



REPUBLIC OF KENYA



**Wainaina & another (Suing as the Legal Representatives of John Wainaina Wangari) v Shikomela & another (Civil Appeal 374 of 2019) [2025] KEHC 2382 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2382 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 374 OF 2019**

**JN MULWA, J**

**MARCH 6, 2025**

**BETWEEN**

**AGNES WANGARI WAINAINA ..... 1<sup>ST</sup> APPELLANT**

**PAUL KIARIE GICHAGA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE LEGAL REPRESENTATIVES OF JOHN WAINAINA WANGARI**

**AND**

**DAUDI SHIKOMELA ..... 1<sup>ST</sup> RESPONDENT**

**MULTIPLE HAULIERS (EA) LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before the Court for determination is the Appellants chamber summons dated 26/10/2023 filed by Agnes Wangari Wainaina and Paul Kiarie Gichaga (hereafter the Applicants) brought pursuant to Section 1A, 1B & 3A of the [Civil Procedure Act](#) (CPA) and Order 49 Rule 7(1) & (2) of the [Civil Procedure Rules](#) (CPR) seeking inter alia orders: -
  1. spent
  2. spent
  3. That the proceedings with respect to the application filed on 17.02.2023 and the ruling dated 13.10.2023 as delivered by Hon. S.K Motari (DR) be hereby set aside
  4. That the application by the Applicants filed on 17.02.2023 be placed before a judge for determination.



2. The motion is premised on grounds on the face thereof and supporting affidavit sworn by the 1<sup>st</sup> Applicant, who cites being one of the legal representatives of the estate of John Wainaina Wangari (deceased). The gist of his deposition is that the Applicants filed a motion dated 17.02.2023 seeking to act in person which was subsequently dismissed vide a ruling delivered on 13/10/2023 by Hon. S.K Motari (DR). It is his deposition that the said motion of on 17/2/2023 was one that the Deputy Registrar (DR) had no powers or jurisdiction to deal with under Order 49 Rule 7 of the CPR and therefore the proceedings and resultant ruling therein ought to be set aside.
3. The chamber summons application was opposed by way of a Preliminary Objection (PO) dated 05/12/2023 on grounds that: -
 

"The Honorable Court lacks jurisdiction to entertain the chamber summons application as it has since become functus officio having fully discharged its duty in the matter; that the motion as filed is disguised as an appeal and this honorable Court lacks jurisdiction to entertain an appeal against its own decision; and that the application is hopelessly incompetent, fatally defective and inadmissible and the same ought to be dismissed forthwith, even suo moto."
4. Directions were taken on disposal of both the chamber summons and preliminary objection by way of written submissions. Only the Applicant complied. Nevertheless, this Court has duly considered the application, the affidavit in support thereof, the preliminary objection as well as the Applicant's submissions, upon which the court flags the following issues for determination:
  1. Whether the DR had jurisdiction to hear and determine the Notice of Motion dated 17/02/2023?
  2. Whether the Court is functus officio of the matter?
  3. Whether this Court ought to set aside the proceedings and ruling of the Deputy Registrar rendered on 13/10/2023?
  4. Who should bear the costs of the application?
5. By the Notice of Motion dated 17/02/2023, the applicants sought leave of court to act in person. Upon the DR hearing the motion, she dismissed it on 13/10/2023. The applicants were obviously dissatisfied with the dismissal of their application, thus filed the application under review dated 26/10/2023, on grounds stated at the motion, one being that the DR had no jurisdiction to hear and determine the application, citing Order 49 Rule 7 Of the CPR.
6. Order 49 Rule 7 provides for applications that the Deputy Registrar is empowered to hear. At (iii) applications under Orders 3, 5 and 9 are stated as those the DR is empowered to hear.
7. As stated above, the applicants in the motion dated 17/02/2023 sought leave of court to act in person under Order 9 Rule 9. By the above alone, the Applicant/Appellants motion lacks merit. The DR is empowered to deal with motions under Order 9 as shown above.
8. As to the nature of a preliminary objection, the same was settled in *Mukisa Biscuits Manufacturing Company Ltd v. West End Distributors* (1969) EA 696 and therefore would require no restatement. The Preliminary Objection raised by the Appellant ordinarily constitutes a question on law, which if argued in limine, will dispose of the matter.
9. In *Odinga v Independent Electoral & Boundaries Commission & 3 others* (Petition 5, 4 & 3 of 2013) [2013] KESC 8 (KLR) (Ruling), 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.”

10. The court upon perusal of the reliefs sought by the applicant, it can deduce that they have invoked this court’s appellate jurisdiction pursuant to order 49 Rule 7(1) & (2) of the *CPR* as read with Section 3A of the CIPA in light of the DR decision rendered on 13/10/2023. It is evident that the applicants obviously being aggrieved by the DR’s decision have preferred an appeal to a superior functionary, and for all intents and purposes the plea of fuctus officio cannot apply in such a circumstance.
11. In the end, it is the courts determination that the Appellants/Applicants application dated 26/10/2023 lacks merit and is dismissed with costs to the Respondents.

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

**JANET MULWA**

**JUDGE**

