



**Kimani v Njoka alias Pauline Wawira Kimani (Environment & Land
Case 204 of 2014) [2025] KEELC 1080 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1080 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 204 OF 2014**

JM MUTUNGI, J

MARCH 6, 2025

BETWEEN

JAMES MAINA KIMANI PLAINTIFF

AND

POLINE WAWIRA NJOKA ALIAS PAULINE WAWIRA KIMANI DEFENDANT

RULING

1. Before the Court is the Plaintiff's application, filed by way of Notice of Motion dated 3rd October 2023. The application is made under Order 51 Rule 1 of the *Civil Procedure Rules*, as well as Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and any other relevant legal provisions. In the application the Applicant prays for the following orders:
 1. An order directing the Land Registrars in both Nairobi and Kirinyaga Land Registries to remove the Defendant's name from land parcels Ngariama/Ngariambu/3924 and Plot No. 20727/99, and replace it with the Plaintiff's name.
 2. An order directing the Deputy Registrar to execute all necessary documents to facilitate the registration of the Plaintiff as the owner of Ngariama/Ngiriambu/3924 and Plot No. 20727/99.
 3. An order allowing the application to proceed without the need to provide copies of the Defendant's National Identification Card, Personal Identification Number, or passport-sized photographs.
 4. An order for costs of the application.
2. The grounds upon which this application is predicated include that on 21st May 2021 this Court delivered Judgment in favour of the Plaintiff. Following this judgment, an official search revealed that a different entry had been made in the Land Registry for land parcel 20727/99 (IR 121xxx). The



Plaintiff prays that, in the interest of Justice, the Defendant should be restrained through an injunction from wasting, damaging, charging, transferring, further constructing, or alienating the said land. The Defendant has neither appealed the Judgment nor applied for a stay of execution. The Plaintiff argues that substantial loss would occur if the orders are not granted, rendering the Judgment effectively meaningless.

3. The Defendant opposed the application and filed a Replying Affidavit dated 14th October 2024. In her response, she averred that she had not interfered with the title or made any changes to it. In fact, she asserted that she had provided the required documents to the court, delivering them to the contact person designated by the Plaintiff. She averred the Plaintiff's application was misconceived, scandalous, frivolous, and an abuse of the Court process.
4. On 13th November 2024, the Court observed that this case had been pending in Court for a long time and even if a Notice of Appeal had been filed, there was no stay order in effect. The Court in the premises indicated that it would review the record and issue a Ruling on the application dated 3rd October 2024, which is essentially related to execution to effectuate the decree of the Court.
5. The Court pronounced Judgment in this case as follows;
 1. A declaration be and is hereby made that the Defendant holds land parcel No. Ngariama/Ngiriambu/3924 and plot No. 20727/99 (IR No. 121xxx) solely in trust for the Plaintiff.
 2. A mandatory order directing the Defendant to transfer the suit properties LR No. Ngariama/Ngiriambu/3924 and Plot No. 20727/99 (IR No. 121xxx) to the Plaintiff failing which the Deputy Registrar of this Honourable Court do sign the transfer documents in favour of the plaintiff and to dispense with all the statutory requirements and titles.
 3. A permanent injunction be and is hereby issued retraining the Defendant, her servants, employees, agents or any person(s) acting under her directions from interfering with the Plaintiffs quiet enjoyment, possession and occupation of the suit properties namely L.R No. Ngariama/Ngiriambu/3924E and Plot No. 20727/99 (IR 121xxx).
 4. That each party to bear their own costs of this suit.
6. It is trite that once a Judgment is delivered, the Court becomes *functus officio* and may not make further orders that may reopen litigation.
7. *Black's Law Dictionary* (10th ed. 2014) defines a judgment as a decision made by a Court regarding the rights and obligations of the parties involved in a legal action or proceeding. A Judgment is the Court's final order concerning these rights and liabilities; it resolves all contested issues and concludes the suit. It represents the Court's definitive and official pronouncement on the law related to the case that was before it. Once a Judgment is issued, it effectively terminates the jurisdiction of the Court that rendered it. Except as expressly provided by law (for example, in cases of revisionary jurisdiction or under the slip rule), a Judgment makes the Court "*functus officio*," meaning it cannot reopen the case. If an Appeal is allowed, the case's jurisdiction transfers to an Appellate Court. The concept of "*functus officio*" signifies that once a Court has issued a Judgment following a lawful hearing, it is undesirable to revisit the matter unless it is for purposes of giving effect to the Judgment. This doctrine serves as a mechanism by which the law upholds the principle of finality. According to this doctrine, an individual granted adjudicative or decision-making powers may, as a general rule, not alter or reconsider their prior decisions.



8. In the case of *Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others* [2016] eKLR the Court of appeal held that;-

“..... a Judgment brings to an end the jurisdiction of the Court that delivers the same. In our considered view, the concept of partial Judgment or interim Judgment after hearing of the parties is unknown to the Kenyan law. A Court of law in delivering its Judgment must determine the rights and liabilities of parties. Save for the limited exceptions provided for in law, delivery of Judgment marks the end of litigation and marks the end of jurisdictional competence of the Court. If a Court is inclined to grant or make interim orders, it is within its powers to do so. However, a Court cannot deliver Judgment and invite further pleadings to be filed or reserve contested matters for its consideration and determination.”
9. In regard to the primary purpose of the application, I understand the Applicant's wish to be that the Judgment be given effect by way of execution. The Applicant seeks an order directing the Deputy Registrar of the Court to execute all necessary documents on behalf of the Defendant to enforce the decree dated 21st May 2021. Additionally, the Applicant seeks an order that the Land Registrars in both Nairobi and Kirinyaga cancel the Defendant's name on the titles for Plot No. 20727/99 (IR No. 121xxx) and Ngariama/Ngariambu/3924, replacing it with that of the Plaintiff. The Applicant further seeks to have the requirement for the Defendant to produce the original title documents waived.
10. The Court has mandate to deal with execution in order to effectuate its orders. In the case of *Lamb & Sons Ltd v Rider* [1948] 2 ALL ER 402, in which the English Court of Appeal observed:

“.....Execution is essentially a matter of procedure – machinery which the Court can, subject to the rules from time to time in force, operate for the purpose of enforcing its Judgments or orders”
11. The provisions of Section 34 of the *Civil Procedure Act*, enables the Court to effectuate its orders after Judgment. It provides as follows;-

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
12. I agree with the holding in the case of *Joseph Odhiambo v Nyakundi Omari* [2016] eKLR where the Hon Judge stated that;

“in this case , the Court's jurisdiction is limited to enforcing its judgment and must not allow for an open window within which parties can relitigate decided matters.”
13. Order 22 Rule 29 of the *Civil Procedure Rules* provides for execution as regards a decree of immovable property and delivery of possession and is applicable in the instant case.
14. The Court acknowledges that the Defendant has filed a Notice of Appeal and has expressed a desire to appeal the court's decision. However, no stay of execution orders are currently in effect. In such a situation, the Court cannot remain inactive, as doing so would result in hardship to the decree-holder, who deserves to benefit from the Judgment rendered.
15. The upshot is that I find the application to be meritorious and I allow the same on the following terms:-



1. That the Land Registrar Nairobi be and is hereby ordered to cancel the registration of Poline Wawira NjokaID/No. 10952xxx as owner of L.R. No. 20727/99 (IR No. 121xxx) and in place thereof register James Maina Kimanias the owner.
2. The Deputy Registrar of the Court be and is hereby authorised to execute all appropriate and necessary documents on behalf of the Defendant to facilitate the registration of the Plaintiff/Applicant as the proprietor of land parcel Ngariama/Ngiriambu/3924 and LR No. 20727/99 (IR No. 121xxx).
3. That the Land Registrar do and is hereby authorised to dispense with the production of such documents as maybe required to facilitate registration and are in the custody and possession of the Defendant/Respondent.
4. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 6TH DAY OF MARCH 2025.

J. M. MUTUNGI

ELC - JUDGE

