



**Peter (Suing the as the Legal Administrator of Peter Kutoyi Mikai - Deceased) v Chema Holdings Limited (Environment & Land Case 19 of 2014) [2025] KEELC 1339 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1339 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 19 OF 2014  
CK NZILI, J  
MARCH 19, 2025**

**BETWEEN**

**VERONICA NALIKA PETER ..... PLAINTIFF  
SUING THE AS THE LEGAL ADMINISTRATOR OF PETER KUTOYI MIKAI -  
DECEASED**

**AND**

**CHEMA HOLDINGS LIMITED ..... DEFENDANT**

**RULING**

1. Before the court is an application dated 11/9/2024, in which the applicant prays for the following orders;
  - a. Stay the proceedings of Kitale Magistrates Court ELC No.78 of 2021- Chema Holdings Limited -vs- Veronica Naliaka Peter- the lower court suit.
  - b. A declaration that land acquired through adverse possession is not defeated by amalgamation, subdivision, or creation of new title documents.
  - c. A declaration that the amalgamation of LR No.6650 with LR No. 5745 to form LR No. 33457 and subsequently subdivided into forty portions being LR Nos. 33457/1 to 33457/40 has no legal consequence since it refers in part or whole to the applicant's land measuring 2.3 acres excised from LR No. 6650 and registered in the name of the respondent.
  - d. An order do issue quashing the respondent's suit, ELC No.78 of 2021.
  - e. An order prohibiting the Magistrates Court in Kitale or any other station within Kenya from presiding over or determining proceedings challenging the applicant's occupation, possession,



or ownership of the 2.3 acres of land excised from LR No.6650 registered in the name of the respondent.

- f. Costs of the application.
2. The application is based on the grounds on the face of it. The applicant avers that vide a judgment dated 18/7/2019, the court declared her the proprietor of 2.3 acres of land from LR No. 6650, which judgment has not been appealed against or set aside, save for an application for review by the respondent, which was dismissed. The applicant avers that pending execution, the respondent filed ELC No.78 of 2021 seeking eviction, wherein the court ordered the Trans-Nzoia County Surveyor to conduct a survey of the respondent's land and to submit a report, which he did dated 31/10/2023.
3. Further, the applicant avers that the survey report concluded that the respondent had amalgamated LR No.6650 and LR No.5745 to form LR No. 33457, which was subsequently subdivided into 40 portions of LR Nos. 33457/1 to LR No.33457/40, out of which her portion measuring approximately 0.1360 hectares, falls within the LR Nos. 33457/3 and 33457/4.
4. Accordingly, the applicant avers that the respondent sought to amend the plaint in the lower court suit to have her evicted from LR No. 33457/4 instead of LR No. 5745, which application was allowed, and necessitated her to amend her defense.
5. The applicant deposes that LR Nos. 33457/4 and 33457/4 are within the location of LR No. 6650, which she has occupied and possessed 2.3 acres of the same since 1952.
6. The applicant also avers that it was during the pendency of the suit and execution of the judgment that the respondent caused the amalgamation, subsequent subdivision, and creation of new title numbers without her consent to defeat the proceedings and the decree herein, despite there being no demarcation or new boundaries established on the ground.
7. Again, the applicant avers that the respondent had filed ELC No. 102 of 2017 to stop the internment of the applicant's late husband on the land, for which the application was dismissed, subsequent to which the respondent obtained an interlocutory order for the exhumation of the body before the judgment in this suit.
8. The applicant avers that the lower court suit that was due for a mention on 24/9/2024 amounted to parallel proceedings, which is an abuse of the court process; she shall be barred from enjoying the fruits of her judgment; she shall be vexed twice on similar issues, and it is in the interest of justice that the orders sought are granted.
9. In her supporting affidavit sworn on even date, the applicant reiterates the grounds save to add that the suit was initially filed by the deceased, who was substituted upon his demise. The applicant says that she has an overriding interest over LR No. 6650, whereby she ought to be registered as the proprietor of 2.3 acres, and thus, any transaction on the land without her consent is illegal, irregular, and unlawful.
10. The applicant avers that the amalgamation and subsequent subdivision of the decreed land by the respondents was illegal and irregular; the respondent is guilty of material non-disclosure for failing to disclose to the lower court that the matters therein had already been determined. She marked as annexure VNP1 a list and bundle of documents.
11. The respondent opposed the motion by filing a notice of preliminary objection dated 1/10/2024 that the court is functus officio; the lower court rendered a ruling dated 9/12/2021, in which no appeal has been preferred, and the issue regarding amendment of the respondent's pleadings at the lower court was also determined in a ruling dated 21/5/2024, which again has not been appealed against. Reliance



was placed on Telkom Kenya Ltd -vs- John Ochanda 2014 eKLR and Kenya Commercial Bank Ltd -vs- Muiri Coffee Estate Limited (2016) KESC 6 (KLR).

12. In a further affidavit sworn on 4/11/2024, the applicant avers that she has filed a defense, witness statement, and a draft further amended statement of defense in the lower court suit.
13. Following this court's directions of 10/12/2024, the applicant provided clear copies of the annexures on pages 54 and 55. The said documents are a survey report dated 31/10/2023 and Survey Plans by the County Surveyor- Mr. Geoffrey K. Ting'oria, in regard to the lower court suit. The report confirms that the applicant herein occupies 0.9713 Ha. According to Survey Plan F/R No.537/85, LR Nos. 6650 and 5745 were amalgamated into LR No. 33457 and further subdivided into LR Nos. 33457/2 to 33457/40.
14. In addition, the report indicates that the land occupied by the applicant falls on LR No.33457/4 and encroaches onto LR No.33457/3 by approximately 0.1360 ha, as seen in the Plans attached thereto. The County Surveyor concluded and recommended that the suit land was already amalgamated and the applicant was occupying LR No. 33457/4, according to the Survey Plan F/R No. 537/85 authenticated on 17/1/2023. He attributed the encroachment to LR No. 33457/3 on inaccurate positioning, which ought to be adjusted to align with the survey plan F/R No.537/85.
15. The court has carefully looked at the application. The applicant seeks orders that the amalgamation, subdivision, and creation of new title documents may not defeat land decreed to her as acquired through adverse possession and to invalidate the said amalgamation, subdivisions, and creation of the forty portions, LR. Nos. 33457/1 to 33457/40. To my mind, these are substantive reliefs that this court may not decide on through affidavit evidence. They warrant a substantive suit. It is noted that other than the surveyor's report, the applicant has not attached any official search certificates, mutation forms, land control board consents and minutes from the land control board showing when the alleged changes took place. It is not enough to allege that they occurred during the pendency of the suit or the decree without specific evidence to back those assertions.
16. The respondent has raised a preliminary objection that the court is functus officio. The doctrine of functus officio was discussed in Raila Amollo Odinga -vs- IEBC (2017) eKLR, that the person with adjudicatory powers, as a general rule, exercises those powers only when it relates to the same matters, and once a decision is made, subject to any right of appeal, the decision is final and conclusive.
17. In Telkom Kenya Limited -vs- John Ochanda (supra), the court observed that the doctrine bars a merit-based decision against re-engagement with the case once a final judgment has been entered and a decree issued.
18. In Bellevue Development Co. Limited -vs- Vinayak Builders Limited & another(2014) eKLR, the court warned that functus officio does not foreclose proceedings that are incidental to or are a natural consequence of the final decision, such as execution and contempt proceedings, or where the court is asked to exercise supplemental jurisdiction. Again, in Raila Odinga & others -vs- IEBC (supra), the court held that the doctrine does not prevent a court from correcting clerical errors or a judicial change of mind, even after the decision has been communicated to the parties.
19. In Asanyo & others -vs- Attorney General (2020) KESC 62 (KLR), the court cited Fredrick Otieno Outa -vs- Jared Odoyo Okello & Other(2017) eKLR, that stare decisis creates clarity, predictability and legitimacy within the law, and that in determining whether a court is functus officio, the court has to consider if the matter was resolved with finality.
20. In Outa -vs- Okello & others 2017) KESC 25 (KLR), the court, upon reviewing comparative jurisprudence within the commonwealth, held that the supreme court becomes functus officio except



in exceptional circumstances as may be determined by the court exercising its inherent powers, so as to meet the ends of justice. Such exceptional circumstances were listed as:-

- a. If the judgment is obtained by fraud or deceit;
  - b. If the judgment is a nullity;
  - c. If the court was misled into giving the judgment and
  - d. If the judgment was rendered on the basis of a repealed law or deliberate concealment of a statutory provision.
21. In this application, the applicant has not come under any of the above exceptions. She was privy to and had she exercised due diligence, she would have established the status of the suit land at the hearing or soon after the judgment was delivered. Equally, the applicant did not seek inhibition orders to safeguard the suit land pending the hearing and determination of the suit. The applicant was also aware of the parties involved in the subdivision, who are not parties to this application and the suit.
22. The court cannot act in vain and issue orders in a vacuum without a substantive suit, more so when the issues raised ought to have been raised during the hearing of the suit through amendment of the pleadings.
23. The upshot is that I find the court functus officio as regards re-opening the judgment herein so as to proceed to issue prayers 3 and 4 of the application dated 11/9/2024. Equally, the court finds no basis and declines to stay Kitale Magistrates Court ELC No.78 of 2021, guided by Kenya Wildlife Service -vs- James Mutembei [2019] eKLR
24. The application is hereby dismissed with costs. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 19<sup>TH</sup> DAY OF MARCH 2025.**

In the presence of:

Court Assistant - Chemutai

Obok for the Defendant/Respondent present

Milimo Muthoi absent for the Plaintiff/Applicant

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

