



REPUBLIC OF KENYA



**Katam v Sigira (Environment and Land Case Civil Suit 56 of 2018)  
[2023] KEELC 653 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 653 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND CASE CIVIL SUIT 56 OF 2018**

**CG MBOGO, J**

**FEBRUARY 14, 2023**

**BETWEEN**

**MOSONIK ARAP KATAM ..... PLAINTIFF**

**AND**

**KIPLAGAT ARAP SIGIRA ..... DEFENDANT**

**RULING**

1. Before this court is a ruling arising out of an oral application made by my counsel for the plaintiff- Mr. Onduso on January 18, 2023 when the court suo moto issued a mention notice to the parties with a view to rectifying an error apparent on the face of its judgment delivered on November 25, 2022. The counsel stated that he read the judgment and it was clear that in paragraph 28 the Originating Summons was allowed and in the same paragraph it was indicated that the Originating Summons was dismissed which in his view, was an error. He stated that the judgment should read that the Originating Summons was allowed.
2. Mr Kilele, opposing counsel stated that the defendant has already issued a notice of appeal against the entire judgment dated December 6, 2022 and has written to the Deputy Registrar requesting for a copy of the decree. Further, that the notice of appeal has been served and upon being supplied with a copy of the decree, he will file a formal application for stay of execution. Mr Kilele further stated that whether there was an error or not, the said error forms part of their grounds in the memorandum of appeal. Further, that having delivered the judgment, the court is functus officio on this issue.
3. Mr. Kilele further stated that none of the parties sought for a mention date to move the court on this issue and it was on the court's own motion and if there was a formal application, they would have responded appropriately.
4. In reply, Mr Onduso, counsel for the plaintiff stated that they requested for the mention of the matter when they realised that there was an error and wanted rectification and this court has jurisdiction to



correct an error on the face of a judgment which is clear in paragraph 28 and which should be rectified. The counsel further stated that though Mr. Kilele has indicated that there is a notice of appeal, there is no memorandum of appeal which has been filed to date and the decree has not been extracted. It was his position that the judgment should first be rectified before the decree is extracted as Mr. Kilele would rely on the decree to file a memorandum of appeal.

5. I have considered the submissions made by the counsel on record for the parties and the issue for determination is whether this court can review the judgment delivered on November 25, 2022.
6. This court, of its own motion, issued a mention notice to the parties on December 21, 2022 for the parties to appear in court on January 18, 2023. Prior to this, Mr. Kilele, the counsel for the defendant filed a notice of appeal dated December 6, 2022 and which was lodged in this court on 1 December 5, 2022. As per the record, no decree has been issued so far. During the mention on January 18, 2023, Mr. Onduso sought for a rectification of the judgment as to the effect that the Originating Summons was allowed. On the other hand, Mr. Kilele was of the view that whether there was an error or not, the same was one of the grounds in their appeal and if at all there was a formal application to review the said orders, they would have responded appropriately.
7. The question therefore is, does this court have jurisdiction to amend its own judgment. Mr. Kilele, counsel for the defendant argued that this court is now *functus officio* having pronounced itself in the judgment.
8. The rule of *functus officio* has exceptions. Section 99 of the [Civil Procedure Act](#) establishes the slip rule it provides that: -

“Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
9. The [Civil Procedure Rules](#) provides under Order 21 Rule 3 (3) that: -

“A judgment once signed shall not afterwards be altered or added to save as provided by section 99 of the Act or on review.”
10. The Court of Appeal pronounced itself on the doctrine of *functus officio* in the case of *Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others* [2010] eKLR, by stating: -

“

“27. 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.

28. 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.

29. 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.

30. 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”.

11. As earlier stated in this ruling, this court of its own motion issued a mention notice to the parties herein with the sole purpose of informing the parties of the error in its judgment delivered on November 25, 2022 and with a view to rectifying the same. As such this court has jurisdiction to rectify an error apparent on the face of its judgment and therefore it is not functus officio.

12. This court did so with the intention of making clear the effect of the judgment. Paragraph 28 of the judgment delivered on November 25, 2022 reads as follows: - “Arising from, this court finds merit in the Originating Summons dated August 15, 2018 and judgment is hereby entered against the defendant in the following terms: -

- i. A declaration that the plaintiff paid money in value in accordance with the agreement and that he is the absolute owner of 3 acres of land comprised in the parcel of land known as Cis-Mara/Ololulunga/15035.
- ii. An order of specific performance is hereby issued compelling the defendant to hive off 3 acres from the parcel of land known as Cis- Mara/ Ololulunga/15035 and execute transfer documents in favour of the plaintiff.
- iii. In the event that the defendant fails to do so, the Court Administrator to execute transfer documents in compliance with order ii. Above.
- iv. The originating summons August 15, 2018 is dismissed.
- v. The plaint dated June 10, 2018 is dismissed.
- vi. Each party to bear its own costs. It is so ordered.



DATED, SIGNED and DELIVERED VIA EMAIL on this 25<sup>th</sup> day  
November, 2022

Mbogo C.G

Judge

25/11/2022

In the presence of: -

CA: T Chuma

13. The error which this court is seeking to rectify is with respect to the wording in paragraph 28 which instead of reading “Counter Claim”, it should read, “Originating Summons”. The rectification does not in any way seek to alter the substance of the judgment but to make manifest the clear intention of the judgment. This can be deduced further from the wordings of 28 paragraph which refer that the judgment being entered is against the plaintiff who is the defendant in ELC Case No. 116 of 2018. I would wish to rely on the case of *Chandrakhant Joshibhai Patel v R* [2004] TLR, 218 where it had been held that an error stated to be apparent on the face of the record:

“...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reading on points on which may be conceivably be two opinions.”

14. Further, the court’s inherent jurisdiction is reserved undersections 1, 1A, 3 and 3A of the *Civil Procedure Act* and article 159 of the *Constitution* which makes it necessary for this court for the ends of justice to be met and to prevent abuse of the process of the court.
15. Having discovered this error, this court cannot just close its eyes and fold its hands in resignation. The court has an option at its disposal for the sake of safeguarding the due process of the law. Also, rectifying this error does not in any way stop or prevent the defendant from filing a memorandum of appeal to challenge the rectification or otherwise of the judgment.
16. As such, this court amends paragraph 28 of its judgment delivered on November 25, 2022 to read as follows: -
- Arising from, this court finds merit in the Originating Summons Counter Claim dated August 15, 2018 and judgment is hereby entered against for the plaintiff the (defendant in ELC No. 116 of 2018) in the following terms: -
- i. A declaration that the plaintiff paid money in value in accordance with the agreement and that he is the absolute owner of 3 acres of land comprised in the parcel of land known as Cis-Mara/Ololulunga/15035.
  - ii. An order of specific performance is hereby issued compelling the defendant to hive off 3 acres from the parcel of land known as Cis- Mara/ Ololulunga/15035 and execute transfer documents in favour of the plaintiff.
  - iii. In the event that the defendant fails to do so, the Court Administrator to execute transfer documents in compliance with order ii. Above.
  - iv. The originating summons August 15, 2018 is dismissed.
  - v. The plaint dated June 10, 2018 is dismissed.



vi. Each party to bear its own costs. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL ON THIS 14<sup>TH</sup> DAY FEBRUARY, 2023.**

**MBOGO C.G**

**JUDGE**

**14/2/2023**

**In the presence of: -**

**CA:T Chuma**

