



Nyoike v Chief Land Registrar & 4 others (Environment & Land Case E197 of 2023) [2024] KEELC 6660 (KLR) (30 July 2024) (Ruling)

Neutral citation: [2024] KEELC 6660 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E197 OF 2023**

**MD MWANGI, J
JULY 30, 2024**

BETWEEN

COSMUS KUSU NYOIKE PLAINTIFF

AND

CHIEF LAND REGISTRAR 1ST DEFENDANT

OCS GIGIRI POLICE STATION 2ND DEFENDANT

DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD DEFENDANT

**MARY NJERI MUNJOGU (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF FREDRICK GACANJA MUNJOGU –
DECEASED) 4TH DEFENDANT**

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The attention of the court has been drawn to a typographical error at the 2nd line of paragraph 26 of the ruling delivered on the 14th May, 2024 by Ms. Kariuki, Advocate for the 5th Defendant. In the said line, the court stated that, ‘Secondly, the plaintiff is in and has been in actual occupation and possession of the suit property’.
2. It is clear from the reading of the 1st line of the said paragraph that the court was referring to the 5th Defendant/Applicant rather than the Plaintiff. The court intended to state that, ‘Secondly, the 5th Defendant/Applicant is in and has been in actual occupation and possession of the suit property.’
3. The reference to the Plaintiff was an error arising from an accidental slip. The Court under Section 99 of the *Civil Procedure Act* is empowered at any time to correct any such clerical or arithmetical mistakes in judgments, decrees or orders, either on its own motion or on the application of any of the parties.



4. In the case of *Republic -v- Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others* [2010] eKLR , the court stated the following on the application of Section 99 of the *Civil Procedure Act*:-

“It is a codification of the common law doctrine dubbed ‘the Slip Rule’, the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which would otherwise become *functus officio* upon issuing a judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

Some of the applications of the rule are fairly obvious and common place and are easily discernible like clerical errors, arithmetical mistakes, calculations of interest, wrong figures or dates. Each case will, of course, depend on its own facts, but the rule will also apply where the correction of the slip is to give effect to the actual intention of the Judge and/or ensure that the judgment/order does not have a consequence which the Judge intended to avoid adjudicating on.

The Australian Civil Procedure has provisions in pari materia with section 99. As was stated in the case of *Newmont Yandal Operations Pty Ltd v The J. Aron Corp & The Goldman Sachs Group Inc* [2007] 70 NSWLR 411, the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended.

Nearer home the predecessor of this Court in *Lakhamshi Brothers Ltd v R. Raja & Sons* [1966] EA 313 endorsed that application of the rule, that is, to give effect to the intention of the court when it gave its judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted. Spry JA in *Raniga Case (supra)* also stated as follows: -

A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.

What is certainly not permissible in the application of section 99, is to ask the court to sit on appeal on its own decision, or to redo the case or application, or where the amendment requires the exercise of an independent discretion, or if it involves a real difference of opinion, or requires argument and deliberation or generally where the intended corrections go to the substance of the judgment or order.”

5. This court therefore, acknowledging the typographical error at the 2nd line of paragraph 26 of the ruling of 14th May, 2024 corrects the said ruling by replacing the word, ‘plaintiff’ with ‘5th Defendant/Applicant’.
6. The said sentence shall therefore be amended to read as follows; ‘Secondly, the 5th Defendant/Applicant is in and has been in actual occupation and possession of the suit property’.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JULY, 2024.

M.D. MWANGI

JUDGE.



In the virtual presence of:

N/A by the Parties

Yvette: Court Assistant

