



Rono v Rono; Juspert Holdings Ltd (Interested Party) (Commercial Cause E001 of 2024) [2025] KEHC 14064 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
COMMERCIAL CAUSE E001 OF 2024
JK NG'ARNG'AR, J
OCTOBER 8, 2025**

BETWEEN

JUSTUS KIPLANGAT RONO APPLICANT

AND

PETER KIBET RONO RESPONDENT

AND

JUSPERT HOLDINGS LTD INTERESTED PARTY

RULING

1. In the present suit, parties had settled the matter through a Consent dated 5th December 2024, the particulars of which are well within the knowledge of both the Applicant and the Respondent.
2. The Respondent filed an Application dated 19th February 2025 where he questioned the contents of the Accountant's Report and further questioned the academic qualifications of the said Accountant. The Respondent sought an order that this court appoint an Independent Auditor/Accountant.
3. In response to the Application, the Applicant filed a Preliminary Objection dated 6th March 2023 which was now the subject of this Ruling. The Applicant stated that the Respondent's Application was bad in law as the court was functus officio and that any reservations concerning the consent Judgment ought to be addressed by the Court of Appeal.
4. In his written submissions dated 21st May 2025, the Applicant submitted that parties agreed to engage the current Auditor, Peter Akuom and he started his work on 15th November 2025 with the assistance of the Interested Party's in house accountant. That at the time of recording the Consent, the audit was already underway and the Respondent did not raise any objection until he filed his Notice of Motion Application dated 19th February 2025.



5. It was the Applicant's submission that the Consent did not speak about the appointment of an Auditor as parties had already settled on an Auditor. That it would be a step back if this court were to engage in the process of appointing an Auditor. It was the Applicant's further submission that the court was functus officio. He relied on *Odinga v Independent Electoral & Boundaries Commission & 3 others* [2013] KESC 8 (KLR), *John Gilbert Ouma v Kenya Ferry Services Limited* [2021] KEHC 7107 (KLR) and *Juma v Kenya Medical Supplies Authority (Petition E160 of 2023)* [2024] KEELRC 13459 (KLR).
6. The Applicant submitted that the law was clear that a Consent Judgement was binding unless the Respondent could prove fraud or collusion in reaching the Consent. That the Respondent failed to demonstrate that he was part of the process that led to the appointment of the Auditor. He relied on *Ethics & Anti-Corruption Commission v Ajwang & another; Ajwang & 7 others (Interested Parties)* [2024] KEHC 14542 (KLR) and *Republic v Kisumu County Secretary Kisumu County Government & 2 others* [2017] KEHC 944 (KLR).

Response.

7. The Respondent filed a Replying Affidavit dated 16th April 2025. He stated that this court had the jurisdiction to determine the matter since the consent was recorded before it. That he sought an issue of enforcement and did not seek to vary the terms of the consent.
8. It was the Respondent's case that the Applicant had locked him out of the day-to-day management of the Interested Party and had since assumed sole management. That the alleged final Auditor's Report from March 2024 to December 2024 was not properly done and his advocate could not ascertain its contents or annexures. It was his further case that the said documents neither had a stamp nor a signature and they could not rely on its contents.
9. The Respondent stated that he was a minority shareholder in the Interested Party and wanted this court to appoint a public auditor as the Applicant's intentions were nefarious and wanted to drain the Interested Party until it becomes non-functional.
10. In his written submissions dated 29th May 2025, the Respondent submitted that this court had the jurisdiction to reopen a closed file and enforce its own orders. That he sought enforcement of an existing order and there was no need to file a fresh suit to enforce the same.
11. It was the Respondent's submission that he had not displayed an intent to vary the terms of the Consent. That he only sought enforcement to protect himself from the Applicant's oppression as the majority shareholder. It was his further submission that there was need to have an independent and qualified auditor appointed as the current Audit Report was oppressive and unfair.
12. I have considered the Preliminary Objection dated 6th March 2025, the Replying Affidavit dated 16th April 2025, the Applicant's written submissions dated 21st May 2025 and the Respondent's written submissions dated 29th May 2025. The only issue for my determination was whether the Preliminary Objection was sustainable.
13. What constitutes a Preliminary Objection was set out in the oft cited case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696*, where 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 pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer



the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.” (Emphasis mine)

14. In *Daqare Transporters Limited v Zainab Hashi* [2021] KEHC 2600 (KLR), Mogeni J. held: -

“In the case of *Ahmed Noorani & another v Rajendra Ratilal Sanghani* [2020] eKLR the Court of Appeal held that: “For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.” (Emphasis mine)

15. The Applicant stated that the Respondent’s Notice of Motion dated 19th February 2025 was bad in law as the court was *functus officio*. The Supreme Court of Kenya in *Odinga v Independent Electoral & Boundaries Commission & 3 others* [2013] KESC 8 (KLR) stated: -

“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.”

This principle has been aptly summarized further in *Jersey Evening Post Limited v A1 Thani* [2002] JLR 542 at 550:

“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.....”

16. Similarly, the Court of Appeal in *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) held: -

“The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.....”

17. Section 99 of the [Civil Procedure Act](#) provides exceptions to the doctrine of *functus officio* as follows: -



Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

18. From the above, 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.
19. I have keenly gone through the Consent dated 5th December 2024. In regards to the Respondent's sole issue of the Audit Report, Clause 7 of the Consent Judgment provided: -

THAT the Defendant has agreed that upon finalization of the financial Accountant's report of the Interested Party, he shall pay any amount found to be mismanaged or not accounted for and the mode of payment shall be agreed upon by the parties.
20. The Clause above was very specific that the Respondent had agreed to pay any outstanding amount to the Applicant after an audit had been conducted and the mode of agreement would be agreed upon themselves. The Clause did not contain any modalities in engaging or appointing an Auditor or Accountant. It is trite that Consents are contractual in nature and parties are bound by their terms and conditions. By asking this court to appoint a Public Auditor, the Respondent wanted this court to rewrite contracts for the parties, a practice that courts abhor. See Robert Osike Ageri v Kenneth Mulongo Ojwang [2020] KEELC 2976 (KLR).
21. This court pronounced itself with finality when it adopted the Consent Judgement dated 5th December 2024 as the order of the court. That meant that the only way parties could move the court in regard to the particular Consent was through an Application for setting it aside, an Application for Review and an Application to correct clerical or any slip ups as envisioned in section 99 of the Civil Procedure Act. The Respondent did not move this court in either of the aforementioned Applications.
22. Flowing from the above, it is my finding that this court was functus officio and had no jurisdiction to entertain the Respondent's Notice of Motion Application dated 19th February 2025.
23. In the end, the Preliminary Objection dated 6th March 2025 had merit and is upheld.

Ruling delivered, dated and signed at Bomet this 8th day of October, 2025.

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HON. J.K.NG'ARNG'AR

JUDGE

Ruling delivered in the presence of;

Siele and Susan (Court Assistants).

Ms. Nduta for the Appellant

Ms. Nganga for the Respondent

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