



**Ondieki v Ndusi (Environment and Land Appeal E024 of 2021)
[2023] KEELC 21331 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21331 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E024 OF 2021
DO OHUNGO, J
NOVEMBER 7, 2023**

BETWEEN

HEBISIBA MORAA ONDIEKI APPELLANT

AND

ELPHAS ABASI NDUSI RESPONDENT

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Kakamega (Hazel Wandere, Senior Principal Magistrate) delivered on 15th June 2021 in Kakamega MCELC No 209 of 2018 Hebisiba Moraa Ondieki v Elphas Abasi Ndusi)

RULING

1. I delivered judgement in this appeal on October 4, 2022. I found no merit in the appeal and therefore dismissed it. In view of the close family relationship between the parties, I ordered that each party bears own costs of the appeal.
2. Aggrieved with the judgment, the appellant filed Notice of Appeal on October 11, 2022. Later, the appellant filed Motion dated October 18, 2022 seeking an order of prohibition and maintenance of status quo pending hearing and determination of the second appeal. Upon considering the application, I delivered a ruling thereon on May 29, 2023. In dismissing the application with an order that each party bears own costs, I held that I did not have jurisdiction to grant stay pending hearing and determination of a second appeal to the Court of Appeal. I urged the appellant to move to the Court of Appeal if she needed further relief.
3. The appellant is back, this time with notice of motion dated June 19, 2023, seeking review of this court's judgment on the ground that there has been discovery of new and important evidence which was not within her knowledge at the time the suit in the Subordinate Court and this appeal were heard and determined. The appellant has also filed notice of motion dated August 24, 2023 seeking maintenance of *status quo* pending determination of notice of motion dated June 19, 2023.



4. This ruling is in respect of both notice of motion dated August 24, 2023 and notice of motion dated June 19, 2023. Upon delivery of this ruling, notice of motion dated August 24, 2023 stands overtaken by events and I will therefore not consider it.
5. Notice of motion dated June 19, 2023 is supported by an affidavit sworn by the appellant. She deposed that she discovered new and important evidence which was not within her knowledge at the time the suit in the Subordinate Court and this appeal were heard and determined. She annexed a document which she contends shows that the respondent was a trustee.
6. The respondent opposed the application through grounds of opposition in which he contended that the applicant lacks locus standi and that the court is *functus officio*.
7. The application was canvassed through written submissions, which both sides duly filed. I have considered the application, the supporting affidavit, grounds of opposition and the submissions. The issues that arise for determination are whether this court is functus officio and whether the reliefs sought should issue.
8. It bears repeating that this court delivered judgment in this appeal on October 4, 2022. This court was not the trial court. At the time of hearing and determination of this appeal, no application for leave to adduce additional evidence before this court was made by the appellant. Consequently, the appeal was heard and determined based on the material that was before the trial court.
9. This court having delivered its judgment, it became functus officio as far as its power to determine the parties' respective claims in the matter goes. The court does not have jurisdiction to revoke or vary its decision, or to reopen the appeal with a view to admitting additional evidence or rehearing it. See *Raila Odinga & others vs. IEBC & others* [2013] eKLR.
10. In the circumstances, notice of motion dated June 19, 2023 was filed in a court without jurisdiction. A case or application filed in a court without jurisdiction is stillborn and no life can be breathed into it, however well-intentioned the efforts at resuscitation. See [*Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service*](#) [2019] eKLR.
11. In the result, I strike out notice of motion dated June 19, 2023. In view of the appellant's conduct of filing multiple applications before this court even after the appeal was determined, it is time that she started bearing the adverse consequences of those actions regardless of the family relationship between the parties. Litigation must end. The respondent shall have costs of notice of motion dated June 19, 2023.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF NOVEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the appellant/applicant

No appearance for the respondent/respondent

Court Assistant: E. Juma

