



M'arimi & 2 others v M'arimi & another (Environment and Land Appeal E029 of 2022) [2024] KEELC 5393 (KLR) (17 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5393 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E029 OF 2022**

**CK NZILI, J
JULY 17, 2024**

BETWEEN

**JOHN M'ANAMPIU M'ARIMI 1ST APPELLANT
SALOME MAKANDI M'ITONGA 2ND APPELLANT
MARY KATHURE M'ITONGA 3RD APPELLANT**

AND

**MAITIMA M'ARIMI 1ST RESPONDENT
M'RUKARIA M'ARIMI 2ND RESPONDENT**

RULING

1. The court is asked to exercise its jurisdiction under the slip rule to correct the final orders or decree and align it with the judgment made on 13.12.2023 in order for the decree-holder to proceed with the execution. The applicant avers that the final orders allowing the appeal were inconsistent with the gist of the judgment suggesting that its appeal succeeded only as against the 1st respondent. Therefore, the applicant urges that the decree as drawn be recalled be corrected and aligned with the judgment otherwise it will occasion injustice.
2. The application is supported by an affidavit of M'Rukaria M'Arimi who was the 2nd respondent in the appeal. It is averred that the appeal was determined in his favor and that its pronouncement was that the appellants were to get land from the 1st respondent's LR No. Nthimbiri/Igoki/661 and not to disturb LR No's Nthimbiri/Igoki/782-787.
3. The applicant avers that after the judgment, the decree holders extracted a unilateral decree, which is inconsistent with the judgment. Further, the applicant avers that it should be recalled to be re-aligned with the judgment; otherwise, there was an error apparent on the face of the record. Whereas the applications were served upon the respondents, none has filed a response.



4. There is no dispute that this court has powers to exercise slip rule powers. In *Kenya Bureau of Standards vs Geo-Chem Middle East* (Application No. 33 of 2020) (2021) KESC 60 (KLR) (17th March 2021) (Ruling), the court said that review powers do not include giving a party an opportunity to relitigate a matter but a party must lay a basis to the satisfaction of the court why it should exercise such powers.
5. In *Sanitam Services (E.A) Ltd vs Rentokil (K) Ltd & another* (2019) eKLR, the court cited *Fredrick Otiemo Outa vs. Jared Odoyo Okello & 3 others* (2017) eKLR the court held that the slip rule does not confer upon a court jurisdiction to sit on appeal over its judgment or to extensively review such judgment as to alter it substantially, other than to steer a judgment decision or order towards a logical or clerical perfection.
6. In *Waiganjo vs. Unga Group Ltd* (Civil Application E036 of 2023 (2024) KECA 289 (KLR) (8th March 2024) (Ruling), the court held that a clerical or arithmetical mistake in any judgment or error of the court arising from accidental slip or omission may be corrected suo moto or on an application to give effect to the intention of the court when the judgment was given.
7. What the applicant says is that the tenor and spirit of the judgment, according to him, was only to affect the 1st respondent's parcel of land and not his parcels of land.
8. The gist of the appeal by the appellant related to customary trust over LR No's 78 & 660 and their resultant subdivisions, among them LR No's. 782 – 787. The court found that LR No. 661 was subject to trust in paragraph 50 of the judgment. In paragraph 51 of the judgment, the court found that the appellants could only claim a share of land under customary trust over LR No. 661 and not the 2nd respondent's LR No. 660 and its subdivisions into LR No's. 782 – 787 held by third parties. Eventually, the court, in paragraph 51 last line, dismissed the claim against the 2nd & 3rd respondents.
9. As to the 3rd respondent, the court found the defense and counterclaim dated 18.5.2015 incompetent and set aside the decree arising therefrom. The effect of allowing the appeal was in regard to parcel LR No. 661 and not parcel number LR 782 - 787. Similarly, the appeal found the counterclaim, which had been allowed in the judgment of the trial court on 20.5.2022, as incompetent.
10. Therefore, I agree with the applicant herein that the decree dated 13.12.2023 is not only erroneous and mischievously extracted but also misleading. The same is recalled, invalidated and set aside. Any subsequent execution of that decree is now declared invalid or inconsequential.

Orders accordingly

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 17TH DAY OF JULY, 2024

In presence of

C.A Kananu/Mukami

Gatari for 2nd respondent

Mutungu for the appellant

Nyamu Nyaga for the interested party

HON. C K NZILI

JUDGE

