

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 42 OF 2020**

*(Originated from the judgment of Land Case number 250 of 2010)*

**DAVID GILEAD TENGA .....APPLICANT**

**VERSUS**

**ANDREW NDAALIO.....RESPONDENT**

**RULING.**

**S.M. MAGHIMBI, J:**

The Applicant filed this application under Section 96 of the Civil Procedure Code, Cap 33 R.E 2002 ("The CPC") praying for this Honorable Court to amend judgment and decree in respect of Land Case No. 250/2010 ("The Suit") delivered on 22<sup>nd</sup> July 2010 before Mkuye, J( as she then was). The applicant further prayed for the costs of this application and any other order this court may deem just and equitable to grant. This application is supported by the affidavit of the applicant dated 21<sup>st</sup> August, 2020.

Before this court, the applicant was represented by Mr. Gift Raphael, Advocate while the respondent was duly represented by Ms. Veronica Luis learned Counsel. This application was disposed by way of written submissions.

Submitting in support of his application, Mr. Gift he applied for the execution but in the midst of the proceedings, it was discovered that the decree read different block number of the disputed plot, the fact that renders the execution impracticable. That the Title Deed to the disputed

land was for Plot No. 212 Block 8 and Plot No. 215 block 8 while the judgment and decree reads Block "B" instead of Block "8" which he argued to be an accidental slip or omission. He emphasized that this error can be rectified by an amendment order of this honorable court and prayed for his application to be granted so as the applicant to be able to enjoy the fruit of his judgment.

In reply Ms. Luis raised a point of law that the application is time barred and was made under the wrong provisions of the law. That the judgment in the suit was delivered on 22<sup>nd</sup> July 2015 and the instant application was filed on 31<sup>st</sup> January 2020, almost four years and six months later. That according to the CPC, where there is no specific section /order /rule stipulating time frame for filling such application, item 21 of Part III of the schedule to the Law of limitation Act Cap 89 R.E 2020 ("The Limitation Act") provides for period of limitation of 60 days. She argued that this application was supposed to be filed on or before December 2015, otherwise the applicant was required to apply for extension of time in which to file such application. She prayed that the application be dismissed under section 3 (1) of the limitation Act.

Submitting on the merit of the application, she submitted that the 'purported discovered errors' do not amount to slip of the pen but rather it goes to the face of the records which amount to change the location of the disputed plot since there are plot number 212/215 located at block **B** Bunju and Plots No. 212/215 located at block **8** Bunju. That these are two distinct plots located at different location. She cited the case of **Interconsult Ltd.**

**Vs. Mrs. Norah Kasanga & Mathew Ibrahim Kasanga, Civil Appeal No. 75 of 2015**, to support her submissions.

She then submitted that the matters which are intended to be corrected under Section 96 of the CPC are those involving typing errors which are minor capable of being cured under the slip rule. She added that in the instant case, the change applied is not a slip of a pen but it goes to the root of the dispute. That the those errors are in the face of records, therefore where a party discovers errors on the face of record the proper procedure is to file an application for review and not the current application. She also submitted that once a judgment or decree is pronounced, the court is functus officio from dealing with the matter unless it is moved by the appropriate procedure. She prayed for this application to be struck out with costs. No rejoinder was filed.

Having gone through the parties' submissions, I will start with Ms. Luis' argument that the application is time barred. I need not dwell much on this point because what the applicant is applying for is a rectification of a typographical error observed in the typed judgment. Such an application could be done even by a simple letter to the court because it does not go to the substance of the decision in the suit, rather a slip in the pen (in this case a wrong touch of the key on the keyboard). Therefore there are no hard and fast rules as to how such applications can be made and since the court may be moved even by a letter, I cannot subject such an application to the law of limitation. The objection, apart from having been raised unprocedurally, it is also lacking merits and is hereby dismissed.

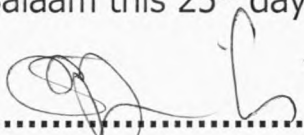
As for the merits of the application, I have read the records of the suit and have found that the plaint filed by the applicant specified that the disputed Plots No. 212/215 are located at Block "8" Bunju area. In his written statement of defense, the respondent herein did not dispute on the existence of the suit plots named as Plots Number 212/215 located at Block "8" Bunju area. The error was discovered on the typed judgment and decree of this court which reads Block "B" Bunju area.

I have also taken time to go through the original court records of the court which are the true records; fortunately, the judgment was handwritten by the trial judge. In the handwritten judgment, the court declared the plaintiff the lawful owner of the suit property located on Plots No. 212/215 located at Block "8" Bunju and not Block B Bunju area. That said, since the error is on the typed copy of judgment while the original handwritten judgment reads Block 8, it is nothing but a pure typographical error that can be cured by this court under the provision of section 96 of the CPC. Consequently, I allow this application by ordering the typed judgment and decree in respect of Land Case No. 250 of 2010 dated 22<sup>nd</sup> July 2010 be corrected by substituting No. 8 wherever it reads the letter B in describing the Block Number of the disputed property. Given the nature of the application and the error observed, I make no order as to costs.

***Application allowed.***

Dated at Dar es Salaam this 25<sup>th</sup> day of September, 2020



  
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**S.M MAGHIMBI**  
**JUDGE.**