



**African Brotherhood Church the Registered Trustees v Head Teacher,
Makivenzi Primary School & another (Environment & Land Case
413 of 2012) [2025] KEELC 3432 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3432 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 413 OF 2012**

NA MATHEKA, J

APRIL 29, 2025

BETWEEN

**AFRICAN BROTHERHOOD CHURCH THE REGISTERED
TRUSTEES PLAINTIFF**

AND

THE HEAD TEACHER, MAKIVENZI PRIMARY SCHOOL 1ST DEFENDANT

**THE MANAGEMENT COMMITTEE MAKIVENZI PRIMARY
SCHOOL 2ND DEFENDANT**

RULING

1. The application is dated 2nd May 2024 and is brought under Order 40 Rule 1(1) of the Civil Procedure Rules and Sections 1A, 1B, 3A and 63 (c) of the [Civil Procedure Act](#) seeking the following orders;
 1. That the Application be certified urgent and heard ex-parte in the first instance.
 2. That the Survey and beaconing exercise carried on 20th September, 2023, the Land Registrar's report dated 29th September, 2023 and all subsequent actions with relation to land parcel No. Machakos/Matuu/1263 be declared a nullity.
 3. That a fresh survey exercise and beaconing be carried out in compliance of the Judgment delivered by the Honorable Court on 23rd February, 2023 at the expense of the Land Registrar and the County Surveyor.
 4. That costs of this Application be awarded to the Applicant.
2. It is based on the following grounds that Judgment was delivered in the instant matter wherein one of the terms of the Judgment was the Land Registrar and the Surveyor of the County Government of Machakos were ordered to clearly demarcate the respective boundaries of Makivenzi ABC Church,



Makivenzi Secondary School and Makivenzi Primary School within land parcel No. Machakos/ Matuu/ 1263. That in executing the orders as issued, the Land Registrar and the County Surveyor were to pick the boundaries of the three institutions as they are on the ground. That when the County Surveyor and Registrar visited the subject land parcel on 20th September, 2023 they blatantly ignored the existing boundaries and went ahead to set up new boundaries to the detriment of the Plaintiff/ Applicant and in blatant disregard of the Judgment of the Court. That as a result of the contemptuous action of the Land Registrar and the County Surveyor the Plaintiff/ Applicant is set to lose a portion of land measuring approximately 1.29 Acres. That in spite of repeated requests for a repeat survey exercise in compliance with the orders of the Honourable Court, the Defendants in cahoots with the Land Registrar and County Surveyor have refused and/or failed to comply. That it is in the interest of justice that the Survey exercise carried on 20th September, 2023 be cancelled and a fresh exercise be carried on since the Plaintiff's future expansion has not been put to consideration. That unless this Application is allowed the Plaintiff/ Applicant will suffer irreparable loss and damage.

3. The application is opposed and the Respondents stated that the court order was to clearly demarcate the respective boundaries of the institutions which was done and hence this application has no merit.
4. This court has considered the application and the submissions therein. Paragraph iii of the judgement dated 23rd February 2022 by Justice Christine Ochieng stated as follows;
 - iii. That the Land Registrar and Surveyor of the County Government of Machakos be and are hereby ordered to clearly demarcate the respective boundaries of Makivenzi ABC Church, Makivenzi Secondary School and Makivenzi Primary School within the Land Parcel No. Machakos/Matuu/1263 and issue them with respective letters of allotment to that effect; the three institutions will be responsible for the cost of the exercise.”
5. The Applicant states that in executing the above orders, the Land Registrar and the County Surveyor were to pick the boundaries of the three institutions as they are on the ground. That when the County Surveyor and Registrar visited the subject land parcel on 20th September, 2023 they blatantly ignored the existing boundaries and went ahead to set up new boundaries to the detriment of the Plaintiff/ Applicant and in blatant disregard of the Judgment of the Court. That as a result of the contemptuous action of the Land Registrar and the County Surveyor the Plaintiff/ Applicant is set to lose a portion of land measuring approximately 1.29 Acres. That in spite of repeated requests for a repeat survey exercise in compliance with the orders of the Honourable Court, the Defendants in cahoots with the Land Registrar and County Surveyor have refused and/or failed to comply. That it is in the interest of justice that the Survey exercise carried on 20th September, 2023 be cancelled and a fresh exercise be carried on since the Plaintiff's future expansion has not been put to consideration.
6. Section 18 of the Land Registrar [Act No. 3 of 2012](#) provides as follows;
 18. (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
 - (2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.
 - (3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary;



Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act.

7. Further Section 19 of the same Act provides as follows;

19. (1) if the Registrar considers it desirable to indicate on a field plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.
- (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

8. In the instant case and by the judgement dated 23rd February 2022 the Judge referred the matter to the Land Registrar and Surveyor of the County Government of Machakos to clearly demarcate the respective boundaries of Makivenzi ABC Church, Makivenzi Secondary School and Makivenzi Primary School within the Land Parcel No. Machakos/Matuu/1263 and issue them with respective letters of allotment to that effect. On the 20th September 2023 this exercise was done in the presence of the representatives of the three institutions, National Land Commission Officers, area chief, neighbours among others. According to the Applicant the land officers were to pick boundaries of the three institutions as they were on the ground. This order is not reflected in the judgement after carefully reading the same. I am satisfied that the order was carried out as per the judgement and this court is now functus officio. If the applicants are dissatisfied with the same then their recourse would now be to appeal against the said judgement. In the case of Telkom Kenya Ltd vs John Ochanda (suing on his behalf and on behalf of 996 former Employees of Telkom Kenya Ltd (supra), the Court of Appeal held as follows on the functus officio doctrine;

"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--

The general rule that final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal in re-St Nazaire Co, (1879), 12 Ch. D 88. The basis for it was that the power to rehear was transferred by the Judicature Acts of the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions. ---"

9. 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.”

10. 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.”

11. It is clear that the doctrine of functus officio does not bar a court from entertaining a case it has already decided but prevents it from revisiting the matter on a merit-based re-engagement once final judgment has been entered as is the case herein. Having discharged its duty on this suit 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 Applicants' invitation to re-engage with this dispute by cancelling the survey already done and ordering a fresh one. Having found that this court is functus officio and this application before me must fail. I find that the application is not merited and I dismiss it with costs to the Respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29TH DAY OF APRIL 2025.

N.A. MATHEKA

JUDGE

