The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Application No. 187 of 2022

(Arising from Civil Suit No. 0034 of 2015)

1. Aisu David Livingstone
2. Ochela Yacobo
3. Olatum Peter James
4. Kakwa Lawrence
5. Emaat Simon
6. Ogire Kupiliano
7. Ogire Peter
8. Inyalio Justine
9. Okobet Vigilio
10. Opolot Peter James
11. Ikiring Katula
12. Osingilio

:: Applicants

Versus

1. Kolir Sub-county Local Government
2. B.O.G Kolir Comprehensive SS
3. Registrar of Titles

:: Respondents

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction:

This application is by Notice of Motion brought under Sections 33 of the Judicature Act, Cap 13, Sections 98 and 100 of the Civil Procedure Act, Cap 71,

and Order 52 Rules 1 and 3 of the Civil Procedure Rules S.I 71-1 for orders that;

a) The orders of this Court in Civil Suit No. 034 of 2015 be amended and corrected to state that the suit land measures 131.00000 hectares and not 21.421 hectares.

b) The Certificate of Title to be cancelled is described as Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, measuring approximately 131,000 hectares and not Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, Kolir subcounty, Bukedea measuring approximately 21.421 hectares.

c) The Orders of this Honourable Court in Civil Suit No. 034 of 2015 be amended and corrected to state that the 2nd defendant is in occupation of the applicants' /plaintiffs' land.

d) The Orders of this Honourable Court in Civil Suit No. 034 of 2015 be amended and corrected to state that a case has been found against the 2nd defendant.

e) Costs be provided for.

2. Grounds:

The grounds of this instant application are set out in the application and anchored in the supporting affidavit deposed by the 1st applicant, Aisu David Livingstone, but briefly, they are that;

a) The applicants instituted Civil Suit No. 00034 of 2015 at the High Court of Uganda, Holden at Soroti, for a declaration that they are the rightful customary owners of the suit land.

b) It was the main finding of the court that the applicants/plaintiffs are bona fide occupants of the suit land.

c) It was also the finding of the court that the defendant fraudulently acquired the suit land.

d) That notwithstanding, the court erroneously concluded that the land in occupation of the 2nd defendant belongs to it, and yet it also found that the defendants fraudulently acquired the suit land.

e) It was also the finding of the court that no case had been found against the 2nd defendant, and as such, any land in its occupation remains for it.

f) It is in the interest of Justice that the application be allowed and that the court amends and corrects this mistake so as to give effect to its findings.

3. Objection:

On the other hand, the 1st respondent through the affidavit of Anyait Harriet, its Senior Assistant Secretary, opposed the application, I will briefly state the objections;

a) The plaint was clear on how much land the plaintiffs were claiming for, which is 21.421 hectares not 131.000 hectares and therefore there is nothing to amend in the orders of the Court vide Civil Suit No. 34 of 2015.

b) A rejoinder to the Written Statement of Defence does not amend the plaint but simply responds to what is pleaded in the Written Statement of Defence and if the plaintiffs wished to amend their plaint, I am informed our counsel, Kanyago Agnes Eres, that they ought to have sought leave of this Honourable Court.

c) I am informed by my said lawyer that this Court is functus officio and cannot change its orders except through review.

d) The applicants herein also have the option of appealing against the orders of this Court instead of qualifying it as a slip.

e) The 1st respondent secured a judgement for part of the land in the two Certificates of Title, and therefore, the applicants cannot claim all the land in both titles in this suit (see a copy of the Judgement in Civil Suit

No. 24 of 2007 between Okwatum Israel versus Kolir Sub-County Local Government).

The 1st applicant rejoined the 1st respondent's affidavit in reply, for brevity, that;

a) The applicants/plaintiffs, in their rejoinder to the Written Statement of Defence, which is a court document, made clarifications on the description of the suit land as HQ 78 Folio 8, Block 5, Plot 231 and 232, measuring approximately 131,000 hectares and not 22.421 hectares as was indicated in their plaint. (A copy of the plaint and rejoinder to the WSD are attached as "A" and "B", respectively).

b) The applicants/plaintiffs, throughout the whole hearing of the matter, while testifying in court, brought the correct description of the suit land to the Court's attention as Vol. HQ T8, Folio 1 Block 5, Plot 231 and 232.

c) my lawyers have advised me that the conclusion of the court was a slip from what should be its intended conclusion, having rightly found that the defendants acquired the suit land fraudulently. (A certified copy of the judgement- Annexure "C").

d) my lawyers have advised me that the Hon Judge's conclusion qualifies as a slip rule, which is an exception to the functus office rule.

e) The court, in its decision, rightly found that the applicants/plaintiffs are the rightful owners of the suit land by virtue of being bonafide occupants.

The 2nd – 12th applicants did not file their affidavits in support of the instant application, and neither was evidence led to show that the 1st applicant's affidavit covered them; therefore, there was only the 1st applicant's affidavit in support on the record. On the other hand, it is only the 1st respondent who filed an affidavit in reply.

4. Representation:

According to the pleadings, the applicants are represented by M/s Omongole and Company Advocates, whereas the respondents are represented by M/s Dagira & Company Advocates.

5. Submissions:

The parties filed written submissions, which I have studied together with the pleadings and annexures thereto.

The 1st applicant, in his affidavit in support of the application, contends that this Court, in its Judgement (Annexure "C"), concluded that the applicants/plaintiffs are the rightful owners of the suit land by virtue of being bona fide occupants of the suit land and that the defendants fraudulently acquired the suit land; however, the court erroneously concluded that the Land Title to be cancelled is Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares, which featured in the Plaint (Annexure A1) instead of HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares which had been captured in the rejoinder to the Written Statement of Defence (Annexure A2) which corrected the suit land. The 1st appellant avers that during the hearing of the Civil Suit No. 34 of 2015, the plaintiffs made reference to the right suit land comprising HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares (Annexure B).

The 1st applicant avers that this honourable court also erroneously concluded that the land in the occupation of the 2nd defendant belongs to it and that no case had been found against the 2nd defendant, which amounts to a slip from what the 1st applicant's counsel prays that this court corrects to give effect to its findings.

Therefore, in the supporting affidavit and in the submissions, the 1st applicant prays for this Honourable Court to correct its mistakes in the judgement and award the following orders;

a) That the orders of the Honourable Court in Civil Suit No. 034 of 2015 be amended and corrected to state that the suit land measures 131.0000 hectares and not 21.421 hectares.

b) That the certificate of Title to be cancelled is described as Vol. HQ T8, Folio 1, plots 231 and 232, block 5, measuring approximately 131.0000 hectares and not Vol. HQ T8, Folio 1, plots 231 and 232, block 5, Kolir Sub-county, Bukedea measuring approximately 21.421 hectares.

c) That the Orders in Honourable Court in Civil Suit No.0034 of 2015 be amended and corrected to state the 2nd defendant is in occupation of the applicant's/plaintiffs' land.

d) The Orders of this Honourable Court in Civil Suit No. 0034 of 2015 be amended and corrected to state that a case has been found against the 2nd defendant.

To buttress his argument and prayers, counsel for the 1st applicant submits that this Honourable court exercises its powers to recall its judgment to correct errors made therein in order to give effect to its findings because it has such powers as per the case of ***David Muhenda Vs Humphrey Mirembe Supreme Court Civil Application No. 5 of 2012.***

The 1st applicant's counsel submitted that they are bringing to the court's attention that the correct description and size of the suit land as indicated on the title and the rejoinder to the Written Statement of Defence is HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares and not Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares, which he calls upon the court to

rectify as the court's intention had there not been an omission in the court's conclusion.

Furthermore, regarding the court's other orders from Annexure C, which are;

c) *No case has been found against the 2nd defendant, and as such, any land in its occupation remains for it.*

d) *No case has been found as against the 3rd defendant as its role in this unfortunate story was merely that of an institution which issued to the 1st defendant, a title which was secured by the 1st defendant fraudulently without due process.*

Counsel for the 1st applicant submits that whereas on pages 26 and 33 of Annexure C, this court held and found as follows;

Page 26 of the judgment reads;

"I am satisfied, therefore, that the plaintiffs have adverse possession of the pieces of the land they occupy and qualifies as bona fide occupants of the pieces of land as per the provision of the Uganda Constitution as amended and the Land Act of 1988. I so hold."

On page 33 of the judgment it reads:

"Considering all the evidence, I am convinced that the defendants fraudulently acquired the title in the suit land. Fraud was thus shown through this action of the defendants. I have already found that the Defendant's registration was done fraudulently.

Accordingly, following the finding of this court that the process through which the title to the suit land was acquired, I would conclude and find that the defendants failed to prove that the process of acquiring the title into the

suit land began before the plaintiffs came to the land and so the subsequent acquisition of the title during the existence of the plaintiffs on the suit land without their notice would amount to fraud. I so find".

Counsel for the 1st applicant asserts that despite the above findings, the court in making its final conclusion and orders, on page 35 of the Judgment, the Court stated that: -

"C. No case has been found as against the 2nd defendant and as such any land in its occupation remains for it."

To this end, counsel submits that this Court, having made the finding to the effect that the defendants fraudulently acquired the suit land, it was an error to conclude that part of the same fraudulently acquired suit land belongs to the 2nd defendant, that no case has been found against the 2nd defendant and that the 2nd defendant should remain on land it fraudulently acquired.

On the other hand, the 1st respondent contends that the corrections sought by the applicant in the judgement that is the basis of this instant application do not fall under the slip rule and that this instant application should fail and the applicants instead appeal or apply for review of the decision.

Counsel for the 1st respondent contends that averment by the 1st applicant that the plaintiffs indicated in the rejoinder to the written statement of defence the correct description of the land in dispute to be HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares instead of Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares, which was in plaint; the 1st respondent contends that this was a fundamental amendment to the plaint, which offended Order 6

Rule 20 of the CPR. In support of that contention, counsel for the 1st respondent avers that the written statement of defence was filed on 22nd September 2015 whereas the rejoinder was filed on 11th February 2016, which was out of time allowed (either 21 days after the summons or 14 days after the Written Statement of Defence) for an amendment of the plaint without the leave of the court.

To that end, counsel contends that the applicants out to have sought the leave of the court to amend their plaint to reflect the change in the description and size of the suit land but not casually change the land in their rejoinder to the written statement of defence. Counsel avers that an amendment from 21.421 hectares to 131.000 hectares prejudiced the 1st respondent as it meant that all the land that is on those titles inclusive of where the sub-county headquarters are located was in dispute.

Counsel for the 1st respondent submits that the rejoinder was a departure from the pleadings which offends Order 6 Rule 7 of the CPR. To that end, counsel cited the case of ***Paineto Semalulu vs Nakitto Eva Kasule HCCA No.004 of 2008*** which cited the case of ***Jani Properties Limited vs Dar es Salaam City Council [1966] E.A 281*** that held;

> ***"...the parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and moreover the court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings."***

Counsel for the 1st respondent also avers that the disputed land was vide HCCS No. 024 of 2007 decreed to the 1st respondent as per Annexure A to the affidavit

in reply, because of which, the 1st applicant cannot claim the same as it would lead to this court making two conflicting judgements over the same suit land.

Counsel for the 1st respondent avers that the court should correct the erroneously entered suit land of plots 231 and 232 instead of plots 148 and 149 as such. Counsel therefore prays that this court holds that the amendment using a rejoinder was wrong.

Counsel for the 1st respondent contends that the judgement does not have clerical or mathematical errors because the applicants prayed for 21.421 hectares and not 131.000 hectares, that even in their rejoinder, the plaintiffs/applicants maintained the prayers in the plaint.

On the issue of the court finding no case against the 2nd defendant, counsel for the 1st respondent submits that this cannot be rectified under Sections 99 and 100 of the Civil Procedure Act because the applicants did not prove a case against the 2nd and 3rd defendants as fraud was only imputed on the 1st defendant.

Counsel for the 1st respondent on the issue of costs submits that if the court decides this application in favour of the applicants, the errors of court cannot be visited on the 1st respondent because to counsel, it is the court that made those errors.

6. Issues:

a) ***Whether there was a clerical error or arithmetic mistake in the judgement?***

b) ***What are the remedies to the parties in the circumstances?***

7. Background:

The applicants instituted Civil Suit No. 0034 of 2015 at the High Court of Uganda, Holden at Soroti, against the respondents for a declaration that they are the rightful customary owners of the suit land. In the plaint, the plaintiffs stated that

the suit land is 22.421 hectares comprised in Vol. 84, Folio 6 plot 148 and 149, Block 5 Kolir Bukedea District, but according to the file of court, this was changed in a rejoinder to the written statement of defence to indicate HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares.

This Honourable Court, in the judgment delivered on 1st November 2022, partly entered judgment for the plaintiff with the orders that were specified therein.

8. Resolution:

The 1st respondent, in its submissions in reply, raised a preliminary objection regarding the affidavit in support of the application. The 1st respondent avers that the 1st applicant swore the affidavit in support of the application without the authority of the other eleven respondents, which means that the other 11 applicants have no affidavits in support. The 1st respondent prayed that the case brought by the 2nd – 12th applicants be dismissed with costs as their application is defective in as far as no affidavits accompanying their application.

Counsel for the 1st applicant, in reply, submits that there is nowhere in the affidavit in support that the 1st applicant states that he appears, pleads or acts for that other in any proceeding, and in like manner and that where it is not stated that the 1st applicant is swearing the affidavit in support on behalf of the 2nd – 12th applicants, there is no requirement for authority as stated by the 1st respondent in their preliminary objection.

Counsel for the 1st applicant submits further that a party to a suit does not require authority to depose an affidavit in support of a suit as long as it's not done on behalf of others who have not authorised him to do so. Counsel cites the case of ***Esemu Nicholas & Anor Vs. Mwitanirwa Charles, HCMA No. 952 of 2020,*** where the Judge, in overruling the preliminary objection, held that;

"... as a party to the application in her own right, the 2nd applicant had the authority to swear the affidavit to support the application with the facts as she knew them."

Under Order 19, rule 3(1) of the Civil Procedure Rules provides that affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.

In the case of ***Dr Akampumuza vs. Absa Bank Uganda Limited and 2 ORS HCMA No. 999 of 2021,*** while quoting the case of ***Namutebi Matilda vs. Ssemanda Simon and 2 ORS HCMA No. 430 of 2021,*** Stephen Mubiru, J held that

"... it then becomes clear that throughout the web of legal provisions relating to Affidavits, one golden thread is always to be seen; that what is required in Affidavits is the knowledge or belief of the deponent, rather than authorization by a party to the litigation...I have considered the available decisions positing the principle that a person is not to swear an Affidavit in a representative capacity unless he or she is an advocate or holder of power of attorney or duly authorised. Those decisions posit the view that where there is no written authority to swear on behalf of the others, the Affidavit is defective. I have not found any basis for that principle in the rules of evidence nor those of procedure. The principle appears to have developed from the analogy of representative suits, which analogy I find to be misplaced."

Justice Richard Wejuli Wabwire, in the case of ***Dr Akampumuza vs Absa Bank Uganda Limited and 2 ORS (supra)*** and in the purview of the observation in the case of ***Namutebi Matilda vs Ssemanda Simon and 2 ORS (supra),*** held that;

> ***"The import of the foregoing authority is that the knowledge or belief of the deponent is of greater importance than the mandate of representation or authorisation by a party to the litigation. I agree with my learned brother, and in any case, as averred under paragraph 1 of the Affidavit in reply, Gerald Emuron stated that as legal Counsel of the 1st Respondent, he was fully conversant with this case".***

Aligning myself to the above persuasive observations of my brother judges, I am of the view in applications such as this one, which involves a number of applications; what is most important is that the deponent of the affidavit in support is knowledgeable or believes the facts which he deposes.

Therefore, to me, authorisation from other applicants or other applicants swearing similar affidavits should not be more important than the deponent of the only affidavit deposing his knowledge or belief of the facts to which he does.

On that basis, and in the interest of justice, I therefore overrule the preliminary objection with no order as to costs.

This application was brought under **Section 100 of the Civil Procedure Act, Cap 71 (CPA)**, which empowers this court at any time, and on such terms as to costs or otherwise, as it may think fit, to amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of

determining the real question or issue raised by or depending on such proceeding.

This application was also brought under **Section 98 of the CPA,** which enjoins this court with inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court and **Section 33 of the Judicature Act, Cap 13**, which empowers this court to grant absolutely or on such terms and conditions as it thinks just all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

In my view and upon perusal of the orders sought by the applicants, **Section 99 of the Civil Procedure Act** is also applicable for the determination of the instant application.

Section 99 of the Civil Procedure Act empowers this court either on its own motion or on the application of any parties at any time to correct clerical or mathematical mistakes in judgments, decrees or orders or errors arising in them from any accidental slip or omission may at any time be corrected by the court.

This application arising from a civil matter; thus, it is trite that the duty and burden of proof lies on the applicant because she is the one who seeks to get a decision of this court in her favour. **(See: Sections 101 and 102 of the Evidence Act, Cap 6).**

a) **Whether there were clerical errors or arithmetic mistakes in the judgement?**

It is the general principle of law that the court, after passing judgment, becomes *functus officio* and cannot revisit its judgement or purport to exercise judicial power over the same.

However, there are exceptions to this general principle of law under the remit of **Sections 99 and 100 of the Civil Procedure Act**, which allow the court on its own motion or by a party to a matter to move the court to rectify clerical or mathematical errors in order to give effect to the judgement.

Be that as it may, the slip rule does not allow or permit a court to give an order which alters the judgment or orders made earlier because the purpose of correcting clerical or mathematical errors is to give effect to the judgment of the court with the sole aim of determining the real question or issue raised by or depending on such proceeding.

In the case of ***Lakhamshi Brothers Limited versus R. Raja & Sons [1966] EA 313,*** it was stated that;

> ***"Indeed, there has been a multitude of decisions by this Court on what is known generally as the slip rule, in which the inherent Jurisdiction of the Court to recall a Judgment in order to give effect to its manifest intention has been held to exist. The circumstances, however, of the exercise of any such Jurisdiction are very clearly circumscribed. Broadly these circumstances are where the court is asked in the application subsequent to Judgment 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. I would here refer to the words of this Court given in the Raina case (2) [1965] E.A. at P. 703) 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."***

This principle was restated in the case of ***Fang min vs Dr Kaijuka Mutabazi Emmanuel SCCA No. 06 of 2009".***

Also, in the case of ***UDB vs. Oil Seeds (U) Ltd Supreme Court Civil Application No. 15 of 1977,*** the Supreme Court held that;

> ***"A slip order will only be made where the court 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 reasonable doubt, as to the order which it would have made had the matter been brought to its attention".***

Therefore, to determine this application, this court needs to establish what the intention of the court was when it made its judgment, specifically the orders that are in contention and whether or not the averments and contentions of the 1st applicant regarding the noted corrections give effect to the intention of court.

Upon perusal of Annexure "C", which is also on the court record, I note the following with respect to the awards/ orders it made in Civil Suit No. 34 of 2015, which was determined partly in favour of the plaintiffs (now applicants).

The judgement/orders that are the subject of the proposed corrections is;

> *9. <u>Conclusion and Orders:</u>*
>
> *In conclusion, judgement is partly entered for the plaintiff with orders that;*
>
> *a) The plaintiffs are individually lawful owners of such pieces of land as are indicated in the sketch map drawn by this court which were fraudulently included in the land titles Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, Kolir subcounty, Bukedea district measuring approximately 21.421 hectares in the names of the defendant.*

b) *The Land Title Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, Kolir subcounty, Bukedea district measuring approximately 21.421 hectares be and is hereby ordered cancelled.*

c) *No case has been found as against the 2nd defendant and as such any land in its occupation remain for it.*

d) *No case has been found as against the 3rd defendant as its role in this unfortunate story was merely that of an institution which issued to the 1st defendant, a title which was secured by the 1st defendant fraudulently without due process.*

e) *No award of any exemplary or general damages to the plaintiffs is made as none was proved or found relevant.*

Premised upon the foregoing orders, the 1st applicant's affidavit and his counsel's submissions posit that;

a) The orders of this Court in Civil Suit No. 034 of 2015 be amended and corrected to state that the suit land measures 131.00000 hectares and not 21.421 hectares.

b) The Certificate of Title to be cancelled is described as Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, measuring approximately 131,000 hectares and not Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, Kolir subcounty, Bukedea measuring approximately 21.421 hectares.

c) The Orders of this Honourable Court in Civil Suit No. 034 of 2015 be amended and corrected to state that the 2nd defendant is in occupation of the applicants' /plaintiffs' land.

d) **The Orders of this Honourable Court in Civil Suit No. 034 of 2015 be amended and corrected to state that a case has been found against the 2nd defendant.**

Counsel for the 1st applicant avers that the foregoing are clerical and mathematical errors that this court has the jurisdiction to correct to give meaning to the true intention of the court.

The 1st applicant's counsel contends that the court made an error when it made orders in Civil Suit No. 034 of 2015 stating that the suit land measures 131.00000 hectares and not 21.421 hectares.

Another error was that the Certificate of Title to be cancelled is described as Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, Kolir subcounty, Bukedea measuring approximately 21.421 hectares, yet according to the rejoinder to the plaint and during hearing of the case, the plaintiffs corrected the description and size of the suit land to Vol. HQ T8, Folio 1, Plots 231 and 232, Block 5, measuring approximately 131,000 hectares which should have been reflected in the orders and not the other.

Counsel also contends that this Court, having made the finding that the defendants fraudulently acquired the suit land, counsel asserts that it was an error to conclude that part of the same fraudulently acquired suit land belongs to the 2nd defendant which the court reflected in its orders that no case has been found against the 2nd defendant and that the 2nd defendant should remain on land it fraudulently acquired.

Counsel further contends that the orders be corrected to state that the 2nd defendant is in occupation of the applicants' /plaintiffs' land and that a correction is made to state that a case has been found against the 2nd defendant and not what was indicated in the orders by the court.

In the case of ***Raniga v Jivraj [1965] EA 700 at 703,*** Spry JA noted that;

> ***"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 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."***

When this instant application aligned with the case law on slip rule and Sections 99 and 100 of the Civil Procedure Act, it is my considered opinion that;

The change in the description of the land in the rejoinder to the written statement of defence stating that the court's intention was HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares instead of Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares is flawed for reasons that the court disregarded the change in description of the suit land because the applicants' rejoinder to the written statement of defence regarding the change of description of the suit land, introduced a new matter (change in the description of the suit land) which was not in the written statement of defence.

A rejoinder must for all intents reply to the content in the written statement of defence and not introduce new material facts like it was in this instant case. Albeit, this was even made without leave of the court and the defendant was not afforded an opportunity to reply to this fundamental change.

It is trite that a party is bound by their pleadings, which in this case is that the suit land was Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea

district, measuring approximately 21.421 hectares as reflected in the plaint as the suit land.

This material in a pleading can only change with the leave of the court.

Moreover, even when the plaintiffs purported to change the suit land in their rejoinder to the written statement of defence, they maintained the prayers regarding the suit land comprised of Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares.

It is also noteworthy that the rejoinder to the written statement of defence was filed on 11th February 2016 yet the written statement of defence of the defendants had been filed on 22nd September 2015 which was beyond the statutory time limit of 14 days within which the plaintiffs/applicants should have amended their plaint to reflect changed suit land without the leave of court as per Order 6 Rule 20 of the Civil Procedure Rules.

Be that as it may, the rejoinder to the written statement of defence was not an amendment within the purview of the law and I hasten to add that I shall not make further observations on the reflection of the suit land in the rejoinder because doing so would be re-opening the case, and yet I am ***functus officio***, and to this extent, I am not in agreement that the representation of Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares in my orders following the pleadings filed by the plaintiffs was erroneous and that I should have instead made a finding or conclusion reflecting the proposed corrected description of land as HQ 78 Folio 8, Block (Road) 5 plot 231 and 232, measuring approximately 131.0000 hectares which was not in the pleadings and was not my intention.

Evidently this is not a clerical or mathematical mistake.

Therefore, I agree with counsel for the 1st respondent that 21.421 hectares and not 131.000 hectares is not a clerical or mathematical error.

As regards my finding and conclusion of ***"no case against the 2nd defendant and that any such land in its occupation remains for it and also no case to answer against the 3rd defendant as its role was merely that of an institution which issued the 1st defendant a title which was secured by the 1st defendant fraudulently without due process",*** is the correct intention of the court and in alignment with sections 99 and 100 of the CPA, is not a clerical error because I did provide the reasons why I concluded the way I did.

The contention of counsel for the 1st applicant that, despite having made the finding to the effect that the defendants fraudulently acquired the suit land, it was an error to conclude that part of the same fraudulently acquired suit land belongs to the 2nd defendant and that no case has been found against the 2nd defendant and that the 2nd defendant should remain on land it fraudulently acquired; this interpretation of counsel for the 1st applicant is not an error, clerical or mathematical and does not represent the true intention of the court because my finding was informed by the evidence as a whole wherein the plaintiffs did not prove the case against the 2nd and 3rd defendants.

In sum, therefore, I find that the errors advanced by the applicant for me to rectify in my judgement in Civil Suit No. 34 of 2015 are not within the remit of mathematical or clerical errors that favour correction under the slip rule and pursuant to sections 99 and 100 of the Civil Procedure Act.

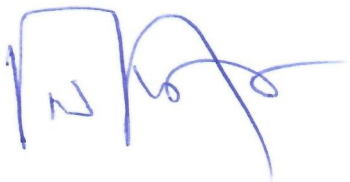
b) What remedies are available to the applicant in the circumstances?

Since the application has been found to want any merits it is dismissed accordingly and the applicants are not entitled to any remedies.

4. Orders:

Having found the above as such , I would dismiss this application in the favour of the respondents and the applicants ordered to meets the costs of this application.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

21st September, 2023