



Mohamudo & another v Juma (The Administrator of the Estate of the Late Juma Yussuf) (Environmental and Land Originating Summons 35 of 2019) [2025] KEELC 1131 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 35 OF 2019**

**JO MBOYA, J
MARCH 5, 2025**

BETWEEN

FATUMA GATTU MOHAMUDO 1ST PLAINTIFF

ZUBERI ABDALLA HASSAN 2ND PLAINTIFF

AND

YUSSUF JUMA (THE ADMINISTRATOR OF THE ESTATE OF THE LATE JUMA YUSSUF) DEFENDANT

RULING

1. The Plaintiff/Applicant has approached the court vide the application dated the 18/02/2025 and wherein the applicant seeks essentially an order for the removal of the restriction that was registered over and the respect of the suit property.
2. The application is premised and anchored on the various grounds that have been highlighted at the foot of the application. Furthermore, the application has been supported by the Affidavit of the Applicant sworn on even date.
3. The Defendant/Respondent has opposed the application and the same has contended inter alia, that the court is divested of the requisite jurisdiction to grant the orders sought and in addition, that the application is contrary to the doctrine of sub-judice in terms of Section 6 of the [Civil Procedure Act](#) Chapter 21 laws of Kenya.
4. Moreover, the Defendant/Respondent has also contended that the court is functus officio and hence the application ought to be dismissed with costs.



5. The application came up for hearing on the 5/3/2025 and where upon the Advocates for the parties agreed to canvass the application by way of oral submissions. In this regard, the issued directions and the application was orally heard.
6. Furthermore, it suffices to state that the submissions of the parties are on record.
7. I have duly examined the application dated the 18/2/2025 and the submissions by and on behalf of the respective parties and come to the conclusion that the determination of the application rests on two (2) salient issues namely;
 - a. Whether the court is seized of the requisite jurisdiction to entertain and adjudicate upon the application
 - b. Whether the orders sought ought to be granted.
8. Regarding the first issues namely; whether the court has the requisite jurisdiction, I wish to underscore that decree that underpins the currents application was rendered and given by this court. Further and in addition, the application herein is geared towards achieving the implementation of the orders of this court.

To this end, there is no gainsaying that the court that issued the Judgment is the ELC and not the Court of Appeal. Consequently, and by virtue of Section 30 of the Civil Procedure Act Chapter 21 Laws of Kenya; it is the ELC that has the jurisdiction to entertain and adjudicate upon any and every application intended to implement and enforce the Judgment.
9. Moreover, it is appropriate to state that the restriction is intended to defeat the realization of the Judgment of the court and hence this court is equally at liberty to deploy and apply the inherent and residual jurisdiction in terms of Section 3A of the Civil Procedure Act Chapter 21 laws of Kenya.
10. Suffice it to state that the purpose of the inherent jurisdiction of the court is to evert a miscarriage of justice; and to foster the achievement/attainment of the ends of justice by the court. [See the holding of the Supreme Court in the case of *Narok County Government Versus Livingstone Kunini Ntutu* [2018] eKLR at paragraphs 98 -100 of the decision].
11. Furthermore, the aspect of jurisdiction touching on the doctrine of *functus officio* is not legally tenable or at all. In particular, it is not lost on the court that once a judgment is issued; the court is chargeable with the mandate and authority to execute the same and execution and/or application for execution thereof cannot be defeated by the invocation of and reliance on the doctrine of *functus officio* or at all. Suffice it to state that the doctrine of *functus officio*; which has been invoked by and relied upon by the Defendant/Respondent is irrelevant and inapplicable.
12. Without belaboring the point, the proper import and tenor of the doctrine of *functus officio*, was highlighted by the Court of Appeal in the case of *Telkom Kenya Ltd Versus John Ochanda* [Suing on his behalf and on behalf of 996 former employees at Telkom Kenya Ltd [2014] eKLR. Simply put, that court has the requisite jurisdiction to entertain and adjudicate upon the instant application.
13. Next is the issue of merits of the application. I do wish to posit that the Judgment and Decree of the court has neither been appealed against and/or stayed. In the absence of an appeal and there being no order of stay of execution of the decree, the Plaintiff/Applicant is obliged to partake of and benefit from the fruits of the Judgment. Suffice to state that the Judgment of court confers and vest upon the beneficiaries thereof, the Applicant not excepted which rights must be actualized unless there exist a compelling reason to the contrary. However, in this case, there is no compelling reason to defeat and/or



delay the enjoyment of the Judgment [See the decisions of the court in the case of John Patrick Machira Versus East African Standard Ltd [2002] eKLR].

14. In view of the foregoing and taking into the account the terms of the Judgment and decree of the court; I am duly persuaded that the application is meritorious.
15. In the premises, the application dated the 18/2/2025 be and is hereby allowed and the restriction under reference be and is hereby removed.
16. Costs ordinarily follow the event unless the court orders otherwise. The event herein is that the application has succeeded and hence the Applicant is entitled to cost. In short, I hereby award the costs of the application to the Plaintiff/Applicant.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO ON THE 5TH DAY OF MARCH, 2025 IN THE PRESENCE OF:

Miss Mugo for the Plaintiff/Applicant

Mr Tony Muguna holding brief for Mr Munene for the Defendant/Respondent.

Court assistant: Lesimito Mukami

HON. JUSTICE OGUTTU MBOYA

JUDGE

