



**Maji Moto Group Ranch & 10 others v Matunke & 14 others; Sankale
& 4 others (Interested Parties) (Environment & Land Petition
268 of 2017) [2023] KEELC 18587 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 268 OF 2017**

CG MBOGO, J

JULY 6, 2023

BETWEEN

MAJI MOTO GROUP RANCH 1ST PETITIONER
TWALA MANKI 2ND PETITIONER
KILETIA SAYIALEL 3RD PETITIONER
SIMON MAISON TONGOYO 4TH PETITIONER
NAGIYO MEIKWAYA 5TH PETITIONER
PARMMOIS NASI 6TH PETITIONER
MEPUKORI NYAYIA 7TH PETITIONER
NCHAO SIOLOLO 8TH PETITIONER
TOPOIKA NTOKOIWUAN 9TH PETITIONER
TIMAYIO TIKANI 10TH PETITIONER
TIAPUKEL NANTEYA 11TH PETITIONER

AND

MAYONE DAVID MATUNKE 1ST RESPONDENT
JAMES PASHAMAI AHIRE 2ND RESPONDENT
SENET RIAMIT 3RD RESPONDENT
MAINKA MUNTET 4TH RESPONDENT
TUMATE PARMUAT 5TH RESPONDENT
SALANKAT MERKU 6TH RESPONDENT



NGERE MOROMBA	7 TH RESPONDENT
ORKUNEE NKONG'ONI	8 TH RESPONDENT
PATRICK KIMURSOI	9 TH RESPONDENT
DAVID NANTEYA	10 TH RESPONDENT
THE DISTRICT LAND REGISTRAR	11 TH RESPONDENT
THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER	12 TH RESPONDENT
THE MINISTRY OF LANDS, URBAN & PHYSICAL PLANNING	13 TH RESPONDENT
THE ATTORNEY GENERAL	14 TH RESPONDENT
THE NATIONAL LAND COMMISSION	15 TH RESPONDENT

AND

OLONANA OLE SANKALE	INTERESTED PARTY
REBECCA PEIYIAI KUDATE	INTERESTED PARTY
LEITA OLE YENKO	INTERESTED PARTY
EQUITY BANK (K) LIMITED	INTERESTED PARTY
OMNIVENTTURES LIMITED	INTERESTED PARTY

RULING

1. Before this court for determination is the Notice of Motion application dated April 20, 2023 filed in court on April 24, 2023 by the 1st, 2nd, 3rd, 5th, 7th and 10th respondents (hereinafter referred to as the applicants) and which is expressed to be brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* seeking the following orders: -
 1. spent.
 2. That interim orders of stay of execution and implementation of the decree issued thereafter which was granted on August 4, 2022 and thereafter extended by this honourable court be reinstated until the application dated August 3, 2022 is heard and determined.
 3. That the costs of the application to abide the outcome of the notice of motion dated August 3, 2022.
2. The application is premised on the grounds on the face of it and more particularly in the affidavit annexed thereto.
3. The application is supported by the affidavit of Mayone David Matunke was sworn on even date. Through the affidavit, the respondents/applicants deposed that on August 4, 2022, Oundo, J sitting as the duty court issued a temporary order of stay of execution of the decree issued on July 25, 2022 pending further orders or directions. The respondent/applicant further deposed that on August 22, 2022, it emerged that the petitioners' advocates had filed a notice of preliminary objection and the



- court issued directions that the preliminary objection be canvassed first with parties given directions to file and serve written submissions.
4. That the interim orders issued on August 4, 2022 were extended to September 21, 2022 when the matter came up for mention for compliance and to take a ruling date. The respondent/applicant further deposed that on September 21, 2022, the interim orders were extended to October 12, 2022 when the matter was again slated for a mention. That on the said October 12, 2022, the court fixed the matter for a ruling on November 15, 2022 and no mention of extension of orders was made.
 5. The respondent/applicant deposed that on November 15, 2022 there was no mention of extension of the orders after the ruling was delivered electronically. Further, that the matter was mentioned on January 19, 2023 and due to either an oversight or inadvertence, the interim orders were not extended. The respondent/applicant deposed that failure to request extension of the orders is excusable and was not intentional and such mistake should not be visited on a litigant. Also, that failure to have the interim orders extended should not be construed to mean that the orders died a natural death. As such, the respondent/applicant prays that the interim orders granted on August 4, 2022 be restored or reinstated until the application dated August 3, 2022 is heard and determined.
 6. The application was opposed by the replying affidavit of Twala Manki on behalf of the petitioners/respondents which was sworn on May 12, 2023. The petitioner/respondent deposed that this court has no jurisdiction to entertain the instant application as this court was rendered functus officio on July 29, 2022 when it vacated the orders for stay obtained by the respondents'/applicants' on account of the petitioners'/respondents' application dated July 25, 2022. As such, this court can only sit to review the orders it issued on July 26, 2022.
 7. The petitioners/respondents further deposed that the orders issued on August 4, 2022 were issued by a court that lacked jurisdiction as it was already functus officio on July 26, 2022. Also, that the respondents/applicants' failed to inform the court sitting during the vacation of two pending previous applications which was also material non-disclosure on the part of the respondents/applicants to obtain orders of stay.
 8. Further, that the only remedy lied in the review of the orders dated July 29, 2022 and not a new application dated August 3, 2022 aimed at misleading this court. In addition, that from the foregoing, this court lacked jurisdiction to determine the application dated August 3, 2022.
 9. The petitioners/respondents went ahead to oppose the application dated August 3, 2022 on averments that the applicants were not properly before court and that this court cannot reinstate or restore orders acquired pre-regularisation and correctly put, there is no active application post regularization save for the contempt of court application that has since been dismissed.
 10. The petitioners/respondents went ahead to respond to the application dated August 3, 2022 in paragraphs 12 and 14. The petitioners/respondents further deposed that in the event that this court finds that it has jurisdiction, then their position is that the respondents/applicants are seeking a reinstatement of a temporary order alleging there was a technical hitch in its extensions and that no prejudice will be suffered by the respondents. The petitioners/respondents maintained the position that the prejudice being suffered is unmeasurable as a community of over six thousand members having litigated this case for more than seven years are being denied the opportunity to enjoy the fruits of their judgment. That with no appeal or review being preferred, it has almost been 11 months since judgment was delivered and it is imperative that the community enjoys the fruits of the judgment.
 11. The petitioners/respondents further deposed that the orders granted by Justice Oundo were granted temporarily to allow the respondents present their case before the ELC court in Narok. Also, that it



is important to note that this is the fourth application yet the application of stay of execution of the orders is yet to be prosecuted to its logical conclusion. The petitioners/respondents went on to state the position in which the application dated July 22, 2022 was handled and further deposed that while all counsel were present on November 15, 2022 when the ruling was delivered, counsel ought to have moved the court seeking extension of the orders. As such it is misleading for the applicants to have further informed the court that interim orders had been extended by consent yet that position was not true as the orders had died a natural death through effluxion of time.

12. The petitioners/respondents further deposed that the non-extension of the orders on November 15, 2022 saw the temporary orders die a natural death and even then, the respondents/applicants have not placed evidence to show prejudice suffered or even offered security for costs.
13. Further, that the respondents/applicants cannot implore this court to reinstate or restore the interim orders as a matter of right as they have not shown seriousness in seeking leave to have their stay of execution of the decree be admitted as having been filed without the counsel not being properly on record.
14. The petitioners/respondents further deposed that the respondents/applicants have continuously misrepresented issues before this court and filing numerous applications which is a tactic used to abuse the court process and bring mockery in the finality of litigation. Also, that the recourse available to the respondents/applicants lies with the Court of Appeal as they seek to be reinstated to a position of maintenance of status quo post judgment.
15. The respondents/applicants filed a supplementary affidavit in response thereto which was sworn by Mayone David Matunke on May 25, 2023. The respondents/applicants reiterated the contents of the supporting affidavit annexed to the application and further deposed that they have since filed an appeal at the Court of Appeal and served the same. Further, that the application dated August 3, 2022 is yet to be heard for the court to pronounce itself on the issue of security for costs.
16. Further, that since this court has not given any further directions as would affect the stay order, then the same can be extended pending hearing and determination of the application dated August 3, 2022.
17. On June 12, 2023 and in the presence of counsel for both parties, this court directed that the application be canvassed by way of written submissions. The respondents/applicants sought to rely entirely on their application and affidavits as it flows from facts. On the other hand, and as at the time of writing this ruling, the petitioners/respondents had not filed their written submissions.
18. I have considered the application and the replies thereof and the issues for determination is whether this court has jurisdiction to hear and determine the application and if so whether the application has merit.
19. I will proceed to deal with the issue of jurisdiction as it goes to the foundation of the primary role of this court. In the case of *The Owners of Motor vessel 'Lilian 'S' Vs Caltex Oil Kenya Ltd (1989) 1 KLR 1*, the Court of Appeal stated as follows: -

' Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and court of law downs it tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

20. The petitioners/respondents contended that this court has no jurisdiction to entertain the instant application as it was rendered functus officio on July 29, 2022 when it vacated the orders for stay obtained by the respondents/applicants on account of their application dated July 25, 2022. That the



said orders were vacated as a result of material non-disclosure on the part of the respondents/applicants herein and for this reason, this court can only sit to review its orders issued on July 26, 2022.

21. I have perused the proceedings herein and the record shows that on July 25, 2022 this court allowed the notice of motion application dated July 22, 2022 in terms of prayer 2 pending the hearing and determination of the application. Prayer number 2 granted the respondents/applicants herein the orders of stay (or an order maintaining the status quo ante the judgment delivered on July 8, 2022) on temporary basis pending the hearing and determination of the application.
22. It followed thereafter, that the petitioners/respondents herein filed a notice of motion application dated July 28, 2022 and on the July 29, 2022 this court allowed the application in terms of prayer 4 which set aside and/or discharged the ex-parte orders delivered on the July 25, 2022 issued on July 26, 2022 for material non-disclosure. This court further directed that the application be canvassed together with the application dated July 22, 2022.
23. The record then shows that the respondents/applicants obtained stay of execution of the decree issued on July 25, 2022 by Oundo, J which was to subsist until further directions are issued. The question then is, is this court functus officio on the issue of stay of execution of the decree.
24. The Black's Law Dictionary, Ninth Edition defines the describes functus officio as: -

' [having performed his or her office]' (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.'
25. The rule of functus officio has exceptions. Section 99 of the *Civil Procedure Act* establishes the slip rule and it provides that: -

' Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.'
26. In *Election Petitions Nos 3, 4 & 5 Raila Odinga & Others versus IEBC & Others [2013] eKLR* the Supreme Court cited with approval an excerpt from an article by Daniel Malan Pretorius, in 'The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,' (2005) 122 SALJ 832:

' 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.'
27. In *Jersey Evening Post Limited versus Al Thani [2002] JLR 542 at 550* the court held to the effect 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 on adjudication must be taken to a higher court if that right is available.'

28. In *Telkom Kenya Ltd v John Ochanda (suing on his behalf and on behalf of 996 former Employees of Telkom Kenya Ltd)* (supra), the Court of Appeal held as follows on the functus officio doctrine-

' Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon--

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

29. In *John Gilbert Ouma v Kenya Ferry Services Limited [2021] eKLR* the court stated that;

' It is clear that the doctrine of functus officio does not bar a court from entertaining a case it has already decided but prevents it from revisiting the matter on a merit-based re-engagement once final judgment has been entered and a decree issued, as is the case herein.'

30. Having regard to the above authorities and in comparison, to the issue at hand, it can be discerned that both the stay of execution of the decree and the order to set it aside were obtained ex-parte. Similarly, the respondents/applicants obtained the same orders exparte albeit before a different court. In my view, the temporary orders of stay of execution was dealt with when this court set aside the same. An attempt to restore the said orders on the strength that Oundo, J granted the same would be equal to sitting on an appeal of the decision of this court. This court also noted in its proceedings that upon delivery of the ruling on November 15, 2022 no orders were extended.

31. In my view, it would serve justice if the parties particularly the respondents/applicants herein pursued the stay of execution application instead of the numerous applications. The temporary orders were dealt with once and for all and there is no need to relitigate over the same issues.

32. Arising from the above, this court is functus officio on the issue of temporary orders of stay of execution of the decree and as such finds no merit in the Notice of Motion application dated April 20, 2023 and I proceed to dismiss it with no orders as to costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON 6TH JULY, 2023.

HON. MBOGO C.G

JUDGE

6/7/2023

In the presence of:-

CA:T.Chuma

