Kiruki v Mwiti & 2 others; Mwithimbu (Applicant) (Environment & Land Case 6"A" of 2011) [2025] KEELC 972 (KLR) (18 February 2025) (Ruling)

Neutral citation: [2025] KEELC 972 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND CASE 6"A" OF 2011

JO MBOYA, J

FEBRUARY 18, 2025

BETWEEN

ZAKARIA KIRUKI ..... PLAINTIFF

AND

SHADRACK MWITI ..... 1ST DEFENDANT

JANET MARINGA M'IKIARA ..... 2ND DEFENDANT

EVANGELINE NKIROTE M'IKIARA ..... 3RD DEFENDANT

AND

JULIUS MUTWIRI MWITHIMBU ..... APPLICANT

RULING

1. The Applicant herein, [who is the legal administrator of the estate of Janet Maringa M'Ikiara, now deceased] has approached the court vide the Notice of Motion Application dated 29th January 2025; brought pursuant to the provisions of Section[s] 1A, 1B, 3, 3A, 99 and 100 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; and wherein the Applicant has sought for the following reliefs;

    i. That the Honourable court be pleased to amend paragraph 41 of the Judgment delivered on 17th October 2018; due to errors as to the names of the 2nd defendant.

    ii. That the Honourable court be pleased to amend paragraph 41 of the Judgment delivered on 17th October 2018 to rectify the names of the 2nd defendants to read as Julius Mutwiri Mwithimbu,[the Applicant].

    iii. That costs be in the cause.

2. The instant application is anchored on the various grounds which have been highlighted in the body thereof. In addition, the application is supported by the affidavit sworn by Julius Mutwiri Mwithimbu

[deponent] sworn on even date and in respect of which the deponent has annexed inter alia a copy of the Grant of Letters of Administration ad litem and a copy of the Judgment of the court rendered on the 17th October 2018.

3. Upon being served with the subject application, the Plaintiff/Respondent filed a Replying affidavit and in respect of which the Plaintiff/Respondent has highlighted a plethora of issues. In particular, the Plaintiff/Respondent has averred that the error sought to be corrected and or remedied was [sic] made by a different judge, who is currently stationed at Nanyuki Environment and Land Court and that it is [sic] the said Judge who is seized of the capacity/jurisdiction to entertain the subject application.

4. Additionally, the Plaintiff/Respondent has also averred that there is a pending appeal before the Court of Appeal and which appeal has substantially been heard. In any event, it has been contended that the appeal at the Court of Appeal is pending delivery of Judgment. To this end, it has been averred that the subject application therefore ought to await the determination of the appeal.

5. Finally, the Plaintiff/Respondent has also averred that the intended correction is substantial in nature and hence same [correction] shall impact upon the character of the Judgment. In this regard, it has been averred that the correction could be tantamount to superseding the Judgment of a court of coordinate jurisdiction.

6. The subject application came up for hearing on the 18th February 2025; whereupon the advocates for the parties covenanted to canvass and dispose of the application vide oral submissions. In this regard, the court agreed and the application was duly canvassed vide oral submission[s].

7. Having reviewed the application and the response thereto and having considered the submissions made on behalf of the respective parties, the determination of the instant application turns on two [2] salient issues, namely; whether this court is seized of the requisite jurisdiction to entertain the subject application; and whether the intended correction shall alter the character of the Judgment or otherwise.

8. I beg to start with the first issue, namely; whether he error alluded to can only be corrected by the Honourable Judge who [sic] made the error and not any other Judge, the current Judge not excepted. The counsel for the Plaintiff/Respondent contended that the error sought to be corrected/remedied was made by a different judge. In this regard, it was posited that if there is an error, in the manner contended by the applicant herein, then it suffices that the application beforehand be raised and addressed before the Judge who is indicated to have [sic] committed the error.

9. Moreover, learned counsel for the Plaintiff/Respondent has submitted that this court cannot purport to correct the error and thus supersede the decision of a court of concurrent [coordinate] jurisdiction. Simply put, learned counsel for the Plaintiff/Respondent submitted that the application beforehand is tantamount to inviting this court to sit on an appeal on the Judgment of a Judge of concurrent jurisdiction.

10. It is common ground that Judges are also human and by virtue of being human, same [Judges] also make mistakes. In any event, there is no gainsaying that no Judge under the sun can purport to and or lay a claim to infallibility. Certainly, infallibility only belongs to God [deity] and not otherwise.

11. To the extent that Parliament perceived that Judges can and often do make mistakes, Parliament enacted a provision vide section 99 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; which allows Judges to correct mistakes so long as the mistakes in question are typographical, clerical or arithmetical. In any event, the correction of such kind of mistakes is intended to ensure that the cause of justice is duly served.

12. Similarly, it is imperative to underscore that the correction of such mistake[s] can also be undertaken to avert a miscarriage of justice and by extension, to serve the ends of justice. [See the provisions of sections 1A and 3A of the *Civil Procedure Act*].

13. In my humble albeit considered view, the court that made the mistake is obligated to undertake the correction. However, where such a court [Judge] has since been transferred, like in the instant situation, the successor of the transferred court [Judge] is seized of the jurisdiction to perform the correction, provided the correction falls within the purview of section 99 of the *Civil Procedure Act* cap 21 laws of Kenya.

14. Moreover, it is worth stating that the scope of the Judge/court to undertake corrections of an error in the Judgment and or ruling, has received judicial pronouncement in various decisions. Suffice it to cite and reference the decision of the Court of Appeal in the case of Telkom Kenya Ltd vs John Ochanda [suing on his own behalf and on behalf of 996 former employees of Telkom Kenya (2014) eKLR, where the court considered the scope of the mandate of the Judge to undertake correction[s] of an error.

15. Pertinently, the Court of Appeal highlighted that correction of errors pursuant to section 99 of the *Civil Procedure Act* is not prohibited by the doctrine of functus officio. For good measure, it was posited that the Court is obliged to undertake the correction[s] as and when same [errors] arise and/ or are identified.

16. Other than the provisions of section 99 of the *Civil Procedure Act*; which has been referenced, it is also imperative to underscore that the correction of errors, like the one beforehand can also be undertaken pursuant to the inherent/residual/intrinsic jurisdiction of the court. [See section 3A of the *Civil Procedure Act*].

17. Additionally, I beg to highlight that the scope and extent of the inherent jurisdiction of a court, has been highlighted and elaborated upon by various courts and learned authors, including Halsburry's Law of England.

18. Without belaboring the scope of inherent jurisdiction, it is apposite to cite and reference the decision of the Supreme Court of Kenya [the Apex court] in the case of Narok County Government & another v Ntutu & 4 others (Petition 3 of 2015) [2018] KESC 11 (KLR) (11 December 2018) (Judgment). In particular, the Supreme Court stated as hereunder;

> Back home, the Court of Appeal in addressing the point at hand in Kenya Power & Lighting Company v Njumbi Residents Association & another [2015] eKLR cited Ouko J (as he then was) In the matter of the Estate of George M'Mboroki, Meru HCSC No. 357 of 2004 and aptly put it that;"... the Court retains certain intrinsic authority in the absence of specific or alternative remedy, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular, to ensure the observance of the due process of the law, to prevent abuse of process to do justice between the parties".
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> 99 .Further in Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited [2014] eKLR the Court of Appeal set out the principles to guide the Court in exercising inherent jurisdiction in these words; "The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the

need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection…" (Emphasis added.)

100. The conclusion drawn from the above citations is that this Court, indeed any other appellate Court, even where there are no specific provisions to do an act, has inherent and/or residual powers to act in a fair or equitable manner in the interest of justice and/or to ensure the observance of the due process of the law. Therein also lies the power for the Court to act to prevent abuse of the Court process by one party so that fairness is maintained between all parties.

19. Flowing from the foregoing, I am not persuaded by the arguments canvassed on behalf of the Plaintiff/ Respondent. On the contrary, I hold the conviction that this court [read, Judge] is duly seized of the requisite jurisdiction to entertain and adjudicate upon the subject application.

20. Next is whether the order sought ought and should to be granted. It suffices to state that the applicant herein sought for and obtained a Grant of Letters of Administration following the death of the 2nd Defendant. In any event, upon being issued with the Grant of letters of administration, the Applicant herein filed the requisite application to be substituted in place of the deceased.

21. Furthermore, there is no gainsaying that the application for substitution was duly allowed and the Applicant was constituted as the 2nd Defendant. For coherence, it is evident from the record that by the time the matter was heard and Judgment proclaimed [rendered], the Applicant herein had been duly joined as a Party.

22. Moreover, it is also apparent that the learned Judge who rendered the Judgment was alive to the substitution of the Applicant. Notably, in paragraph 41 of the Judgment dated 17th October 2018, the learned Judge referenced Julius Mutwiri Miringo, in lieu of Mwithimbu.

23. It is the error relating to the third name, namely; Miringo which has precipitated the current application. For good measure, the Applicant is merely seeking to have the erroneous name of [sic] Miringo to be replaced with his correct name and not otherwise.

24. Quite clearly, the issue beforehand is the correction of the name of a party, which was misspelled by the trial Judge. Instructively, the documentation on record, including the Grant of Letters of administration that was deployed for purposes of substitution confirms the Applicant's correct names.

25. For the foregoing reason[s], I encounter no difficulty in finding and holding that the application beforehand is meritorious. The same be and is hereby allowed. In this regard, paragraph 41 of the Judgment rendered on the 17th of October 2018; be and is hereby corrected.

26. Henceforth and for purposes of posterity, paragraph 41 of the Judgment rendered on the 17th of October 2018; shall reference Julius Mutwiri Mwithimbu [which is the correct names of the Legal Administrator of the 2ND Defendant, deceased] and not Julius Mutwiri Miringo.

27. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 18TH DAY OF FEBRUARY, 2025

OGUTTU MBOYA

JUDGE.

In the presence of

Mr. Mutuma– Court Assistant

Mr. Karanja for the Applicant and the Defendants.

Mr. Riungu for the Plaintiff/Respondent.