



**Fara & another v Verge & another (Environmental and Land Originating
Summons 39 of 2019) [2024] KEELC 1237 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 39 OF 2019
FM NJOROGE, J
MARCH 7, 2024**

BETWEEN

EDWARD TOYA FARA 1ST PLAINTIFF

PHILEMON MUGANGA TSORI 2ND PLAINTIFF

AND

BEACH VILLAS LIMITED 1ST DEFENDANT

JIMMY VERDE VERGE 2ND DEFENDANT

RULING

1. This court delivered a judgment in this matter, in favour of the plaintiff, on 16th July 2021. In that judgment, the court referred to the suit property as MN/III/414 Kikambala. A decree was subsequently issued on the same date wherein the suit property is referred to as MW/III/414 Kikambala.
2. The plaintiff has moved this court by Notice of Motion application dated 27th September 2023 under Sections 99, 100 and 3A of the *Civil Procedure Act* with the following prayer:
 - a. Spent.
 - b. This Honourable Court be pleased to issue an order for rectification of the decree issued on 16/7/2021 by amending/rectifying and/or correcting the description of the suit property from MW/III/414Kikambala to read MN/III/414Kikambala.
3. The application is premised on the grounds at the foot of it and the supporting affidavit sworn by Edward Toya Farah.
4. Despite service by way of substituted service vide the Standard Newspaper of Friday 24th November 2023, the Defendants, just as in the main suit where they failed to enter appearance, failed to file



any response to the application. The Application is therefore unopposed. The Plaintiffs filed written submissions which I have carefully considered.

5. Section 99 and 100 of the Civil Procedure Act, Cap 21 state: -

“99. Amendment of judgments, decrees or orders

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.

100. General power to amend

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.”

6. The Court of Appeal in the case Leonard Mambo Kuria v Ann Wanjiru Mambo [2017] eKLR extensively discussed the above provisions of the Civil Procedure Act as below: -

“The application of these two sections [Sections 99 and 100 of the Civil Procedure Act, CAP 21] 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 v 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”.

7. In this case, I note that although the Plaintiffs referred to the suit property as MW/III/414 Kikambala throughout their pleadings, it is clear that the property in dispute is or was MN/III/414 as can be seen in the judgment of the court and copy of title annexed as part of the plaintiffs’ documents herein. in view of the foregoing, I am satisfied that the decree ought to be corrected.

8. In the upshot, I find merit in the Notice of Motion dated 27th September 2023 and it is hereby allowed as prayed. There shall however be no orders as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 7TH DAY OF MARCH 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

