



**Republic v Attorney General & 7 others; Mwamba Sacco & 4 others (Interested Parties); Risen Company Limited (Exparte Applicant); Rebecca Wangui Muigai t/a Credible Fashions (Proposed Interested Party) (Application 527 of 2016) [2025] KEHC 2313 (KLR) (Judicial Review) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2313 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 527 OF 2016**

**JM CHIGITI, J  
MARCH 6, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE HONOURABLE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**THE TRAFFIC COMMANDANT ..... 4<sup>TH</sup> RESPONDENT**

**THE CENTRAL POLICE STATION (OCS) ..... 5<sup>TH</sup> RESPONDENT**

**THE BURUBURU POLICE STATION (OCS) ..... 6<sup>TH</sup> RESPONDENT**

**THE KAYOLE POLICE STATION (OCS) ..... 7<sup>TH</sup> RESPONDENT**

**THE KAMUKUNJI POLICE STATION (OCS) ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**MWAMBA SACCO ..... INTERESTED PARTY**

**UMOINNER SACCO ..... INTERESTED PARTY**

**UTIMO SACCO ..... INTERESTED PARTY**

**CITY TRAM LTD ..... INTERESTED PARTY**

**MARVELOUS SHUTTLE LTD ..... INTERESTED PARTY**

**AND**



**RISEN COMPANY LIMITED ..... EXPARTE APPLICANT**

**AND**

**REBECCA WANGUI MUGAI T/A CREDIBLE FASHIONS .... PROPOSED  
INTERESTED PARTY**

**RULING**

1. The application before this Court is the 6<sup>th</sup> Proposed Interested party's Notice of Motion dated 9<sup>th</sup> August, 2024. The application is brought Under Article 159(2)(d) of *the Constitution* of Kenya, 2010. Section 1A.1B, 3 and 3A of the Civil Procedures Act. and Order 51, Rule 1 of the Civil Procedure Rules. 2022. It seeks the following orders:
  1. Spent.
  2. The Court be pleased to join the Proposed 6<sup>th</sup> Interested Party to this suit for purposes of seeking an interpretation of the judgment dated 20<sup>th</sup> September, 2017 herein.
  3. Pending the hearing and determination of this application, an order be and is hereby issued staying the Judgment this Court delivered on 20<sup>th</sup> September, 2017 in Judicial Review Case No. 527 of 2016 - Risen Company Limited versus the Honorable Attorney General & Others to the extent that the same is claimed to apply to Loading Zone Bay 1 at the intersection between Ronald Ngala Street and Tom Mboya Street.
  4. Pending the hearing and determination of this application, an order be and is hereby issued directing the Chief Officer of Mobility of Nairobi City Council and the Deputy Registrar of this Court to conduct a joint site visit in the disputed zones in presence of the parties or their representatives and file their respective / separate reports stating the location and application of the license issued to Risen Company Limited at the intersection of Ronald Ngala Street and Mfangano Street and whether or not it is the same or different from the location and application in respect to the license for Loading Zone Bay 1 at the intersection between Ronald Ngala Street and Tom Mboya street which the Proposed 6<sup>th</sup> Interested Party holds.
  5. Order be and is hereby issued, by way of interpretation, that the Judgment of this Court delivered on 20<sup>th</sup> September, 2017 does not relate to Loading Zone Bay 1 situated in Starehe Sub-County. Nairobi Central, Interfina House. Ronald Ngala Street Plot No. L. R. No. 209/668 at the intersection between Ronald Ngala Street and Tom Mboya Street in respect to which the Proposed 6<sup>th</sup> Interested Party holds a license.
  6. An order be and is hereby issued that the judgment of the Court as delivered on 20<sup>th</sup> September, 2017 relates to the license issued to Risen Company Limited for the intersection between Ronald Ngala and Mfangano Street, which is for all purposes and intents a different location from Loading Zone Bay 1 that is at the intersection between Ronald Ngala & Tom Mboya Street.
  7. An order be and is hereby issued permanently prohibiting and restraining Risen Company Limited from interfering with the Proposed 6<sup>th</sup> Interested Party's peaceful use and occupation of Loading Zone Bay 1 that is situated in Starehe Sub-County, Nairobi Central, Interfina House, Ronald Ngala Street Plot No. L. R. No. 209/668 at the intersection between Ronald Ngala Street and Tom Mboya Street based on the judgment dated 20<sup>th</sup> September, 2017.



8. Costs of this application be provided for.
2. The Applicant owns and operates a business known as Credible Fashions in shops 5, 6, and 7 on the ground floor of Interfina House building as a license holder issued by the 3<sup>rd</sup> Respondent, licence which entitles her to the sole and exclusive use and occupation of Loading Zone Bay 1 situated at Starehe Sub-County Nairobi Central, Interfina House Ronald Ngala Street Plot No. L. R No. 209 668 at the intersection between Ronald Ngala Street and Tom Mboya Street which loading bay she utilizes for receiving shipments and conducting her business activities that includes the sale of goods and services.
3. According to her, the 9<sup>th</sup> Respondent/Exparte Applicant has a license that allows it to have its operations at the intersection between Ronald Ngala and Mfangano Street as a picking and dropping point for their passengers.
4. It is contended that this Court vide a judgement dated 20<sup>th</sup> September, 2017 issued an order in favor of the 9<sup>th</sup> Respondent in the following terms: -
  - “ 62. In the premises an order of mandamus is hereby issued directed to the 2<sup>nd</sup> to 8<sup>th</sup> Respondents compelling them to take the necessary legal steps to ensure that the applicants carry out their PSV operations along peacefully without interference by third parties and in accordance with the terms of their license as long as the same remains valid.”
5. It is the Applicant’s case that 9<sup>th</sup> Respondent/Ex-parte Applicant is brazenly using the aforementioned judgment as a basis for conducting its operations on Loading Zone Bay 1 at the intersection of Ronald Ngala Street and Tom Mboya Street, causing congestion and traffic and also without regard to her rights and curtailing her ability to conduct her business and earn a living.
6. The Applicant is seeking clarification on the interpretation of the judgment dated 20<sup>th</sup> September, 2017 whether it entitles the 9<sup>th</sup> Respondent to encroach and use the Loading Zone Bay 1 that is at intersection between Ronald Ngala Street and Tom Mboya Street, or is restricted to the intersection between Ronald Nga la Street and Mfangano Street as per the terms of its license.
7. It is her submission that Order 1 Rule 10 (2) of the Civil Procedure Rules allows for the joinder of any party to the proceedings.
8. Reliance is placed in the case of Trusted Society of Human Rights Alliance v Muma Matemu & 5 Others [2015] eKLR which outlined the criteria for determining whether a party qualifies as an interested party as follows: -
  - “ Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”
9. It is further submitted that the court vide its judgment dated 20<sup>th</sup> September 2017 directed the 2<sup>nd</sup> to 8<sup>th</sup> Respondents to ensure that the Applicant carries out its Public Service Vehicle (PSV) operations peacefully and in accordance with the terms of its license.
10. It is the applicant’s case that a party cannot extend the scope of a judgment beyond what is provided for in an order to confer upon itself an additional benefit not envisioned in the judgement.



11. Reliance is placed in the case of *Sam Ventures (K) Limited v Ouko; Mburu (Intended Interested Party)* (the Personal Representative of the estate of the late Edward Mburu Mugunyi t/a Mbugamu Enterprises) [2022] KEELC 3353 (KLR), where the Court while determining an application for interpretation of judgement admonished the Plaintiff for purporting to use a temporary injunction order as a basis for conducting evictions against an interested party, yet the same had not been expressly provided for in the order.
12. The Application is not opposed.

### **Analysis and Determination;**

The issues for determination is whether or not the applicant is entitled to the order sought.

13. Judgment in this suit was entered in the year 2017. To ask the court to admit her as an interested party to a suit that has a judgment that was issued 7 years ago no doubt amounts to an inordinate delay.
14. The intended interested party ought to have moved the court within a reasonable time of the delivery of the judgement or in the least explained the delay. The applicant does not explain to the court where she has been for all those seven years.
15. The applicant does not tell the court why she did not opt to file an independent suit to pursue what she is pursuing through the post judgment Application.
16. The right to identify issues for determination belongs to the principle parties to a suit. She is not a principle party the suit.
17. In so holding this court is guided by the Supreme Court's finding in the case of *Francis Kariuki Muruatetu & Another v. Republic & 5 others*, Sup. Ct. Pet. 15 & 16 of 2015 (consolidated); [2016] eKLR, as follows (paragraphs 41, 42):

“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties' before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court.

This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court” [emphasis supplied].



18. In like terms we thus observed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others*, Civil Appeal No. 290 of 2012 (paragraph 24):

“A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

Against such a background, the trial Court ought not to have entertained issues arising from the cross-petition by the interested party, especially in view of Article 163 (7) of *the Constitution* which provides that ‘All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court. Moreover, this cross-petition did not comply with Rule 15 (3) of the Mutunga Rules which speaks to a respondent filing a cross-petition; and it was also not in conformity with Rule 10 (2) of these Rules. Rule 10(3) cannot also be invoked as the replying affidavit of the interested party does not fit any of the descriptions contained therein.

19. What the intended interested party is seeking to do in the instant application is to introduce a new issue that can only be raised by the principle parties.
20. It is this court’s finding and I so hold that it is only the *Ex parte* applicant/Decree holder and the original respondent who can move the court as the principle parties for purposes of interpretation of the judgement. A stranger to the suit like the intended interests party lacks the locus stand to move the court for such reliefs.
21. It is my finding that this court, lacks the jurisdiction to engage in the interpretation of the judgment.
22. On another front, the applicant has repeatedly admitted that judgment has already rendered.
23. The Supreme Court in the case of *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission, Ahmed Issack Hassan, Uhuru Kenyatta & William Samoei Ruto* (Petition 5, 4 & 3 of 2013) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling) held as follows on the doctrine of *functus officio*;

“18. 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.”



24. This principle has been aptly summarized further in *Jersey Evening Post Limited v A1 Thani* [2002] JLR 542 at 550:

“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” [emphasis supplied].”

25. The judgment marked the finality and settlement to their issues that were raised in that suit and this court is functus officio and I so hold.

**Determination;**

26. The application has no merit whatsoever.

Order;

The application is dismissed with costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2025**

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**J. CHIGITI (SC)**

**JUDGE**

