



Y. Jeruto & Company Advocates v Shadrack G Kimotho (Miscellaneous Application E003 of 2021) [2024] KEHC 4695 (KLR) (6 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E003 OF 2021**

FR OLEL, J

MAY 6, 2024

BETWEEN

Y. JERUTO & COMPANY ADVOCATES APPLICANT

AND

SHADRACK G KIMOTHO RESPONDENT

RULING

A. Introduction

1. The Application before this court for determination is the notice of motion application dated May 17, 2023 brought pursuant to the provisions of section 1A, 1B,3B, 63 (e) of the [Civil Procedure Act](#) and Order 50(1) of the [Civil Procedure Rules](#) seeking the following orders;
 - a. The orders issued on 17th day of January 2023 dismissing the suit be set aside.
 - b. The suit be reinstated and listed for hearing on such terms as the court will direct
 - c. The costs of the application be borne by the Applicant
2. The said Application is supported by the supporting affidavit of the Applicant dated 19th May 2023, in which he deponed that on January 17, 2023 this matter came up for hearing and it was unfairly dismissed. He contends that he was never informed or served with notice relating to the aforesated hearing date and failure to attend court was not deliberate. He therefore prayed that in the interest of Justice, his prayers be allowed as the Respondent would not be prejudiced if the orders sought are granted and he is given a chance to defend his suit.
3. This Application is opposed by the Respondent who filed a replying affidavit dated January 19, 2024 in which counsel deposed that the matter was substantively concluded by the ruling delivered by Hon. Analo on December 23, 2021. It was deposed that both parties were notified of the said date and the proceedings indicate that the matter had been finalized and the file was closed. It was contended that



the court was functus officio in light of the ruling. The application under consideration was therefore bereft of merit, otiose, vexatious, an abuse of the court process and ought to be dismissed.

B. Determination

4. This court has considered the averments made in support of this Application, the response thereto and the various pleadings on record. A perusal of the court record indicates that an advocate-client bill of costs dated January 14, 2021 was taxed by Hon E. Analo(SRM) and vide a ruling delivered on December 23, 2021, the said Advocate/client bill of costs were taxed at Kshs.110,218/=.
5. It should be noted that this matter was not dismissed on January 17, 2023 as alleged by the Applicant, and a such there are no orders of dismissal to set aside. On the said date, the Advocate/respondent informed court that their bill of costs had been taxed and the full taxed amount had been settled. There was nothing left for determination and prayed for the court to mark the matter as settled. The Matter was therefore marked as settled and the file closed.
6. The Supreme Court in the case of *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR while discussing the doctrine *functus officio* had this to say;

“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.”
7. In this case, this court has rendered itself and the file was closed. Though the applicant subsequently filed an application dated April 20, 2022, which is undetermined, the same relates to accounts as between him and his advocate and that is not a matter the court has jurisdiction to determine and he should direct his complaint to the Advocates complaints commission to assist him (if need be). There is therefore nothing left for the court to determine once, the taxation ruling was delivered. Litigation must come to an end.
8. I therefore decline to give to grant the orders sought and dismiss the said application with no orders as to costs. For avoidance of doubt, this file is marked as closed as directed on January 17, 2023.
9. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 6TH DAY OF MAY, 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 6TH DAY OF MAY, 2024.

In the presence of;

No appearance for Appellant

No appearance for Respondent



