

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TABORA SUB-REGISTRY)
AT TABORA
MISC. LAND APPLICATION NO. 2370 OF 2024**

ZENGO JILYA MADUKA

(Administrator of the estate of the late Jilya Maduka) **APPLICANT**

VERSUS

1. MARY ELIENKYA NKYA

2. LAMECK ISMAILI

3. MARIAM MOHAMED

4. PILI SAIDI KARUNGA *(Administratrix of the estate of the late Hussein Ally Kalunga)*

5. SADA MAGANGA

6. JUMANNE MTASHA

7. HAMIS MUSSA

8. MASHAKA IDDI

9. REHEMA IDDI

10. KAWILI RAMADHANI **RESPONDENTS**

Date of Last Order: 15.05.2024

Date of Ruling: 12.06.2024

RULING

KADILU, J.

The applicant filed this application praying for the court to rectify its previous order in Misc. Civil Application No. 24 of 2022 before Bahati, J. dated 13/12/2022 to include all the respondents appearing in the court records. The application was supported by an affidavit sworn by Mr. Kelvin Kayaga, the learned Counsel for the applicant. The applicant alleges that in the above-named application, he prayed for a permanent restraint of the respondents from entering or dealing with his land. This court issued the restraint order after the parties had concluded a settlement deed, but the applicant claims that there was a typing error record of the court in which

only five (5) names of the respondents featured on the order. He urged the court to add the names of the respondents from five to ten (10) names as that was a clerical mistake. According to Mr. Kayaga, the said error came to their knowledge after having applied for execution before the Deputy Registrar in Application No. 31 of 2023.

Advocate Frank Kavishe represented the respondents. He filed a counter affidavit opposing the application. He denied all the allegations by the applicant putting him under strict proof thereof. He prayed for the court to dismiss the application for the end of justice. Mr. Kavishe informed the court that the applicant filed this application after his earlier application for execution was struck out by the Hon. Deputy Registrar when she found that the court's order was not executable. The learned Advocate argued that the application is made under Section 96 of the Civil Procedure Code (CPC) [Cap. 33 R.E. 2019] which allows the correction of clerical or arithmetical errors on a judgment, decree, or order, not an addition of the parties on the court's records such as the pleadings and proceedings.

In his view, the sought addition of names is unjustified because it goes beyond what is permitted under Section 96 of the CPC. According to Mr. Kavishe, Section 96 of the CPC permits rectification of minor errors that do not affect the court's decision. He elaborated that the court's proceedings are clear that Misc. Civil Application No. 24 of 2022 involved five respondents only and were present in court during the hearing. He opined that adding other persons who were not parties to the previous application means condemning them without being heard. He called upon this court to trust its previous records as true and correct as the avenue taken by the applicant is

not proper for a person who wants to change the court's decision at the execution stage. He prayed for the application to be dismissed with costs.

In rejoinder, Mr. Kayaga refuted the allegation that the application was brought in this court after the failure of the application for execution. He explained that the applicant is not moving the court to rectify its pleadings and proceedings but, the rectification of order only. He submitted in addition that the contents of the order in Misc. Civil Application No. 24 of 2022 shows that it was intended to cut across ten (10) respondents, not five alone. As such, the application does not change any decision of the court. He cited the case of ***Victor W. Meena & Another v Arusha Technical College***, Civil Appeal No. 515 of 2020, in which the Court of Appeal interpreted Section 96 of the CPC.

I have examined the records and affidavits of the learned Counsel for the parties along with their submissions. The task before me is to determine whether the application has merit or not. The application has been brought under Section 96 of the CPC which provides:

"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."

Thus, the court has been empowered to correct clerical mistakes, errors, or omissions in its judgment, decree, or order. However, the said mistakes, errors, or omissions should not affect the rights of any of the parties. In ***Victor W. Meena & Another v Arusha Technical College (supra)***, it was stated that the importance of Section 96 of the CPC is based on two important principles; (i) an act of the court should not prejudice any

party and; (ii) it is the duty of the courts to see that their records are true and present a correct state of affairs.

In the instant matter, it is undisputed that the court's order sought to be corrected emanated from a settlement agreement between the applicant and five respondents. A perusal of the said order reveals that the respondents therein were barred from conducting any agricultural activities on the suit land from 1st July 2023. They were further prohibited from inviting any person whatsoever to use the applicant's land or his swamps. Before reaching the agreement, the parties held some negotiations and consented to its terms. For these reasons, I agree with Mr. Kavishe that adding five respondents to the court's order to which they did not participate in reaching is tantamount to condemning them unheard.

I am unable to agree with Mr. Kayaga's argument that the error is a clerical one which does not touch the root of the case. The **Black's Law Dictionary, 8th Edition** (2004) on page 622 defines clerical error as an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination. Examples of clerical errors that the court may correct were stated in the case of ***Sebastian Stephen Minja v Tanzania Harbours Authority***, Civil Application No. 107 of 2000, Court of Appeal at Dar es Salaam where it was held:

"...The Court can correct a clerical mistake such as where the word "from" instead of the intended word "for" had been written, or an arithmetical mistake such as the figure "108" instead of the intended figure "180" appearing in the judgment. It can also correct an error arising from an accidental, that is to say, unintended, slip or omission ..."

From the quoted authorities, there is no way an addition of five individuals who were not parties to Misc. Civil Application No. 24 of 2022 can be considered a mere clerical error. In my humble opinion, it affects the rights of those who did not participate in the negotiation that led to the court's order of 13/12/2022. The basis of a settlement deed is the voluntariness of the parties. Even the parties to a purported settlement deed have been included in this application implying that they also need to be added in the court's order to which they were parties. Surprisingly, they have resisted being added to the order by filing a counter affidavit.

Moreover, the learned Advocate for the applicant did not disclose the names of the persons he is praying to add to the court's order. It appears the applicant is seeking a blanket order for him to include any five individuals in the court's restraint order of 13/12/2022. Indeed, the course taken by the applicant is not appropriate as it will not cure the execution hardship he had encountered but rather, it will intensify it. Mr. Kayaga told this court that the five individuals he wishes to add were the parties to Misc. Civil Application No. 24 of 2022, but he did not provide any proof. The assertion has, therefore, remained a mere statement from the bar.

Generally, the applicant has not shown how the omission of five persons in the court's previous order is only a slip of the pen henceforth, a clerical mistake within the meaning of Section 96 of the CPC. Consequently, the application is not granted. I hereby dismiss it with costs.


It is so ordered.




KADILU, M.J.
JUDGE
12/06/2024.

The ruling delivered in chamber on the 12th Day of June 2024 in the presence of Mr. Mtaki Kaitila, Advocate holding brief for Mr. Kelvin Kayaga, Advocate for the applicant, and Mr. Frank Kavishe, Advocate for the respondents.




KADILU, M.J.
JUDGE
12/06/2024.