



**Mwilu v Mutei (Environment and Land Case Civil Suit 2 of 2016)  
[2025] KEELC 6133 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6133 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE CIVIL SUIT 2 OF 2016  
AY KOROSS, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**KASALU NZIOKA MWILU ..... PLAINTIFF**

**AND**

**JOYCE NDUNGE MUTEI ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of notice of motion dated 17/12/2024 filed by the defendant, where she seeks the following orders from this court: -
  - a. Spent.
  - b. That this honourable court be pleased to issue an order directing the officer commanding station, Joska, to provide security to the surveyor and the defendant in the sub-division and carrying out the groundwork of the land known as Mavoko Town Block 3/2592.
  - c. That this honourable court be pleased to issue any further orders made in the interest of justice.
  - d. That costs be awarded to the defendant.
2. The motion is supported by the grounds set out in the body thereof and the defendant's affidavit sworn on the instant date, and in a nutshell, she stated: a) she is the registered proprietor of land known as Mavoko Town Block 3/2592 (suit property), b) when she sought to sub-divide the suit property, the plaintiff and her son Dominic Kithuka rushed to it wielding a panga and threatened to kill the surveyor and the defendant, c) the judgment of 8/02/2023 and a ruling of 24/07/2024 were all in her favour, finally, d) the plaintiff had made it extremely difficult for her to enjoy her suit property. The motion was unopposed.



3. As directed by the court, the motion was canvassed by the written submissions of Mss. D.M. Mutinda & Co. Advocates for the defendant, dated 21/01/2025, and J.M. Tamata & Company Advocates for the plaintiff, dated 3/03/2025.
4. This court has carefully considered the motion, its grounds, affidavit, and submissions, and the 2 issues that fall for determination are: (a) whether this court is functus officio and (b) whether the motion is merited. These 2 issues shall be handled consecutively.

**a. Whether this court is functus officio.**

5. It is unfortunate that none of the parties addressed this court on this issue. The common law doctrine of functus officio prevents the reopening of a matter once the court has rendered its final decision, and it bars a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. Its origins, purpose and exceptions were highlighted in the decision of Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited) [2014] KECA 600 (KLR) in the following manner:-

“It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19<sup>th</sup> Century. In the Canadian case of Chandler vs Alberta Association of Architects [1989] 2 S.C.R. 848, Sopinka J. traced the origins of the doctrines as follows (at p. 860);

“The general rule that a 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 to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions:

1. Where there had been a slip in drawing it up, and,
2. Where there was an error in expressing the manifest intention of the court. See Paper Machinery Ltd. vs. J.O. Rose Engineering Corp., [1934] S.C.R. 186”

6. The Supreme Court of Kenya decision of Odinga v Independent Electoral & Boundaries Commission & 3 others [2013] KESC 8 (KLR) cited with approval the book of Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832, that explicated this legal concept in the following manner:-

“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.”

7. It therefore follows that the exception to the doctrine is found in our Section 99 of the [Civil Procedure Act](#), which allows courts to correct clerical or arithmetical mistakes in judgments, decrees, or orders, or errors arising therefrom from any accidental slip or omission, either on its own motion or on the application of any of the parties.



8. In its final decision that it rendered on 8/02/2023, this court dismissed the plaintiff's suit and did not issue any positive orders in the defendant's favour save for costs. The significance of this decision is that the parties' position remained in the same position as they were before the suit was filed.
9. The proceedings that were before this court were perfected by its judgment, and this court is now functus officio and its decision can only be overturned by way of an appeal. The reliefs sought in the motion are an abuse of the court process as they do not seek to correct any errors in the judgment, and furthermore, these reliefs are not available to the defendant at this juncture. This court need not say more. This court therefore finds it is functus officio and as a result, the motion dated 17/12/2024 is hereby struck out with no orders as to costs. This file is hereby effectively marked as closed.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

23.09.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

M/s Sibika holding brief for Mr. Musyimi for applicant.

N/A for the respondent.

Ms Kanja- Court Assistant.

