



**Krk Impex Pvt Limited v Safmarine Kenya Limited & another (Civil Suit 693 of 2008)
[2023] KEHC 22548 (KLR) (Commercial and Tax) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 693 OF 2008
JWW MONG'ARE, J
SEPTEMBER 22, 2023**

BETWEEN

KRK IMPEX PVT LIMITED PLAINTIFF

AND

SAFMARINE KENYA LIMITED 1ST DEFENDANT

ACCORD METALS (KENYA) LIMITED 2ND DEFENDANT

RULING

1. On March 12, 2010, the Honourable Court rendered its judgment in the main suit herein. The said judgment was confirmed by the Court of Appeal in Nairobi Civil Appeal No. 210 of 2011 between the same parties. Twelve years later on May 3, 2023, the applicant has moved this court seeking to reopen the pleadings and declare the 1st defendant incompetent and expunge its name from the proceedings. The applicant argues that the 1st defendant is a business name and not a company and hence it is not a corporate person with legal capacity to sue or be sued. The Applicant urges the court in making the said declaration to declare the proceedings against the applicant and the subsequent judgement and all consequential orders issued against the said defendant a nullity. The applicant argues that the incompetency of the 1st defendant from statutory provisions and that there can be no estoppel against a statute since competency to sue or be sued is given by the *Companies Act* to incorporated persons.
2. The respondent in opposing the application filed a notice of preliminary objection. The respondents argue that the Application before the court is a frivolous and an abuse of the court process as the orders sought are no longer available as the court upon rendering its Judgment on 12/3/2010 became functus officio and lacks jurisdiction to reopen the case and make any determination therein. The Respondents contend that these issues being canvassed today in the present application were canvassed conclusively



and the issue of the 1st defendant status settled in a previous application by the court and hence the matters herein are res judicata and cannot be litigated upon afresh.

3. Secondly, the respondents further argue, that the matter was decided, judgment entered, and the execution process commenced and as such there is nothing pending for determination. There are no pleadings available for the court to consider or to be struck out. Having participated in the process to all along, the respondents argue that the applicant is estopped by operation of the law from challenging the existence of the 1st defendant at this stage.

Analysis and Determination:-

4. I have carefully considered the application filed before me and the notice of preliminary objection filed by the respondent, the rival arguments by both parties in their submissions thereto. In my view, the only issue available for determination is “whether the court is functus officio and therefore bereft of jurisdiction as per the preliminary objection filed by the respondent.”
5. It is not contested that judgment in this matter was entered on 12/3/2010 and subsequently, the principal decretal amount settled on 18/12/2015. It is not contested that this said judgement was affirmed by the Court of Appeal pursuant to a Civil Appeal filed thereto. It is also not contested that the Applicant herein actively participated in these proceedings at all material times and was never at any one time not part of the process.
6. I have considered carefully the preliminary objection raised herein and the arguments put forth by the Respondents that this court became functus officio upon entry of judgment on 12/3/2010 and it cannot therefore reopen the case and determine the issues afresh. Blacks Law Dictionary defines the term Functus Officio as follows; “Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority.” My understanding of the above principle is that once the court has rendered its decision, its power to do anything else touching on the merits of the case is extinguished and cannot be seen to do anything else.
7. Respectively, I agree with the arguments put forward by the respondent that this application is frivolous and at the very least an abuse of the court process and misuse of very scarce judicial resources, especially seeing that the same is being brought so long after judgment was entered and the principal debt already paid out. I will say no more. I therefore find and hold that the application is without merit and the same is hereby is struck out with costs to the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2023.

J. W. W. MONG'ARE

JUDGE

