



Standard Chartered Kenya Nominees Limited (As Nominees of the Trustees of Standard Chartered Kenya Pension Fund) v Njeru (Suing as the Personal Representative of Mr. Samwel Njeru Muthi - Deceased) & 3 others (Environment & Land Case 537 of 2018) [2023] KEELC 22505 (KLR) (18 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22505 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 537 OF 2018
EK WABWOTO, J
DECEMBER 18, 2023**

BETWEEN

STANDARD CHARTERED KENYA NOMINEES LIMITED (AS NOMINEES OF THE TRUSTEES OF STANDARD CHARTERED KENYA PENSION FUND) PLAINTIFF

AND

FRANCIS NYAGA NJERU (SUING AS THE PERSONAL REPRESENTATIVE OF MR. SAMWEL NJERU MUTHI - DECEASED) 1ST DEFENDANT

KIPROTICH KATTAM 2ND DEFENDANT

REGISTRAR OF TITLES 3RD DEFENDANT

DIRECTOR OF SURVEYS 4TH DEFENDANT

RULING

1. This ruling is in respect to the Notice of Motion Application dated the 17th November, 2023 which was accompanied by a Supporting affidavit of Fred Waswa, where the Plaintiff sought the following orders;
 - i. Spent.
 - ii. This Honorable Court do issue conservatory orders restraining the 1st Defendant from implementing and/or otherwise executing or acting upon the orders of dismissal of this suit made on 9th November 2023, pending the hearing and determination of this Application.
 - iii. This Honorable Court do issue conservatory orders restraining the 1st Defendant from implementing and/or otherwise executing or acting upon the orders of dismissal of this suit



made on 9th November 2023, pending the hearing and determination of the intended Appeal against the dismissal order.

- iv. In the alternative to prayer b above, this Honorable Court be pleased to grant an order for maintenance of this *status quo* as of 9th November 2023, pending the hearing and determination of this Application.
 - v. In the alternative to prayer c above, this Honorable Court be pleased to grant an order for maintenance of this *status quo* as of 9th November 2023, pending the hearing and determination of the intended Appeal.
 - vi. The costs of and occasioned by this Application be provided for.
2. The application is premised on the main ground that following the dismissal of the Plaintiff's suit on 9th November 2023, the Plaintiff has preferred to appeal and has lodged a Notice of Appeal dated 16th November 2023 but the 1st Defendant was threatening to tear down the existing perimeter wall and infrastructure. It was also averred that the dismissal order did not grant rights of demolition or power to damage the Plaintiffs' property.
 3. In opposition to the application, the 1st Defendant filed grounds of opposition dated 20th November 2023. It was argued that the application was incurably defective and it was inexcusable that the Applicant failed to comply with the mandatory provisions. Additionally, it was argued that the provisions under which the application is brought under cannot be the basis for the Court to grant the orders sought. Relying on the case of *Sendy Kenya Freight Limited vs Multiple Hauliers Limited* (2021) eKLR it was argued that Courts in similar circumstances of non-compliance with rules had opted to dismiss the suits and therefore in this instance, the Court ought to dismiss the said application.
 4. I have considered the application, the grounds of opposition and oral submissions made by counsel for the parties. In my view, the main issue that arises for determination is whether the application dated 17th November 2023 is merited?
 5. I wish to reiterate that the Courts exists to protect and promote the rights of all persons without fear or favour. In determining the merit of the application placed before it, this Court must answer whether a Court can grant conservatory orders after being rendered *functus officio*? *Black's Law Dictionary* defines *functus officio* as:

“...Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority...”
 6. The Court of Appeal in *Behan & Okero Advocates vs National Bank Of Kenya* (2007) eKLR was of the view that a party cannot be allowed to blow hot and cold at the same time. The court further stated that considering that the suit has already been dismissed and the subsequent applications to revive it have been unsuccessful, the defendant's applications have no merit as they have been brought and/or premised on a non-existent suit. That to proceed to consider the merits or otherwise of the two applications would thus amount to an academic exercise.
 7. The Supreme Court of Kenya discussed the doctrine of *functus officio* in Election Petitions Nos. 3, 4 & 5 *Raila Odinga & Others vs. IEBC & Others* [2013] eKLR where they cited with approval an excerpt from an article by Daniel Malan Pretorius, in “*The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law*,” (2005) 122 SALJ 832:

“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 a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”[Emphasis Mine]

8. Additionally, the seven judge bench also made reference to *Jersey Evening Post Limited v A1 Thani* [2002] JLR 542 at 550:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available” [Emphasis Mine]

7. In the instant case, It is undisputed that the fate of the suit was sealed upon its dismissal on 9th November 2023. Consequently, in the usual order of practice, the Court would be deemed to have fulfilled its obligation to finality. In the foregoing, I find that all prayers sought by the Plaintiff herein are untenable being that the Court is functus officio and as such no suit exists to hold up or apply the prayers sought. In the circumstances, the application dated 17th November 2023 is without merit and the same is dismissed with costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF DECEMBER, 2023.

E.K WABWOTO

JUDGE

In the presence of:

Mr. Mbaluto and Mr. Ajak for the Plaintiff.

Mr. Osundwa for the 1st Defendant.

N/A for the other parties.

