



**Jelimo v Kemboi & another (Environment & Land Case  
78 of 2008) [2025] KEELC 761 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 761 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 78 OF 2008**

**CK NZILI, J**

**FEBRUARY 21, 2025**

**BETWEEN**

**LILIAN JELIMO ..... PLAINTIFF**

**AND**

**ENOCK KIPKOECH KEMBOI ..... 1<sup>ST</sup> DEFENDANT**

**JOYCE CHEPCHIRCHIR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The court, by an application dated 4/11/2024, is asked to amend the judgment and decree to read Title Number Kitale Municipality Block 1/Lessos/994, to be canceled to revert to Trans Nzoia/Kitale Municipality Block 1/Lessos/826 and to inhibit any dealings over parcel No. Kitale Municipality Block 1/Lessos/994 pending hearing and determination of this application. The reasons are contained on the face of the application and its supporting affidavit of Joyce Chechirchir Langat.
2. Briefly, the applicants aver that the suit had been filed against them by the plaintiff/respondent, who was and is still the registered owner of Kitale Municipality Block 1/Lessos/994 as per the copy of the green card marked JCT'1'. It is averred that the respondent and her late husband transferred the land to themselves and subdivided it into several portions, which, upon hearing the case, the court established to have been fraudulently undertaken, ordered their cancellation and reinstatement of parcel Nos. Kitale Municipality Block 1/Lessos/39 and 994.
3. The applicants depose that upon the decree being presented for implementation, it was discovered that the original number before the transfer to the plaintiff was Trans Nzoia/Kitale Municipality Block 1/Lessos/826, registered under the name of Wilson K. Tangut, as per the annexed copy of green card marked JCT'2', necessitating the requested amendment to the judgment; otherwise, there will be no prejudice occasioned to the respondent.



4. Equally, the applicants aver that when the case was filed and heard, they were under the impression that parcel No. 994 was the original number before the transfers to the applicant's name, which unfortunately was not the case and was only discovered on 23/10/2024, when their advocates on record obtained the green card. The applicants aver that the respondent has been selling the land, claiming the same to be hers, despite the letter of the court, hence the need for an inhibition order to maintain the status quo of the land from changing.
5. The application is opposed by the replying affidavit of Lilian Jelimo, sworn on 20/11/2024. It is averred that a list of documents was filed on 23/6/2014, among them the green card for parcel numbers Kitale Municipality Block 1/Lessos/826, 867, and 994, showing that:-
  - (a) Kitale Municipality Block 1/Lessos/826 was closed on subdivision, creating parcels 867 to 869
  - (b) Kitale Municipality Block 1/Lessos/867 was closed on subdivision, creating parcels 994 and 995.
  - (c) Kitale Municipality Block 1/Lessos/994 was closed on subdivision, creating parcels 1062, 1063, and 1102.
  - (d) Kitale Municipality Block 1/Lessos/994 was registered under her name.
6. The respondent avers that due to this, the applicants had actual and constructive knowledge of the facts as early as 2014 when they were served that parcel No. Kitale Municipality Block 1/Lessos/826, previously in the name of Wilson Tangut, had been transferred to her. Similarly, the respondent avers that in her testimony on 18/2/2015, she explained the same and produced all the green cards, without any objection from the applicants. Further, the respondent avers that on 1/10/2018, the 2<sup>nd</sup> defendant testified in support of the defense case and was shown P. Exhibit No. (4) and admitted that it reflected Wilson Tangut had transferred the land to her. Further, it was deponed that the 2<sup>nd</sup> defendant was shown P. Exhibit No. (7) and admitted that it did not reflect the name of Wilson Tangut.
7. Again, the respondent depones that during the pretrial and actual hearing, the applicants knew of all these facts or entries in the land registers, for they were supplied to them and produced as exhibits before the court, yet they failed to amend their defense and counterclaim. The respondent depones that both this court and the Court of Appeal proceeded based on the pleadings before the court, and therefore, the judgment and resultant decree were based on the defendant's pleadings. Therefore, the respondent depones that the judgment and decree align with the pleadings and the evidence tendered with no alleged error by the court.
8. According to the respondent Section 99 of the [Civil Procedure Act](#) is limited to correcting court's errors, omissions, or accidental slips. In this case, the respondent depones that the alleged errors or omissions can only be corrected through amendment of pleadings, but the defendants are time-barred, as the suit is already heard and determined and the court lacks jurisdiction to amend its judgment and decree otherwise, it would put the same at variance with the pleadings or evidence presented.
9. The respondent depones that after the closure on the subdivision of parcel No. 869 on 22/12/2005, creating parcel Nos. 1003, 1004, and 1005, the latter two were registered in the names of third parties before the suit was filed, who were not even parties to this suit as per annexures marked LI'2' and L1'3', which if cancellations are implemented will adversely affect them.
10. The respondent depones that the defendants failed to meet their obligation to join all parties who could be affected by the cancellation despite the fact that those parties got title deeds before this suit was constituted. The respondent further depones that the application if allowed, would open a pandora's



box and create multiple litigations on issues already determined by both this court and the Court of Appeal. The respondent denied selling any of the land as alleged.

11. In a further affidavit sworn on 28/11/2024, the applicants depose that the respondent was also under a duty to disclose the new facts to the court but chose to keep quiet. Further, it is deposed that once the court found that there was a fraudulent transfer from Wilson Tangut to the respondent, what was required was done; hence, the transfer to third parties was also fraudulent, which the court knew about but proceeded to invalidate them; hence, the application will not amount to an amendment.
12. The applicant relies on written submissions dated 28/11/2024. Reliance was placed on Section 99 of the *Civil Procedure Act*, Lakhmshi Brothers Ltd -vs- R. Raja & Sons [1966] EA 313 and Lilian Jelimo -vs- Enock Kipkoech Kemboi Eldoret Civil Appeal No. 61 of 2019.
13. On the other hand, the respondent relies on written submissions dated 1/12/2024. It was submitted that the court is functus officio, and the alleged errors are outside the purview of Sections 99 and 100 of the *Civil Procedure Act*. Further, it was submitted that the applicants have applied to amend but failed to do so up to the delivery of the judgment; hence, the omission on their part cannot be cured under the slip rule. Reliance was placed on Antony Francis Warcham T/A AF Wareham & Others -vs- Kenya Post Office Savings Bank [2004] eKLR, and Fredrick Outa -vs- Okello & Others Petition 6 of 2014 [2017] KESC 25 [KLR].
14. Section 99 of the *Civil Procedure Act* grants the court powers to correct clerical or arithmetical mistakes in judgments, decrees, or orders, or errors arising therein from any accidental slip or omission, either suo moto or on an application by any of the parties.
15. Section 100 thereof grants the court powers, at any time and on such terms as to costs or otherwise, to amend any defect or error in any proceedings 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 proceedings.
16. In Trattoria Ltd -vs- Maina & Others Petition Application 26 (E029 of 2022 [2024] KESC 54 [KLR] (30<sup>th</sup> August 2024) (Ruling), the court said that a clerical error is an issue that falls under the slip rule. The court said that the application must meet the test set out in Fredrick Otieno Outa -vs- Okello & Others (Supra). The court said that in slip rule, the court can correct errors apparent on the fact of the judgment, ruling or order of the court and where such correction is obvious and does not generate any controversy on the decision of the court.
17. The court cited Fredrick Outa case (Supra), that the slip rule does not confer upon a court any jurisdiction or powers to sit on appeal over its judgment or to review such judgment as to substantially alter it extensively. The court said that under slip rule, the correction should be seen to steer a judgment, decision, or order of the court toward a logical or clerical perfection, but not to change the substance of the judgment or alter the clear intention of the court. Further, the court said that a clerical error is an issue that falls squarely under the slip rule.
18. In Waiganjo vs- Unga Group Ltd (Civil Application E036 of 2023 (2024) KECA 289 (KLR) (8<sup>th</sup> March 2024) (Ruling), the court cited Sanitam Services EA Ltd -vs- Rentokil (K) Ltd & Another [2019] eKLR, that under the slip rule, a court is not conferred with jurisdiction or powers to sit on appeal over its judgment or to extensively review such judgment as to alter it substantially, or to give an order which alters the judgment or orders made earlier. The court held that the applicant had not pointed out any apparent error, whether clerical or arithmetic, that the court would have committed in its ruling. The court said the applicant instead wanted the court to re-open an already determined matter and overturn its decision. Consequently, the court termed such a request as amounting to an



interference with the substance of the ruling and, which was outside the authority to review permitted by the slip rule.

19. The court cited *Benjoh Amalgamated Ltd & Another vs. Kenya Commercial Bank*[2014] eKLR, that only in minimal circumstances can a court undertake a substantive review of its judgment which goes beyond the borders of the jurisdiction more extraordinary under the slip rule. The court said that for a court to breach the walls of the slip rule, a party seeking such review must prove the existence of factors affronting the administration of justice in the impugned decision or demonstrate that there is no right of appeal. The court, citing *Fredrick Outa Case (Supra)*, said such circumstances include where the ruling or order (a) is obtained by fraud or deceit, (b) is a nullity, (c) the court was misled into giving it under a mistaken belief that the parties had consented thereto (d) is rendered on the bases of a repealed law or as a result of deliberate concealment of a statutory provision.
20. In *Kiruki -vs- Mwiti & Others; Mwthimbu (Applicant) (E&L Case 6'A' of 2011) [2024] KEELC 6346 [KLR] (25<sup>th</sup> September 2024) (Ruling)*, this court cited *Leonard Mambo Kuria -vs- Ann Wanjiru Wambo [2017] eKLR*, where it was held that the court's power is to correct or amend the judgment over defects, clerical errors or mistakes arising therefrom out of an accidental slip or omission. Further, the court cited *Republic -vs- Attorney General & Others Exparte Kenya Seed Co. Ltd & Others [2010] eKLR*, that some of the errors include arithmetical mistakes in calculating interest, wrong figures or dates, so as to give effect to the intention of the judge and to avoid a consequence which the judge intended to avoid adjudicating on. The court, after reviewing the pleadings by the parties, held that there was no error apparent on the face of the record amounting to an accidental slip, clerical, or an error on the part of the court, since it was the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who had joined parties using the wrong names, and further, the court said that a party court could not confuse his name in the ID card unless there was mischief to hide the identity in the first instance. The court also declined to exercise its powers due to the inordinate delay in noticing the alleged mistake and moving the court.
21. The court held that the sought amendments were substantive in nature, would alter the substratum of the judgment, and were in any event not attributable to the court.
22. Applying the foregoing binding principles, does the application before the court fall under the purview of the slip rule? Have the applicants made a case for correction of any errors to the judgment or decree apparent on the face of the record? Can failures to cure the errors in the pleadings fall under the limited jurisdiction set out in *Fredrick Outa Case (Supra)*, to disturb the walls of the slip rule?
23. The primary pleadings by the parties were an amended plaint dated 3/2/2014, the amended defense and counterclaim dated 3/2/2014, and a reply to the defendant and defense to counterclaim dated 24/3/2014. There was no mention by the applicants in the amended defence and counterclaim about LR No. Trans Nzoia/Kitale Municipality Block 1/Lessos/826. The respondent, in her list of documents filed on 23/6/2014, listed a copy of the green card. However, showing parcel Nos. 826, 807, 414, and 994, its resultant subdivision. The original green card and the Land Control Board minutes and consents were eventually produced before the court as P. Exhibits 1-13, respectively.
24. The history of parcels Nos. 994 and 867 as resultant subdivisions of parcel No. 826 belonging initially to Wilson Tangut with effect from 12/2/2003 was brought to the attention of the applicant as early as 2014. The same was even mentioned in the respondent's final written submissions dated 5/11/2018.
25. PW1, in her testimony on 18/2/2015 and on 16/9/2015, testified on parcel No. 826 and its resultant subdivisions following the Land Control Board consent dated 22/5/2003, and the resultant subdivisions to parcel Nos. 994 and 995, then No. 994 to parcel Nos. 1062, 1063, 1102, 1111, and 1112, then parcel No. 1062 into 1130, 1134 and later parcel No. 1130 to 1172 and 1173; 1172 into 1215 and 1216; then parcel No. 1215 into 1224 and 1225. PW2 testified on 18/9/2018 and produced



minutes on how parcel No. 826 was transferred to PW1 by her late husband. The judgment of this court was rendered on 29/1/2019. The decree was issued on 12/6/2023.

26. From the record, it is quite clear that the so-called impression that parcel No. 994 was in the name of Wilson K. Tangut and that the discovery of the facts occurred at the presentation of the decree for execution is not accurate but misleading. The facts were known and were within the knowledge or disposal of the applicants since 2014. Had they exercised due diligence, the applicants would have amended their pleadings appropriately and pleaded that the reliefs they wished, should go behind the creation of parcel No. 994 and trace it from its parent number. The pleadings by the applicants were, therefore, not seeking retrospective cancellation.
27. As to an inhibition order, again, none were sought since the filing of the amended defense and the counterclaim. The court has to be given the reasons for the issuance of the said orders. They cannot be issued indefinitely. The suit is already determined. What remains is the implementation of the decree. The applicant is simply asking the court to amend its judgment to the extent that the cancellation to cover preceding entries in the register before parcel No. 994 was created. That is not what the pleadings and the evidence tendered by the respondents sought. Parties are bound by their pleadings, and a court of law only determines issues flowing from the pleadings and which parties have drawn for determination. See *Mutinda Mule -vs.- IEBC* [2014] eKLR, and *Raila Odinga & Others -vs- IEBC* [2017] eKLR.
28. The applicants are asking the court under the slip rule jurisdiction to amend the judgment to apply retrospectively or as part of the creation of parcel No. 994. If the court were as to do so, the judgment shall dramatically and substantially be altered. The court granted the orders sought in a forward-looking manner from the creation of parcel No. 994 and its resultant subdivisions. Therefore the respondent cannot be heard to say that third parties will be affected. The record does not show that the respondent testified that she had caused transfers to third parties before she filed the suit and or during the pendency of the suit. The said decree still stands. The third parties have not disputed the same. A nullity is a nullity, as held in *Macfoy vs United Africa Co. Ltd* (1961) 3 All E.R 1169. The court cannot sanction an illegality.
29. The upshot is that I find the application filed late, lacking merits, and an abuse of the court process. It is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

<b>RULING: KITALE ELC NO. 78 OF 2008 - D.O.D.- 21/02/2025</b>
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