kijipwa/137, which gave rise to Kilifi/Kijipwa 1333, 1334 and 1335 be restored in the name of Kidheka Mutisya Ngala.
8. I have perused the Complaint, the Defence and all the exhibits that were produced in the lower court which shows that the suit property, before sub-division, was known as plot number 173 Kijipwa Settlement scheme and not plot number 137 as alluded in my Judgment.
9. The decision that was appealed against also referred to plot no. 173 and not plot number 137.
10. The fact that I referred in my Judgment to plot number 137 and not 173 was therefore out of error, which is on the face of the record.
11. In the circumstances, I allow the Application in terms of prayer number (b) alone.
12. I however decline to review or set aside the orders of 30<sup>th</sup> May, 2014 staying the Judgment of this court.
13. If the Intended Appellants have delayed in filing the Record of Appeal, then the Applicant's option is to move the Court of Appeal to dismiss the Notice of Appeal.
14. Having issued an order of stay of execution pending appeal, it is not for this court to direct the Intended Appellants on how to proceed with the Appeal. It is for the Court of Appeal to do that.
15. For the reasons I have given above, I allow the Application dated 30<sup>th</sup> July 2014 in the following terms:

**(a) Prayer (b) of the Judgment of this Court made on 19<sup>th</sup> December 2013 be rectified to read as follows:- “The Register in regard to Kilifi/Kijipwa/173 be rectified by cancellation of Title Kilifi/Kijipwa/1333, Kilifi/Kijipwa/1334 and Kilifi/Kijipwa 1335 and parcel number 173 be restored in the name of Kidheka Mutsya Ngate.”**

**(b) Each party to bear his own costs**

Dated and delivered in Malindi this 17<sup>th</sup> day of April, 2015.

**O. A. Angote**

**Judge**