



Kathia & another (Suing as the Administrators of the Estate of Hellen Muthoni Kathia) v Mutunga & another (Environment and Land Case 143 of 2017) [2025] KEELC 6469 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6469 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 143 OF 2017
AY KOROSS, J
SEPTEMBER 30, 2025

BETWEEN

LIBERATA CIRINDI KATHIA & ASHFORD KINYUAH NGATUNI (SUING AS THE ADMINISTRATORS OF THE ESTATE OF HELLEN MUTHONI KATHIA) PLAINTIFF

AND

NICHOLAS MAWEU MUTUNGA 1ST DEFENDANT
MAVOKO LAND DEVELOPMENT CO LIMITED 2ND DEFENDANT

RULING

1. This is a ruling in respect of notice of motion dated 13/06/2024 filed by the 1st defendant, where he seeks the following orders from this court: -
 - a. That this honourable court be pleased to grant orders staying the proceedings of 18/06/2024.
 - b. That this honourable court be pleased to stay the ruling and orders given on 3/07/2007 pending the full hearing and determination of the suit.
 - c. That the plaintiff be compelled to account for rental income from plot No. 106, Mlolongo Ngwata phase 11A, since the year 2007.
 - d. That henceforth, the plaintiff and or his/her agents be barred from collecting rent from plot No. 106, Mlolongo Ngwata phase 11A pending the full hearing and determination of this matter.
 - e. That henceforth, rent be deposited in a joint interest-earning account, pending final determination of this matter.



- f. The costs of the application and suit be borne by the plaintiff.
2. The motion is supported by the grounds set out in the body thereof and the 1st defendant's affidavit sworn on the instant date, and in a nutshell, he stated: a) the plaintiff instituted the suit in Nairobi Chief Magistrates Court as Milimani CMCC No. 4066 of 2007 vide an application and plaint dated 14/05/2007; b) on hearing the parties, the court issued injunctive orders on 3/07/2007 in the plaintiff's favour against the defendants over plot No. 106, Mlolongo Ngwata phase 11A (suit property); and
 3. C) That after these orders, the matter was transferred to the Milimani High Court and came to be identified as Milimani ELC No. 26 of 2011. Still, subsequently, the matter was again moved and referenced Machakos ELC in 2017, which is now the current case; d) he had contributed to the construction of the suit property, and finally, e) the plaintiff is enjoying the benefits of the investment he made on the suit property with blatant disregard of his input and or contribution.
 4. The motion is opposed by Liberata Cirindi Kathia's replying affidavit sworn on 28/02/2025, where she briefly affirmed as follows: a) the delay has been occasioned by a series of deaths within her family- the initial plaintiff had died and there have been a total of 3 to 4 substitutions of deceased plaintiffs as a result of deaths and obtaining letters of administration forestalled the hearing of the matter compounded with Covid 19 and defendants' lethargy; b) the motion is an attempt to litigate the main case, and the orders sought are not tenable; and c) In any event, there is no rent being collected as nobody could invest more funds into the suit property in view of the dispute, and d) the suit property has remained empty and rundown, and the estate has continued to incur expenses in maintaining a caretaker thereat. The 2nd defendant did not oppose the motion.
 5. As directed by the court, the motion is canvassed by the written submissions of Mss. Lumumba & Lumumba Advocates for the 1st defendant dated 21/01/2025, Wilfred K. Babu & Co. Advocates for the 2nd defendant dated 14/10/2024 and, finally, from Mr. Namada Simoni, counsel for the plaintiff, dated 28/02/2025.
 6. This court has carefully considered the motion, its grounds, affidavit, and rival submissions. Taking all these into account, 2 issues fall for determination and they are: (a) whether this court is functus officio and (b) whether the motion is merited. These 2 issues shall be handled together
 7. Unfortunately, none of the parties addressed this court on the first limb except for Mr. Namada, who pointed out to the court that the issues raised were moot as the injunctive orders had long been granted on 14/05/2007. Counsel further argued that the orders had never been vacated either by appeal, review, or otherwise.
 8. What Mr. Namada is raising is essentially the common law doctrine of functus officio, which prevents the reopening of a matter once the court has rendered its final decision, and it bars a merit-based decisional re-engagement with the case once final judgment and/or ruling has been entered and a decree/order thereon issued. Its origins, purpose and exceptions are highlighted in the decision of Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited) [2014] KECA 600 (KLR) in the following manner:-

“It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19th Century. In the Canadian case of Chandler vs Alberta Association



of Architects [1989] 2 S.C.R. 848, Sopinka J. traced the origins of the doctrines as follows (at p. 860);

“The general rule that a final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal In re St. Nazaire Co., (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions:

1. Where there had been a slip in drawing it up, and,
2. Where there was an error in expressing the manifest intention of the court. See Paper Machinery Ltd. vs. J.O. Rose Engineering Corp., [1934] S.C.R. 186”

9. The Supreme Court of Kenya decision of Odinga v Independent Electoral & Boundaries Commission & 3 others [2013] KESC 8 (KLR) cited with approval the book of Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832, that explicated this legal concept in the following manner:-

“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.”

10. It therefore follows that the exception to the doctrine is found in our Section 99 of the [Civil Procedure Act](#), which allows courts to correct clerical or arithmetical mistakes or errors arising therein from any accidental slip or omission either on its own motion or on the application of any of the parties.
11. In the decision of 3/07/2007, the court allowed the plaintiff’s application dated 3/07/2007 that sought injunctive reliefs restraining the defendants from interfering in any way with the suit property pending hearing and determination of the main suit.
12. Accordingly, the reliefs sought in the motion are an abuse of the court process as they do not seek to correct any errors in the ruling. Concerning the 2nd limb, the reliefs are unsustainable as no legal basis has been proffered as to why they should be granted. This court need not say more. This court therefore finds it is functus officio and as a result, the motion dated 13/06/2024 is hereby dismissed with costs to the plaintiff.
13. Having considered the history of this matter and bearing in mind that it has been in the court corridors for close to 18 years without taking off for one reason or another, this court hereby issues the following final orders:
 - a. That the notice of motion dated 13/06/2024 is hereby dismissed with costs to the plaintiff.
 - b. No further applications shall be entertained in this matter.
 - c. With strict timelines, all parties are directed to fully comply with Order 11 and file indexed and paginated trial bundles within 60 days hereof.



d. Matter shall be mentioned for purposes of fixing a hearing date.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

30.09.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Omari holding brief for Mr. Namada for plaintiff.

M/s Munyata for Mr. Babu for 2nd defendant.

Ms Kanja- Court Assistant.

