



REPUBLIC OF KENYA



KENYA LAW
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**Ruenji v Omwenga & 2 others (Environment & Land Case
609 of 2014) [2023] KEELC 20933 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20933 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 609 OF 2014
LN MBUGUA, J
OCTOBER 19, 2023**

BETWEEN

LYDIA WANJIKU RUENJI PLAINTIFF

AND

THOMAS OMWENGA 1ST DEFENDANT

DANIEL SIBWORI 2ND DEFENDANT

FLORENCE OUMA JANGARA 3RD DEFENDANT

RULING

1. Judgment herein was delivered on 27.4.2023. The 3rd defendant has filed an application dated 24.7.2023 seeking the following orders;
 - i. Spent
 - ii. Spent
 - iii. That, pending the final determination of the present application, the Honourable Court be pleased to issue an order to stay the execution of the judgment entered into against the 3rd Defendant/Applicant on 27th April, 2023 and the 3rd Defendant/applicant be granted liberty to defend the plaintiff's suit.
 - iv. That, the Honourable Court be pleased to issue an order setting aside the ex-parte Judgment entered on 27th April 2023 against the 3rd defendant/applicant, albeit, upon terms.
 - v. That, the Costs of the application be provided for.
 - vi. Any other relief which the Honourable Court may deem fit and just to grant in the circumstances.



2. The applicant contends that she was denied an opportunity to be heard as she was never served, that her counsels on record did not file a defence for no fault of hers, and that she has a plausible defence.
3. The plaintiff opposed the application vide her replying affidavit dated 12.9.2023, averring that the applicant was properly served with the requisite documents and notices, and that the court is now functus officio.
4. I have considered all the arguments raised herein. I find that the reasons as to why this court denied the applicant an opportunity to defend the suit are captured in two rulings delivered on the same date of 14.2.2023. As rightly stated by the plaintiff, this court is now functus officio in this matter.
5. Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon, as was stated in Brian Muchiri Waihenya v Jubilee Hauliers Ltd & another; Geminia Insurance Co. Ltd (Interested Party) [2018] eKLR, thus any adjudication on the issue ought to be taken to a higher court as was stated in SCOK case of *Shollei v Judicial Service Commission & another* (Application 10 (E016) of 2022) [2023] KESC 8 (KLR) (Civ) (17 February 2023) (Ruling).
6. The upshot of the findings herein is that the application dated 24.7.2023 is found to have no merits, the same is hereby dismissed with costs to the plaintiff.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

