



**Kiarie v Karai farmers Co-operative Society Limited & another (Environment & Land Case 81 of 2019) [2024] KEELC 6977 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6977 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 81 OF 2019  
A OMBWAYO, J  
OCTOBER 16, 2024**

**BETWEEN**

**LEAH NYAMBURA KIARIE ..... APPELLANT**

**AND**

**KARAI FARMERS CO-OPERATIVE SOCIETY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**GEOFFREY KAHIU KARANJA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. The Plaintiff/Applicant filed the instant application dated 20th March, 2024 seeking the following orders:
  1. Spent.
  2. An order to revive the suit which has abated do issue.
  3. Costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of Leah Nyambura Kiarie the Applicant herein.
3. She stated that she filed the instant suit for the recovery of her land which she has been in occupation. That she only became aware of the 2nd Defendant's death when Peter Kitashori sued Dickson Mbugua Kuria in Naivasha CM ELC E070 of 2022 claiming that he had been appointed as the administrator of the deceased's estate. She stated that the case was later withdrawn on 25th May, 2023 when he discovered that Dickson Mbugua was not the owner.
4. That the 2nd Defendant filed an application to be substituted but did not serve her but became aware after perusal of the court file. She added that she never opposed the application as it sought similar



orders as she would have sought to enable substitution. She stated that the cause of action survived the deceased's death and that it was in the interest of justice that the abated suit be revived for the case to be heard on merit. She further stated that the current market value for the suit properties was over 30 million and it would only be in the interest of justice and fairness that that the suit be revived to allow her prosecute her case.

### **Response**

5. The 2nd Defendant/Respondent filed his replying affidavit sworn on 27th August, 2024 where he averred that on 7th March, 2024 this suit was marked as having abated and the same struck out for being incompetent. He further averred that prior to the suit having been marked as abated, the Plaintiff/Applicant participated in the said proceedings as it was after an inter-parties hearing of the application dated 9th January, 2024.
6. The Respondent averred that any party aggrieved by the court's decision of 7th March, 2024 could only appeal or apply for review of the said ruling. He urged the court to dismiss the present application for lack of merit.

### **Submissions**

7. The Plaintiff/Applicant counsel filed his submissions dated 25th September, 2024 where he reiterated the contents of the Applicant's supporting affidavit. He relied on Order 24 Rule 1 of the Civil Procedure Rules and submitted that the cause of action survives upon the death of a Plaintiff or Defendant. Counsel further relied on Sections 1A and B of the *Civil Procedure Act* where he submitted that the court ought to handle matters with the purpose of attaining just determination of proceedings.
8. In conclusion, counsel urged the court to revive the suit so as to accord both parties a chance to present their cases on merit.

### **Analysis and Determination**

9. This court has considered the application and supporting affidavit and the replying affidavit and is of the view that the main issue for determination is whether the application dated 20th March, 2024 is merited.
10. It is not in dispute that this court on 7th March, 2024 found that the suit abated against the 2nd Defendant and that the suit against the 1st Defendant struck out. The said ruling emanated from the Respondent's application dated 9th January, 2024 where the Applicant was duly served with the same as evidenced by the affidavit of service sworn by Richard Kipkirui Kerich on 18th January, 2024. It is also not in dispute that the Applicant through her advocate participated in the proceedings that led to the court's ruling on 7th March, 2024.
11. The Applicant has filed the present application which from the prayers does not qualify as review or appeal of this court's ruling. This court already pronounced itself on the issue and going into determining the instant application would be like sitting in its own appeal.
12. In the case 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) the court cited with approval the Supreme Court case in *Raila Odinga & 2 Others V Independent Electoral and Boundaries Commission & 3 Others* [2013] eKLR where it held as follows:

...“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.”

13. The same court also cited the case in Jersey Evening Post Ltd VS Ai Thani [2002] JLR 542 at 550 where the court held that:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available.”

14. It is this court’s view that there was finality as to the proceedings, merits and decision in the application dated 9th January, 2024 by virtue of the ruling of this court on 7th March, 2024. I find that this court thereafter became functus officio and any issues of grievance could only be dealt with as an appeal or review which is not the case in the present appeal.
14. Consequently, I find that the instant application is devoid of merit and is therefore dismissed with costs to the Respondent. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16TH DAY OF OCTOBER 2024.**

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

