



Mbagu (Suing on her behalf and as the administrator of the Estate of the Late David Mbagu Kingeche - Deceased) & 4 others v Karura Farmers Company Limited & 8 others (Environment and Land Case 3017 of 1990) [2025] KEELC 6048 (KLR) (17 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6048 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 3017 OF 1990
CA OCHIENG, J
SEPTEMBER 17, 2025**

BETWEEN

HANNAH NYAMBURA MBAGU (SUING ON HER BEHALF AND AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE DAVID MBAGU KINGECHE - DECEASED) 1ST PLAINTIFF

AGNES NYAMBURA MUGO (SUING ON HER BEHALF AND AS ADMINISTRATOR OF THE ESTATE OF THE LATE JAMES MUGO WAWERU - DECEASED) 2ND PLAINTIFF

KARUTHI KARANJA 3RD PLAINTIFF

HANNAH NYAMBURA MBAGU 4TH PLAINTIFF

SUSAN NJERI WAINAINA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE HENRY WAINANINA KARIUKI) 5TH PLAINTIFF

AND

KARURA FARMERS COMPANY LIMITED 1ST DEFENDANT

SAMUEL KUNGU 2ND DEFENDANT

FESTUS KADENGE 3RD DEFENDANT

GRACE GATHURI 4TH DEFENDANT

PETER MUGO MBUTHIA 5TH DEFENDANT

PETER MARERI 6TH DEFENDANT

FLORENCE WANGUI 7TH DEFENDANT

BENJAMIN MATHINGI 8TH DEFENDANT

PETER MUNGAI 9TH DEFENDANT



RULING

1. What is before the Court for determination is the 2nd and 9th Defendants Notice of Motion Application dated the 10th February 2025, where they seek the following Orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Honourable Court be pleased to extend the time and terms of stay of execution orders issued on 11th November, 2024 for a further period of ninety (90) days and/or such reasonable time the Honourable Court may deem fit to impose.
 - e. That, the costs of the application be in the cause.
2. The application is premised on grounds on its face and on the 2nd Defendant's supporting affidavit. He avers that on 11th November 2024, the Court granted stay of execution for a period of ninety (90) days to facilitate filing of a Record of Appeal. Further, that even before the said Ruling, they had applied to be supplied with typed proceedings to facilitate the filing of the Record of Appeal but they are yet to be supplied with the same and as such, the Record of Appeal is yet to be filed.
3. He attributes the delay to the file being bulky having been active in Court since 1990 and having been handled by different Judges. He asserts that they are apprehensive that execution of the judgment will proceed and render their intended Appeal nugatory unless the Court intervenes through issuance of the orders sought herein.
4. He claims that he is in occupation of the suit property together with the 9th Defendant and their families and it will occasion them irreparable harm if execution of the judgment was to be initiated before determination of their intended Appeal that has high chances of success. He insists that the Respondents will not suffer any prejudice if stay orders are granted pending the hearing and determination of their intended Appeal.
5. The 2nd Plaintiff filed a replying affidavit in opposition to the application. She avers that the 2nd and 9th Defendants unlawfully acquired the suit properties and seek to continue with the said illegality despite being issued with stay orders on 11th November 2024, which were self-executing and lapsed on 11th February 2025. She asserts that seeking an extension of self-executing orders is tantamount to asking the Court to sit on Appeal of its decision. Further, that extension of time is not a right of a litigant; but a discretionary power of the Courts where litigants have to lay a basis on what they seek from Court.
6. She avers that the 2nd and 9th Defendants are not deserving of the orders sought as they have not come to court with clean hands. She points out that there are hints of dishonesty on their part as their claim that they requested for typed proceedings even before a Nine (90) days stay was granted is false as they requested for the same vide a letter to the Deputy Registrar dated 4th October 2024 thus they also played a part in the delay of obtaining the typed proceedings as they were indolent and have been for the last thirty three (33) years. She also asserts that it is trite that a non-existent order cannot be extended.
7. The application is also opposed by the 1st, 3rd, 4th and 5th Plaintiffs vide the 3rd Plaintiff's replying affidavit. He avers that having substantively heard and pronounced itself with finality in the earlier



application for stay of execution by the same parties, this Court is deemed to be "Functus Officio" in so far as the instant application is concerned as the issue is res-judicata.

8. Further, that the ninety (90) days stay of execution orders earlier granted having effectively expired, the Court lacks the jurisdiction to validate, reinstate or extend non-existent orders. He insists that the 2nd and 9th Defendants have not met the threshold for extension of time to warrant this court to exercise its judicial discretion in their favour owing to their own indolence.

Submissions

9. The 2nd and 9th Defendants concede that the Court is functus officio on the issue of stay of execution having granted the order on 11th November 2024 but argue that the Court cannot be said to be functus officio on the issue of extension of the Ninety (90) days' stay granted. They submit that they have established the principles for extension of time as enumerated in the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR.
10. They submit that the reason for the delay in filing of the Record of Appeal is not only valid but reasonable as the delay in typing proceedings is beyond their control. They urge the Court to consider that the judgment herein was obtained through ex parte proceedings where their evidence and defence was never considered at all, they were condemned unheard and it is one of the grounds of the intended Appeal. To support this argument, they relied on the case of *Boleyn Magic Wall Panel Ltd v Nesco Services Limited* [2022] KEHC 10020 (KLR).
11. The 2nd Plaintiff reiterates her averments in her replying affidavit in opposition to the instant application and submits that this Court is functus officio with respect to the grant of stay orders against the Judgment and Decree delivered on 3rd October 2024, pursuant to this Court's self-executing stay orders. To support her arguments, she relies on the following decisions: *Moyale Liner Bus Services versus Gachu Ibrahim* [2021] eKLR; *Julius Njoroge Muira v Harrison Kiambuthi Mburu* [2011] eKLR and *Karachi Walla Nairobi Ltd v Sanji Van Mukherjee* [2015] eKLR.
12. The 1st, 3rd, 4th and 5th Plaintiffs submit that the application is res judicata thus its offends the provisions of Section 7 of the *Civil Procedure Act*. Further, that the earlier granted ninety (90) days stay order having lapsed on 11th February 2025, without extension prior to its expiry, got extinguished and as such it ceased being in place thus the Court cannot extend that which is no more. To support their arguments, they relied on the following decisions: *Nairobi Civil Appeal No. 60 Of 2013 between Telkom Kenya Limited v John Ochanda & Others*, (2014) eKLR; *Raila Odinga v Independent Electoral and Boundaries Commission & 3 Others* [2013] eKLR and *Niangu v Wambugu and Another*, Nairobi HCCC No. 2340 Of 1991 (unreported).

Analysis and Determination

13. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether this Court can extend the time and terms of stay of execution orders issued on 11th November, 2024 for a further period of ninety (90) days.
14. Judgment was entered herein for the Plaintiffs on 3rd October 2024. Subsequently, the 2nd and 9th Defendants were granted stay of execution for a period of ninety (90) days from 11th November 2024, which lapsed on 11th February 2025. The instant application was filed a day before lapse of the stay period.
15. The 2nd and 9th Defendants seek to extend the time and terms of stay of execution orders issued on 11th November, 2024 for a further period of ninety (90) days and/or such reasonable time the Honourable



Court may deem fit to impose and claim there was a delay in receiving proceedings, which was beyond their control.

16. The Plaintiffs contend that the Court already pronounced itself on the issue of stay of execution and it is trite that when a Court has already pronounced itself on a matter, it is deemed to have performed all its duties in the case and it becomes functus officio. Further, that the Court cannot validate expired orders.
17. The functus officio doctrine was pronounced by the Supreme Court in *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR where it stated thus:

“We, therefore, have to consider the concept of functus officio,” as understood in law. Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832, has thus explicated this concept: “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.”
18. In *Moyale Liner Bus Services v Gachu Ibrahim* [2021] eKLR, the Court stated that:

“Although ... the Court already pronounced itself on the issue of stay of execution, this Court observes that the instant application is similarly one touching on stay of execution when a court has already pronounced itself on a matter, it is deemed to have performed all its duties in the case and it becomes functus officio. This Court would, therefore, not allow any attempts to re-open the matter for stay of execution, which will have the court re-hear the application again. The essence of functus officio is to give finality to the adjudication of matters.”

See also the case of *Karuri v Housing Finance of Kenya & 2 Others* [2024] KECA 335 (KLR)
19. The 2nd and 9th Defendants claim that their reason for delay is excusable and that they deserve this Court’s discretion as they have established the principles for extension of time as stated in the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR.
20. From the Court record, I note that the Orders sought to be extended already lapsed. Further, I note it is actually the Applicants herein who applied for typed proceedings much later and hence cannot blame the Court for delay. I have had a chance peruse the Court record and note that the typed proceedings are available. Based on the facts as presented while associating myself with the decisions cited and applying them to the circumstances at hand, I find that this Court is functus officio and cannot extend the orders of stay of execution that were already granted. Further, since the orders have lapsed, there is nothing to extend. I opine that since the Applicants have already filed a substantive Appeal, they can hence seek for stay of execution before the Court of Appeal.
21. In the circumstances, I find the instant Notice of Motion application unmerited and will proceed to dismiss it with costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2025



CHRISTINE OCHIENG

JUDGE

In the presence of:

Matwere for 1st, 3rd, 4th, 5th Plaintiffs

Ms. Okoth for 2nd Plaintiff

Manyara for Applicant

Court Assistant: Joan

