

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

**MISC. LAND CASE APPLICATION NO. 1141 OF 2017**

**JOWHARA CASTOR KIIZA.....APPLICANT**

**VERSUS**

**ACCER PETROLEUM (T) LIMITED.....1<sup>ST</sup> RESPONDENT**

**JAFFER HASSANALI VIRJI.....2<sup>ND</sup> RESPONDENT**

**FATUMA MUZAMMIL (LEGAL REPRESENTATIVE**

**OF THE ESTATE OF THE LATE MUZAMMIL**

**SHEIKH HASSAN).....3<sup>RD</sup> RESPONDENT**

**MAC CONTRACTORS CO. LIMITED.....4<sup>TH</sup> RESPONDENT**

**RULING**

**OPIYO, J.**

This is an application for correction of clerical mistakes and errors arising from both the ruling and drawn order in Land case no 4 of 2012 from accidental slips or omissions. The same is made and a section 96 of the Civil Procedure Code, Cap. RE 2019 and is supported by an affidavit of the applicant, Jowhara Castor Kiiza.

The application was argued by way of written submission as per the order of the court in agreement with both sides.

The first clerical mistake pointed out is the use of the plural 'these rulings'

instead of 'this ruling'. Number two is making reference 'applicant' instead of the of 'plaintiff', the matter being a Land Case the parties are rather plaintiff and defendant, not applicant and respondent. Mistake number three is the referring to 'MAC Contractors Company Limited' as first defendant instead of 'Accer Petroleum (T) Limited who were the first defendants in the application. All these clerical mistake appears on page one of the ruling.

In page two, reference to '2nd defendant Jaffer Hassanal Firji', 'the 'notification clause' and the subsequent use of the '2nd defendant' in the succeeding sentences instead of '1<sup>st</sup> defendant' is what is prayed to be corrected. This is because the preliminary objection was against the first defendant and not the second defendant to the effect that their verification clause was not signed. Another accidental slip referred to, at page two of the ruling is making reference to 'Mr. Kihoko' for second defendant instead of Mr. Mgimba for the 1st defendant as the preliminary objection that was disposed in that ruling was against the amended Written statement of defense of the first defendant and the her advocate was Mgimba not Kihoko. Furthermore, continued reference to '2nd defendant' instead of 1st defendant in subsequent pages of the ruling as well as referring to 'Written statement of defence' instead of 'amended written statement of defence'. lastly is the phrase 'preliminary jurisdiction' instead of 'pecuniary jurisdiction'.

The correction of clerical mistakes is also prayed for in the drawn order to replace the reliefs referred therein which are from the original plaint rather than amended plaint. This is because those reliefs ceased to exist with the amended plaint in place.

The second and the fourth respondents jointly object to the application on the ground that, the application has failed to meet necessary requirements that are needed for the court to invoke its powers and correct mistakes and errors arising from accidental slips. Advocate Gwamaka Mwaikugile argued that, clerical mistakes are mainly writing or typing errors from an accidental slip or omission or an error due to careless mistake or omission made unintentionally and unknowingly referring to the definition in Mulla (2011) "The Code of Civil Procedure" by Sir Dinshah Mulla.

He then argued that, in correcting such mistakes, the act of the court should not prejudice any party. And the court has a duty to see to it that the records are true and present the correct state of affairs. In his view, any attempt to grant this application will prejudice the rights of respondents as the applicant's submission differs from her affidavit in support of the application. To him, what the applicant is doing amounts to abuse of court process, since this is not the first application by the applicant to that effect. She had made Misc. Application no. 135 of 2017 and Land Application no. 1090 of 2016 which she subsequently withdrew and yet filed the current application on the same thing. He contended that, this amounts to forum shopping and indeed abuse of court process. That, according to Black Law Dictionary, Sixth Ed at page 10 to 11 abuse of court process occurs when one makes an improper or excessive use of a thing in manner contrary to natural legal rules for its uses or improper use of judicial privileges in a litigation. He argued that, such kind of correction was already done by this same court via their letter with reference Land Case no 4/2014. So, what happens in this application is multiplicity of actions on the same subject matter against the same opponents on the same issues or actions.

This court should therefore guard its jurisdiction among to ensure that it sticks to its mandate and it is not abused or trivialized, he submits. It must at the outset reject anything that undermines or trivializes or abuses its jurisdiction or plainly lacks a cause of action. And only stick to orders that may be necessary for achieving the ends of justice in the prevent abuse of court process as per letters of section 95 of Civil Procedure Code. He therefore asked the court to dismiss this application with costs since the intention of this application is to harass and annoy the respondents and interfere with the administration of justice.

The first respondent also objected to the application on the ground that, the applicant failed to prove how the errors affect the ruling and the applicant for that matter and what should be corrected thereon. That, there are words which are stated to be highlighted in the affidavit by the applicant but, the applicant has failed to show how those highlighted words have been mistakenly put in the ruling and how they affect the same in any manner. That, she has not annexed anything, including plaint and amended plaint for this courts reference in making the prayed for corrections. Thus, by failure to explain how those errors affect the decision, the application is not maintainable. He found some matters which the corrections are sought for go to the root of the decision. Thus, if the application is allowed the same will substantially alter the impugned ruling and affect the merits of the case. They are not mere words the applicant put them to be. Therefore, the remedy available for the applicant would be to appeal or pray for review and not to seek for corrections against the ruling as she has done.

He submitted further that, should it be found that indeed there is a confusion between the 1<sup>st</sup> and 2<sup>nd</sup> defendant as argued by the applicant, then the change totally alters the reasoning and context of the ruling and thus becomes an error on the face of the record and not mere arithmetical and clerical errors worth correction under the provisions the application has been made under. He finally concluded that, as this is an application for review in disguise it is unmaintainable and the court cannot lend assistance to the applicant in her attempt to exhume and alter or change the matter that had been finalized. He prayed for the application to be dismissed with costs.

I have gone through the submission of both parties and the records available relating to this application. In essence all parties agree that there are some mistakes that needs to be corrected, but they do not agree on the modality to effect those corrections. Respondents argued that, the same have to be done through a review or an appeal as they go to the root of the matter that cannot be made through correction under section 96. The main question is therefore whether the prayed for corrections can be effected, i.e. is the application attainable? In my view they are, because as long as they involve merely clerical error and other forms of the accidental slips or mistakes covered under section 96. The records show that, it is the preliminary objections of the first defendant and of the plaintiff against the amended statement of defence of the first defendant which was heard after the second and the fourth defendants withdrew their preliminary objections on 18/11/2016. The records are intact, save for a bit of accidental mix-ups on the name of party and advocate involved, plus position of that particular party in a list of defendants. They do not constitute any error on face of record to invoke review for, in my considered view. The prayed corrections

do not alter this court's decision in any way as insinuated by the respondent's counsel. And they do not prejudice the rights of respondents in any way. Therefore, the application is granted as prayed for and corrected ruling and drawn order accordingly issued. No order as to costs.



A handwritten signature in blue ink, appearing to be "M. P. Opiyo", written over a horizontal line.

**M. P. OPIYO,**  
**JUDGE**  
**22/12/2020**