



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL APPLICATION NO. 310 OF 2016

MUGAMBI & CO. ADVOCATES.....APPLICANT

VERSUS

PETER WANGAI KIAMA.....RESPONDENT

RULING

1. This matter came up before the court on 27th June, 2016 for the hearing of the Notice of Motion and Notice of Preliminary Objection both dated 22nd July, 2016.

2. Having heard the parties on the same, this court delivered its ruling on 19th July, 2018, thereby allowing the Preliminary Objection and dismissing the Notice of Motion.

3. However, *Mr. Kiama*, advocate who is the respondent herein, moved the court on the 6th of February, 2019 by way of a mention and the matter was listed on the day's causelist.

4. On the aforesaid date, *Mr. Kiama* in addressing the court sought a clarification as to when the court file left the judge's chambers after delivery of the ruling. He brought the attention of the court to Civil Misc. Application No. 288 of 2018 pending before the Court of Appeal (a copy of which was availed to the court). His concern in particular was with regard to the averments made in paragraph 4 of the supporting affidavit to the said application in which the deponent, who is an advocate trading in the name of the applicant in Civil Misc. Application No. 288 of 2018, has deposed as follows:

“THAT the failure to appeal on time against the High Court's ruling on my part is not deliberate but occasioned by a certain number of factors that were beyond my control, being that after delivery of the ruling, the Judge retreated back to the chambers with the file for the routine amendments before the ruling is released and by the time the file came out for me to access the ruling, study it and make a decision, time for lodging the appeal had since lapsed.”

5. *Mr. Kiama Wangai* advocate told the court that his concern was that the judge should be isolated from the heat of litigation and hence the need for clarification.

6. On his part, *Mr. Mugambi* (counsel for the applicant) basically contended that this court is functus officio by virtue of the ruling delivered on 19th July, 2018; that the respondent has not sought the necessary clarifications by way of a formal application and that this is a matter to be handled by the Court of Appeal.

7. Having listened to both counsels, the court wishes to point out that it is alive to the issue of functus officio that was raised by counsel for the applicant and, when the court can be said to be functus officio. In that regard, the court relies on the case of *Dhanji Jadra Ramji v Commissioner of Prisons & another [2014] eKLR* wherein reliance was placed on the definition of “functus officio” in *Jersey Evening Post Limited v Al Thani [2002] JLR 542 at 550* that:

“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.”

8. Having established the above, the court is of the considered view that a court of law is in no way barred from shedding light on an issue

which appears uncertain, notwithstanding that the matter has been determined, especially in this case. In the present instance, the respondent is merely seeking clarification on the circumstances surrounding the whereabouts of the court file after the delivery of the ruling. In this case, the court is not prevented from giving such clarification since it does not touch on the contents of its ruling in any way. In any case, the court has perused a copy of the Motion dated 9th October, 2018 and in particular, paragraph 4 of the supporting affidavit by *John Mugambi* the contents of which allude to the fact that this court retained the file in its chambers for longer than was necessary and in doing so, it is deponed, the court hindered access to the ruling thus making it impossible for the applicant to lodge the appeal timeously.

9. Resultantly, it is imperative that this court sets the record straight by indicating that the court file left the judge's chambers on 23rd July, 2018 and the relevant records will bear witness to that. The file was thus available in the registry for any party wishing to take any further action in the matter thereafter.

10. With this information, the court now hopes the record has been set straight.

Dated, Signed and Delivered at **NAIROBI** this **11th** day of **February, 2019**.

L. NJUGUNA

JUDGE

In the Presence of

..... ***For the Applicant***

..... ***for the Respondent***