



**Ethics and Anti-Corruption Commission v Lowoton t/a Napeyok Suppliers
& Contractor & 2 others (Anti Corruption and Economics Crime
Miscellaneous Application E014 of 2025) [2025] KEHC 12583 (KLR)
(Anti-Corruption and Economic Crimes) (16 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI CORRUPTION AND ECONOMICS CRIME
MISCELLANEOUS APPLICATION E014 OF 2025**

**BM MUSYOKI, J
SEPTEMBER 16, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION APPLICANT

AND

**STEPHEN GOLE LOWOTON T/A NAPEYOK SUPPLIERS &
CONTRACTOR 1ST RESPONDENT**

TRABAMO INVESTMENT LIMITED 2ND RESPONDENT

JULIAH EKARAN KAMAI 3RD RESPONDENT

RULING

1. The application by way of notice of motion before this court dated 31st July 2025 seeks the following orders;
 1. Spent.
 2. Spent.
 3. This Honourable Court be pleased to reinstate and extend the orders made and issued by Hon. Justice Kanyi Kimondo on 14th April 2025 for a further period of 3 months from 10th July 2025.
 4. The costs of the application be in the cause.



2. The same is supported by affidavit of Jackie Kibogy sworn on 31st July 2025 and the ground indicated on the face of the said application. The genesis of the matter is an order which was issued by Honourable Justice Kanyi Kimondo on 11th April 2025 which was in the following terms.
 1. That the application is certified urgent and may be considered during the current Easter High Court Recess.
 2. That pending conclusion of investigations by the applicant into allegations of corruption or economic crime or institution of any recovery proceedings, an order be and is hereby issued prohibiting the respondents, their agents, servants or any other persons from withdrawing, transferring, disposing or in any other manner dealing with the funds held in the 4 bank accounts as particularized in prayer 2(a) to (d) of the originating motion.
 3. That the order above shall remain in force for a period of three months (90 days) only unless otherwise extended by the court.
 4. That the chamber summons and originating motion dated 11th April 2025 shall be served forthwith upon all the three respondents for mention/directions inter-partes virtually before the court on 10th July 2025 at 9.00 a.m. or thereabouts.
3. When the parties appeared before me on 10-07-2025, the orders aforesaid were not extended and in my ruling dated 31-07-2025, I made observation that the application by the respondents dated 22-04-2025 which sought to discharge the said orders of injunction had been overtaken by events because the orders had lapsed and had not been extended. As it would turn out, the order which was in possession of the applicants a copy of which is also in the court file were in the following terms;
 1. That this application is certified urgent.
 2. That an order be and is hereby issued prohibiting the respondents, their agents, servants or any other person from withdrawing, transferring, disposing or in any other way dealing with the funds held in the bank accounts as follows: -
 - a. Kshs.110,000,000 Held in Fixed Deposit A/C No. 099XXXX Equity Bank Lodwar Branch in the name of Napeyok Suppliers And Contractors.
 - b. Kshs.125,000,000 Held In Fixed Deposit A/C No. 0990xxxx Equity Bank Lodwar Branch in the name of Napeyok Suppliers And Contractors.
 - c. Kshs. 230,000,000 Held In Fixed Deposit A/C No. 01xxxx Co-operative Bank Lodwar Branch in the name of Kamais Julia Ekan.
 - D. Kshs. 649,375.36 Held In A/c No. 099xxxx equity Bank Lodwar Branch in the name of Trabamo Investment Limited.
 4. I have sought explanation from the Deputy Registrar on why the extracted order was in terms different from those given by the Honourable Judge and it has been explained to me that the error was on the part of the Assistant Deputy Registrar and the officers who extracted the orders. This is an error by officers of the court registry and cannot be blamed on either party. The respondents did not also seem to be aware of the terms of the orders given by Justice Kanyi Kimondo. This is a regrettable state of affairs and on behalf of the registry and the office of the Deputy Registrar, this court through this ruling, tenders unreserved apologies to the parties.
 5. I now turn to the merits of the application dated 31st July 2025. The deponent of the supporting affidavit has averred that since they were not aware that the orders were to lapse after ninety days, they



did not deem it fit to apply for extension of the orders. She takes the position that since Section 56(3) of the [Anti-Corruption and Economic Crimes Act](#) (ACECA) provides orders issued pursuant to the said Section should remain in force for six months, the orders granted on 11-04-2025 should have run for six months. According to the applicant, this position in law made it believe that it did not need to apply for extension of validity of the orders as the life of the orders is provided in the statute.

6. The application is opposed through replying affidavit of Stephen Lowoton sworn on 5th August 2025. Stephen avers that the application is incompetent as the remedy the applicant has after this court's ruling dated 31st July 2025, was either to appeal the decision or apply for review. He argues further that the current application is *res judicata* as the applicant made an oral application for review of my orders on 31-07-2025 which I declined. According to the respondents, this court having pronounced itself on the merits of application for review, it is *functus officio*. The respondents aver further that the applicant does not deserve the orders for extension of time as it has not demonstrated the progress of the investigations during the period it obtained the preservation orders.
7. The application was heard orally and I have given due consideration to the submissions made by the counsel for the parties. It is apparent that the issues for determination in this application are;
 - a. Whether the application is *res judicata*;
 - b. Whether the applicant deserves extension of the orders dated 11-04-2025.
8. The doctrine of *res judicata* posits that a court should not try a matter or issue which has before been tried and determined on merits by a competent court between the same parties. The ingredients of this doctrine are that; the previous matter must have been between the same parties or parties litigating under the same title as the current matter, the matter must have been determined on merits by a competent court and the issues in the current suit must have been the same issues in the previous suit. The Supreme Court of Kenya restated the ingredients of the doctrine in [John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others](#) (2021) KESC 39 (KLR) thus;

“For *res judicata* to be invoked in a civil matter the following elements had to be demonstrated:

 - a. there was a former judgment or order which was final;
 - b. the judgment or order was on merit;
 - c. the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
 - d. there had to be between the first and the second action identical parties, subject matter and cause of action.”
9. In this matter, it is indisputable that parties in the current application were the same as in the oral application for review made on 31st July 2025. It is also indisputable that this court was competent to handle the issues raised and determined on 31-07-2025 as well as the issues in the current application. The question which begs for an answer on this point is whether the issues raised for determination in the oral application are the same as the issues in the current application.
10. The oral application made on 31-07-2023 was for me to reconsider my decision that the respondent's application dated 22-04-2025 had been overtaken by events, on account that I had misconstrued the orders dated 11-04-2025. The basis of that argument was the variance between the order issued by the



court and the extracted one as mentioned earlier. In my ruling, I declined the application for reasons that the order made by the Judge was clear on the lifespan of the same. There was no application for extension of the validity of the orders and that issue was neither argued nor decided on. The current application has been brought under Order 50 Rule 6 of the [Civil Procedure Rules](#) and Section 56 of [ACECA](#). In that case, it is my finding and I hold that the application dated 31st July 2025 is not *res judicata* the oral application made the same day.

11. The respondent has argued that this court is *functus officio*. *Functus officio* applies where the court has finally disposed of the matter with no widow of control over the proceedings. While making my ruling on 31-07-2025, I stated that the parties were at liberty to apply meaning that the court retained the residual powers to consider an application by either of the parties. In [Syombua Muli Mutuva v Charles A.K. Mulela](#) (2014) KECA 309 (KLR), the Court of Appeal followed its finding in unreported case of [Caltex Oil \(K\) Limited v Rono Limited](#), civil application number 97 of 2008 where it had held as follows;

“The jurisdiction of the Court to extend time fixed by the Court where there is a default clause was considered by this Court in [Caltex Oil \(K\) Limited v Rono Limited](#) - Civil Appeal/Application No. 97 of 2008 (unreported) where the Court said in part:

“However the fact that a default clause has been imposed by a court does not necessarily deprive a court of its jurisdiction to extend time. As a general principle, where the court fixes time for doing a thing it always retains power to extend time for doing the act until it has made an order finally disposing of the proceedings before it. It seems that the main test is whether the Court still retains control of the order, notwithstanding that there has been default. That would necessarily depend on the true construction of the default clause.”

12. In [John Gilbert Ouma v Kenya Ferry Services Limited](#) (2021) KEHC 7107 (KLR), Honourable Lady Justice Njoki Mwangi held 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.”

13. The Supreme Court of Kenya has had an opportunity to discuss the principle of *functus officio* where in [Odinga v Independent Electoral & Boundaries Commission & 3 others](#) (2013) KESC 8 (KLR), it held that;

“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.”



14. 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].’

15. In my opinion this case falls within and resonates with the above holdings and it is my finding that this court is not *functus officio* on the issue of extension of the validity of the orders dated 11-04-2025.
16. The respondent has argued that the applicant does not it deserve orders for extension because it has not explained what it has done with the time it was granted by the court or the progress it has made in its investigations. In response to this, the applicant states that it did not have to explain the progress of investigations because it was still within the statutory time of six months. I hold the view that where the court grants time to do an act which is less or different from what is provided in the relevant statute, the court orders must take precedence and parties must not resort to the statutory period.
17. In my view, where the applicant seeks extension of orders granted under Section 53, it is desirable that it gives cogent reasons why it deserves such orders. Progress of the investigations could be one of but not the only reasons the applicant must give. In the circumstances, failure by the applicant to give the progress or status of investigations cannot by its own disentitle the applicant of the orders sought. Whereas the respondents deserve to know the reasons for continued freezing of their money, this court notes that the period the law provides for such investigations has not lapsed and we cannot speculate on what would be the status of the said investigations as at the time of the statutory period.
18. I not that the applicant was living in comfort that it had six months from 11-04-2025 to complete its investigations which led it not to address the issue of expiry of the orders when the matter came for mention on 10-07-2025. Since the applicant has argued that it still had time as the reason for failure to explain how far it has gone with the investigations, the court takes it that by the period given by law expires, the applicant will have made substantial progress which may not necessitate further extension of the orders.
19. This court has powers to enlarge validity of the orders despite the same having expired. Order 50 rule 6 of the *Civil Procedure Rules* provides that;

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”



20. Section 59 of the *Interpretation and General Provisions Act* provides that;

“Where in a written law a time is prescribed for doing an act or taking a proceeding, and power is given to a court or other authority to extend that time, then, unless a contrary intention appears, the power may be exercised by the court or other authority although the application for extension is not made until after the expiration of the time prescribed.”

21. I have duly considered the circumstances of this case and I am of the view that while the respondent may suffer inconveniences in having the money preserved, I see no major prejudice for allowing the application for a time that is not beyond the statutory period contemplated in Section 56(3) of the *ACECA*. I say so because the funds sought to be preserved except one, are in fixed deposit accounts which are yet to mature. The respondents have not shown this court the urgency of having the money so preserved prematurely withdrawn.

22. The allegations made by the applicant are serious ones and public interest would in my view demand that the preservation orders be maintained. In view of this, I will give the applicant the benefit of the mix-up caused during extraction of the court orders and allow the application in the following terms;

1. The orders of injunction granted by the court on 11-04-2025 are hereby reinstated and extended up to 10th October 2025.
2. Consequent to order ‘1’ above, the respondents, their agents, servants or any other persons are prohibited from withdrawing, transferring, disposing or in any other way dealing with the funds held in the bank accounts as follows: -
 - a. Kshs.110,000,000/= held in fixed deposit account no. 099XXXX Equity Bank Lodwar branch in the name of Napeyok Suppliers and Contractors.
 - b. Kshs.125,000,000/= held in fixed deposit account no. 09XXXX Equity Bank Lodwar branch in the name of Napeyok Suppliers and Contractors.
 - c. Kshs. 230,000,000/= held in fixed deposit account no. 01XXXX Co-operative Bank Lodwar branch in the name of Kamais Juliah Ekaran.
 - d. Kshs. 649,375.36 held in account no. 099XXXX Equity Bank Lodwar branch in the name of Trabamo Investment Limited.
3. This order shall lapse on 10th October 2025.
4. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF SEPTEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Kibogy for the applicant and Mr. Omamo the respondent.

