



**Mungai v Njoroge & 2 others (Environment and Land Case
21 of 2011) [2025] KEELC 6220 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 21 OF 2011
CA OCHIENG, J
SEPTEMBER 25, 2025**

BETWEEN

JAMES WAKIBI MUNGAI APPLICANT

AND

JAMES NJUGUNA NJOROGE 1ST RESPONDENT

LAND REGISTRAR KIAMBU COUNTY 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Judgment was entered in the suit on 13th October 2017. What is before the court for determination is the Applicant's Notice of Motion application dated the 17th November, 2024 and the Respondents' Notice of Preliminary Objection dated the 17th December, 2024. In the Notice of Motion application dated 27th November 2024 the Applicant seeks for the following Orders:
 - a. Spent.
 - b. That this Honourable court be pleased to cancel entries transferring land parcels Kiambaa/Ruaka/3257 to 3259 to the name of Njoroge Njabi.
 - c. That costs of this application be in the cause.
2. The application is supported by the Applicant's supporting affidavit. He avers that he holds certificates of title to LR Kiambaa/Ruaka/3257, 3258 and 3259, by virtue of transfer from Njoroge Njabi



(deceased) in 2008. Further, that order (d) of this Court's judgement (Gacheru J), dated 13th October 2017 states;

“The Deputy Registrar of this Honourable court be authorized to sign transfer forms transferring the properties to the 1st Plaintiff or to the deceased's estate if the Defendant refuses to sign them”

3. He asserts that he proffered an Appeal against the said judgment, being Civil Appeal No. 349 of 2019. However, in order to defeat justice, the 1st Respondent has since transferred the suit parcels back to Njoroge Njabi (deceased), without requesting him to sign the Transfer forms to facilitate the same. Further, that neither the 1st nor the 2nd Respondents required him to return the Certificates of Title in respect to the suit parcels thus he still holds them, whereas there is another parallel set held by the said Njoroge Njabi (deceased).
4. In opposition, the 1st Respondent and Esther Ruguru Njoroge filed a Notice of Preliminary Objection dated 17th December 2024. They contend that the application offends Section 7 of the [Civil Procedure Act](#) as this Court is functus officio having entered judgment on 13th October 2017 and Appeal No. 349 of 2019 against the said judgment is pending at the Court of Appeal. Further, that the jurisdiction to stay execution of the aforementioned judgment once an Appeal has been filed lies with the appropriate Appellate Court.
5. The application was canvassed by way of written submissions but it is only the Applicant that filed written submissions reiterating his averments in the supporting affidavit to his application.

Analysis and Determination

6. Upon consideration of the instant Notice of Motion application, Notice of Preliminary Objection and Applicant's submissions, the only issue for determination is whether this Court should cancel entries transferring land parcels Kiambaa/ Ruaka/3257 to 3259 to the name of Njoroge Njabi (deceased).
7. At the outset, it is pointed out that while the Applicant indicated the parties as in the title herein, the judgment issued in ELC No. 21 of 2011 indicates Esther Ruguru Njoroge and James Njuguna Njoroge as the Plaintiffs versus James Wakibi Mungai (Applicant) as the Defendant.
8. In this instance, the Preliminary objection is on the basis that the application offends Section 7 of the [Civil Procedure Act](#) and that the Court is functus officio.
9. On raising of a Preliminary Objection, in the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] 1 EA, it was held that:

“..... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit.....”
10. While Section 7 of the [Civil Procedure Act](#) stipulates that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”



11. In *Telkom Kenya Limited v John Ochanda* (Suing on his own behalf and on behalf of 1996 former employees of Telkom Kenya Limited) [2014] eKLR, the Court of Appeal held as follows on the *functus officio* doctrine;

“*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. The general rule that 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 of the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions...”

12. In this instance I note there is a pending Appeal in the Court of Appeal in respect to the impugned Judgment. There is no stay of execution of the judgment. The Applicant has an issue that the judgment was implemented and suit lands transferred without involving him. I note the prayers sought in the application seem to be seeking a review of implementation of the said judgment. It is trite that where a party lodges an appeal, it cannot seek for review of the said orders. Further, I note since this Court had already delivered a judgment in favour of the Respondents, it is *functus officio* and cannot set aside the said orders unless there was an application for review.
13. In the foregoing, while associating myself with the decisions cited, I find that the instant application hence offends the provisions of Section 7 of the *Civil Procedure Act*. Further, I find that this Court is *functus officio* having entered judgement on 13th October 2017 with Appeal No. 349 of 2019 against the said judgement still pending at the Court of Appeal. I opine that if the Applicant wanted orders for stay of execution, he should have sought for the same before the Court of Appeal and not in this Court.
14. In the foregoing, I find the instant Notice of Preliminary Objection merited and will allow it. I however find the instant Notice of Motion application unmerited and will dismiss it with costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Mary Mungai for Applicant

Court Assistant: Joan

