



**Kiruki v Mwiti & 2 others; Mwithimbu (Applicant) (Environment & Land Case 6" A" of 2011) [2024] KEELC 6346 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6346 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 6" A" OF 2011  
CK NZILI, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**ZAKARIA KIRUKI ..... PLAINTIFF**

**AND**

**SHADRACK MWITI ..... 1<sup>ST</sup> DEFENDANT**

**JANET MARINGA M'IKIARA ..... 2<sup>ND</sup> DEFENDANT**

**EVANGLEINE NKIROTE M'IKIARA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**JULIUS MUTWIRI MWITHIMBU ..... APPLICANT**

**RULING**

1. By an application dated 28.2.2024, the court is asked to amend paragraph 41 of a judgment delivered on 17.10.2018 and rectify the names of the 2<sup>nd</sup> & 3<sup>rd</sup> defendants to read Julius Mutwiri Mwithimbu and Nkirote Evangeline Daniel. The reasons given are contained in the supporting affidavit of Julius Mutwiri Mwithimbu, sworn on 28.2.2024, swearing it on behalf of the 3<sup>rd</sup> defendant.
2. The deponent says that he substituted his late mother in this suit as the legal representative, following letters of grant ad litem attached as annexure JMM "1". The applicant says the names captured are Julius Mutwiri Miringo and, Evangeline Miringo and Evangeline Nkirote M'Ikiara in the judgment and decree. Yet, the I.D card has Julius Mutwiri Mwithimbu and Nkirote Evangeline Daniel, which copies he has attached as JKMM "3" & "4" respectively.
3. The applicant is seeking the court to exercise its jurisdiction under by Sections 99 and 100 of the *Civil Procedure Act*. In *Fredrick Otieno Outa vs Jared Odoyo Okello & others* (2017) eKLR, the Supreme Court of Kenya held that the slip rule does not confer upon a court any jurisdiction to sit on appeal over its judgment or to review such judgment as to substantially or extensively alter it.



4. In *Leonard Mambo Kuria vs Ann Wanjiru Wambo* (2017) eKLR, the court said the power is to correct or amend the judgment over defects, clerical errors, or mistakes arising therefrom out of an accidental slip or omission. In *Republic vs AG & others ex parte Kenya Seed Co. Ltd & others* (2010) eKLR, the court said some of the errors include arithmetical mistakes in calculating interest, wrong figures or dates so as effected to the actual intention of the judge or to avoid a consequence which the judge intended to avoid adjudicating on.
5. Turning to this application, the suit before the court commenced with a plaint dated 19.1.2011 and a defense and counterclaim dated 21.2.2011. A notice of appointment introducing Janet Maringa M'Ikiara and Evangeline Nkirote M'Ikiara was filed by Mwangi E.G and Co advocates who by an application dated 4.7.2011 had sought to be joined as 2<sup>nd</sup> and 3<sup>rd</sup> defendant and to file a defense and counterclaim.
6. By a ruling dated 24.5.2012 the application was allowed. Consequently, a 2<sup>nd</sup> and 3<sup>rd</sup> defendant's defense and counterclaim dated 25.5.2012 were filed, which attracted a reply and defense to counterclaim dated 28.2.2012.
7. In a witness statement filed on 22.2.2011, Evangeline Nkirote described herself as such, from the court proceedings up to 17.2.2016; the 3<sup>rd</sup> defendant introduced herself as a witness Evangeline Nkirote M'Ikiara going by the pleadings and her evidence on page 37 & 52 of the proceedings.
8. The applicant herein came in by an application dated 26.4.2017 using the name Julius Mutwiri Mwithimbu going by his affidavit on 26.4.2017. On page 84 of the proceedings, D.W. 6 was Julius Mutwiri Miringo she adopted her mother's witness statement using the name Evangeline Nkirote. Therefore, it cannot be true that there was an error apparent on the face of the record amounting to an accidental slip, clerical or an error on the part of the court.
9. The 2<sup>nd</sup> & 3<sup>rd</sup> defendants were the ones who sought to be joined as parties using the names mentioned earlier. Even though in the application as a legal representative, the applicant herein used a different name, it is not clear why, during his testimony, he used the name.
10. The identity of a party cannot be confused by such a party by giving names that do not appear in their I.D. card unless there is mischief to hide their identities in the first instance. The decree and judgment sought to be corrected have been in existence since 2018.
11. The amendments sought are substantive in nature and would alter the substratum of the judgment. I find no accidental slip or error on the part of the court. The upshot is that the application is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 25<sup>th</sup> DAY OF SEPTEMBER, 2024**

In presence of

C.A Kananu

Riungu for the plaintiff

**HON. C K NZILI**

**JUDGE**

