



**Yego & 3 others v Ogada & 3 others (Miscellaneous Application  
136 of 2020) [2024] KEHC 9837 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9837 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS APPLICATION 136 OF 2020  
RE ABURILI, J  
AUGUST 8, 2024**

**BETWEEN**

**DR. REV. SILAS YEGO ..... 1<sup>ST</sup> APPLICANT  
REV. GEOFFREY GICHURE ..... 2<sup>ND</sup> APPLICANT  
REV. JOHN KITALA ..... 3<sup>RD</sup> APPLICANT  
THE REGISTERED TRUSTEES, AIC CHURCH, KENYA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**ELD. AMOS NYAIGA OGADA ..... 1<sup>ST</sup> RESPONDENT  
ELD. MARTIN ORWA OBUYA ..... 2<sup>ND</sup> RESPONDENT  
ELD. JOSEPH AYIECHO ..... 3<sup>RD</sup> RESPONDENT  
ELD. DAVID OUKO ANYANGO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction**

1. On the March 27, 2023, this court issued orders as follows:
  - a. That all applications pending in this matter are hereby marked as spent and therefore withdrawn with no order to costs.
  - b. That parties shall return to the lower court to prosecute Kisumu CM Civil Suit No. 555/2018 to its logical conclusion unless they agree to resolve the dispute amicably in the said suit.
  - c. That on the Kshs. 50,000 deposited by each of the initial applicants in this matter and who are contemnors in the lower court, as the question of purging the contempt is still pending in the conterminous having withdrawn the appeal, and this court having perused the ruling



of 22.10.2020 which stipulates that the Kshs. 50,000 deposited by each of the applicants shall remain in the custody of the court until other/further order of the court; although the said sums of money were deposited in respect of this miscellaneous cause as per the deposit receipts dated 20.7.2020

- d. That the said sum of money shall be held by the court until the issue of contempt of court is resolved in the lower court upon which the court will make appropriate orders on the release of the said sums of money if that shall be case.
  - e. That this file is accordingly closed and the court continues to implore the parties to find an amicable solution to the dispute.
2. Consequently, the applicants herein moved this court vide a letter dated 11.12.2023 in which they sought directions on the issue of the money deposited by the applicants in court on grounds among others that on the 30.11.2023 the court in CMCC 555/2018 determined essentially that all the matters before it had been determined and ordered the parties therein to extract the decree within 30 days of the ruling.
  3. It was the applicants' case that the contempt of court that resulted in the orders for depositing of the funds herein in contention arose from a consent by the parties herein when the GCLA was to be created and elections were to be held in 30 days and that this court had noted on the 16.12.2021 that parties had agreed on the dispute which agreement effectively varied the terms of the consent in the lower court.
  4. The applicants submitted that on the 22.2.2022, the presiding Bishop appeared in court and was commended for complying with the court orders and thus the contempt was purged. It was further submitted that the respondents had filed an application in the lower court seeking stay of the release of the funds subject of this ruling, which was irregular.
  5. The applicants submitted that this court had powers under sections 1A, 1B of the [Civil Procedure Act](#) to make appropriate orders for the ends of justice to be met and that as the issue of contempt had been resolved, there was need to refund the money deposited by the applicants in the case.
  6. On their part, the respondents opposed the request by the applicants on the grounds that this court had no jurisdiction to entertain the matter as it was not brought in accordance with the provision of Order 51 Rule 4 of the [Civil Procedure Rules](#). The respondents further submitted that this court is *functus officio* as the court had directed and then closed the file hence the applicants should have filed an application to open the file.
  7. It was submitted that the issue of contempt was still an issue before the trial court and that on the 24.6.2024, there is a hearing and further that contempt was a personal issue and the contemnors in this case had not come to court personally to request release of the deposited funds.
  8. The respondents further submitted that there is a structure for supervision of the lower courts under Section 63 of the [Civil Procedure Act](#) and that there was no application to vacate orders of the lower court.
  9. I have considered the issues raised herein as submitted by both counsel for the parties, Mr. Amalemba and Mr. Mwamu.



10. The first issue for determination is whether this court is functus officio. 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.”
11. The Court of Appeal in the case of *Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited)* [2014] eKLR stated thus:

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”
12. A similar position was taken in the case of *John Gilbert Ouma v Kenya Ferry Services Limited* [2021] eKLR where the court stated 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. This court pronounced itself vide the consent order of 27<sup>th</sup> March 2023 and to be specific, Order No. (4) provided that the money shall be held by the court until the issue of contempt of court is resolved in the lower court upon which the court will make appropriate orders on the release of the said sums of money if that shall be case.
14. The court went on at Order No. 5 to provide that the file was accordingly closed with the court imploring the parties to find an amicable solution to the dispute.
15. The above orders do not require any interpretation. They are as clear as the blue sky. The Court in this is this Court that made the orders of 27<sup>th</sup> March 2023 which clearly reserved the issue of funds deposited in this Court by the applicants as a condition for stay of execution of the contempt Orders of the trial court in Kisumu CM CC 555 of 2018. The funds held by this court can only be released on orders of this court and not the lower court as the lower court never ordered for the depositing of the said funds. In addition, the lower court cannot sit on appeal of the orders of this court. This court, therefore, reserved the jurisdiction to give further directions regarding the disposal of the monies deposited into this court after the issue of contempt had been dealt with at the lower court.
16. Accordingly, it follows that this court is not functus officio as it had reserved exercise of its jurisdiction and discretion regarding the release of funds deposited as a condition for stay of execution of contempt orders issued against the applicants in the lower court.
17. Consequently, there was absolutely no requirement for the applicants to make a formal application for re-opening of the file as submitted by the respondents as the court still had reserved its exercise of



jurisdiction and discretion for the specific issue of the deposited funds. To hold otherwise would be to elevate procedural technicalities over substantive justice, which practice would impede access to justice. This practice is abhorred by Articles 48 and 159 (2) (d) of *the Constitution* which provisions guarantee every person access to justice at an affordable cost and the courts are mandated to ensure that justice is administered without undue regard to procedural technicalities.

18. Turning to the issue of whether the said funds ought to be released to the applicants, it was submitted by the respondents that the issue of contempt had not been settled in the trial court. On their part, the applicants submitted that the issue of contempt revolved around the formation of the Greater Central Lake Area and carrying out of elections, issues which were adequately addressed and dealt with by this court in Kisumu Civil Case No. 13 of 2020 leading up to the formation of the Greater Central Lake Area and subsequent elections being carried out which effectively purged the contemnors' contempt.
19. It is on this basis that the applicants submitted that on the 30.11.2023, the court in CMCC 555/2018 determined essentially that all the matters before it had been determined and it ordered the parties therein to extract the decree within 30 days of the ruling.
20. This court has the history of the dispute between the parties herein not only before it in this file but also in Kisumu Civil Suit No. 13 of 2020 as well as Kisumu CMCC 555 of 2018. I do agree with the applicants that the subject matter of the contempt in which the applicants deposited Kshs. 50,000 each had already been determined with the applicants purging themselves of the contempt by allowing the formation of the Greater Central Lake Area and allowing the subsequent elections to take place. If that were not to be the case, the respondents would have demonstrated before this court what exactly was pending as far as the dispute between the parties was concerned, which was the issue of the Greater Central Lake Area region and the holding of elections.
21. This court is thus asked to examine whether it can exercise its discretion to allow the funds deposited by the applicants released to them.
22. The request by the applicants herein requires the court to exercise its judicial discretion. In the instant case, there is no reason for this court to continue holding the funds deposited by the applicants in light of the fact that there is no other issue pending, relating to the contempt proceedings that brought them to this court. It is in the interest of justice that the said funds be released to them forthwith.
23. Although the respondents argued that contempt is personal issue, which is correct, and that the applicants should have applied individually for release of the money, the applicants came to this court through their advocate who has applied for the release of the funds.
24. Accordingly, as the funds were received against official receipts acknowledging the deposits, this court orders that the funds of Kshs 50,000 deposited into this court by each of the applicants herein shall be released to each of the applicants upon production of the original official court receipt and presentation to the court's accounts office for verification and processing of the refund.
25. I make no orders as to costs.
26. This file is accordingly closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 8<sup>TH</sup> DAY OF AUGUST, 2024**

**R.E. ABURILI**

**JUDGE**

