



Case Number:	Environment and Land Case 32 'B' of 1997
Date Delivered:	15 Dec 2021
Case Class:	Civil
Court:	Environment and Land Court at Meru
Case Action:	Ruling
Judge:	Christopher Kyania Nzili
Citation:	Allosious Iriga v Settlement Fund Trustees & 4 others [2021] eKLR
Advocates:	Mwirigi Kaburu holding brief Mwanzia for plaintiff/applicant Kieti for 1st and 2nd defendant
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Meru
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 32 'B' OF 1997

ALLOSIUS IRIGA.....PLAINTIFF

VERSUS

SETTLEMENT FUND TRUSTEES.....1ST DEFENDANT

CHIEF LANDS REGISTRAR.....2ND DEFENDANT

LUCY KIRUMBA M'MBIJIWE.....3RD DEFENDANT

BETH MUTHONI RUKARIA.....4TH DEFENDANT

M'RUKARIA M'TURUCHIU.....5TH DEFENDANT

RULING

1. By a chamber summons dated 9.4.2021 the plaintiff seeks the court to recall and amend the decree issued on 6.3.2020 to align it with the judgment delivered on 14.6.2018.
2. The application is supported by an affidavit sworn on the even date by the applicant.
3. The grounds upon which the application are made are that the decree omitted part of the reliefs granted regarding Parcel No. 485 and that the 3rd, 4th and 5th respondents failed to prepare and send a draft for the applicant's approval before it was signed by the court. As a result the applicant states he is unable to execute the decree in its present form.
4. With leave of court the applicant filed written submissions dated 24.10.2021. He relies on **Order 21 rule 8 (2) & (3) of Civil Procedure Rules** and *David Mutemi Ngumi –vs- Kamiii Packers Ltd [2019] eKLR citing Erad Suppliers General Contractors –vs- National Cereals & Produce Board [2012] eKLR Rand ECO Bank Ltd –vs- Elsek & Elsek (K) Ltd & 3 others [2015] eKLR.*
5. There is no dispute that the judgment was read on 14.6.2018. At the main hearing the parties relied on the plaintiff's further amended plaint was filed on 28.4.2015 and the 3rd, 4th and 5th defendants' defence and counterclaim filed on 27.9.2016 and 15.10.2012 respectively.
6. Looking at the judgment therefore the court allowed prayers a, b, c, d and e of the further amended plaint dated 24.8.2015.
7. Under **Section 99** of the **Civil Procedure Act** the court has powers to amend a decree and correct an apparent error.
8. The applicant states the decree left out a relief which was granted by the court over **Parcel No. 485**. He submits this was occasioned by the failure by the defendants to send a draft decree to him for approval before it was endorsed by the court. The respondents have not opposed the application.

9. **Order 21 rules 7 and 8** of the **Civil Procedure Rules** deals with a draft decree. In this case the decree has already been extracted and signed.

10. Be that as it may, in *Wilson Njiiri Gikonyo –vs- Simon Kimamo & 7 Others [2006] eKLR* the court in circumstances similar circumstances citing **Halsburys Laws of English 4th Edition Vol 26, 596** held the court has inherent jurisdiction to vary or clarify an order so as to carry out the court’s meaning so long as it does not change the substance of the judgment.

11. Even though judgment was delivered in 2018, the decree was issued on 6.3.2020 hence it cannot be said there has been inordinate delay in seeking for the review. Likewise I find no prejudice occasioned by the failure to bring the application under **Order 45** and **Section 99** of the **Civil Procedure Act**.

12. Accordingly I allow the application in terms of prayer No 2 with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 15TH DAY OF DECEMBER, 2021

In presence of:

Mwirigi Kaburu holding brief Mwanzia for plaintiff/applicant

Kieti for 1st and 2nd defendant

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE



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