



**Daniel M. Amalemba Advocate t/a Amalemba & Associates Advocates v
Central Electricals International Ltd (Miscellaneous Civil Application
E049 of 2021) [2023] KEHC 24252 (KLR) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E049 OF 2021
DKN MAGARE, J
OCTOBER 24, 2023**

BETWEEN

**DANIEL M. AMALEMBA ADVOCATE T/A AMALEMBA & ASSOCIATES
ADVOCATES APPLICANT**

AND

CENTRAL ELECTRICALS INTERNATIONAL LTD RESPONDENT

RULING

1. It is not easy to say it is over. Sometimes grief takes time and parties continue mourning long after the burial has occurred.
2. The matter was done and dusted. However, in a series of application the same have been kept life.
3. This were among the many first matters I dealt with in Mombasa. The certificate of costs was made a decree. The matter arose from Advocate client bill of costs. The matter arose from Mombasa CMCC 1543 of 2016 Central Electricals International =vs= Suchae Investments Ltd.
4. The plaint had only 2 parties. The client herein and the defendant Suchan Investment Ltd. The client instructed Amalemba & Associates that for them. The matter subsequently resulted in this bill of costs. The bill was taxed inter parties there was no reference from the same.
5. Now the applicant seeks orders to join another party to the suit. The cause is completed. If there are other aspects, they need to be dealt with elsewhere.
6. There is no reference to this court. It is unnecessary to go into the merits and submissions. the bill of costs has been taxed and made a decree. This court of this functus officio. There is nothing the proposed



second defendant is coming to do in the matter. In *John Gilbert Ouma v Kenya Ferry Services Limited* [2021] eKLR, the court, Justice Njoki Mwangi, stated as doth: -

“

“20. The Supreme Court of Kenya in the case of *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 which reads: -
“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”

21. Section 99 of the *Civil Procedure Act* provides exceptions to the doctrine of functus officio in the following terms-

“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.”

7. In the case of *ICEA Lion General Insurance Co. Ltd v Julius Nyaga Chomba* [2020] eKLR, justice C. Meoli, stated as doth:

“15. Having discharged its duty on this appeal this court is therefore functus officio, defined in Black's Law Dictionary, Ninth Edition as “[having performed his or her office] (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.” In the circumstances, the court is wary of the Applicant's invitation to re-engage with this dispute in a manner that necessarily involves wading into a new controversy between the parties. The application dated 6th February 2019 is therefore dismissed with costs.”

8. There is no step remaining except execution. I do not find it prudent nor necessary to add another party. The last aspect is the firm of Hans Orchoe wishes to come on record. I have perused the application and I find nothing remaining to be done in the suit. The Application to come on record serves no useful purpose in a concluded suit.

9. It is anathema to good order to have a viscous cycle of applications in a Miscellaneous Application. In the circumstances I strike out the application dated 27/6/2023 and dismiss in limine the one dated 16/5/2023 with costs of 10,000/= and 25,000/= respectively.

10. This file is close except for execution which shall proceed forthwith without of judicial time to allow them to come on record. I have also noted they have filed an avalanche of applications just to confuse issues.

11. In the end I do not find merit in the application. It is unnecessary to belabour submissions of parties. It is incumbent on a party, to ensure that they engage in useful endeavour. There being no reference further let or hindrance.



Determination

12. In the circumstances I make the following orders: -
- a. The application dated 10/5/2023 lacks merit and is dismissed in limine with costs of 25,000/=
 - b. The application dated 27/6/2023 is struck out with costs of 10,000/=
 - c. The Applicant be at liberty to proceed to execution without let or hindrance.
 - d. The file is closed.

DELIVERED, DATED and SIGNED at MOMBASA on this 24th day of October, 2023. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Amalemba for Applicant

Hans Oicho for the Respondent

Court Assistant - Brian

