



**Syan & 2 others v Kihoro (Environment and Land Case 517 of 2017)  
[2025] KEELC 7103 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7103 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 517 OF 2017  
CA OCHIENG, J  
OCTOBER 16, 2025**

**BETWEEN**

**SURINDERPAL SINGH SYAN ..... 1<sup>ST</sup> PLAINTIFF**

**JARSMEER SINGH SYAN ..... 2<sup>ND</sup> PLAINTIFF**

**SANATKUMAR SHANTILAL TRIVEDI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**WANYIRI KIHORO ..... DEFENDANT**

**RULING**

1. What is before the Court for determination is the Defendant's Notice of Motion application dated 23<sup>rd</sup> May 2025 where he seeks the following Orders:
  - a. Spent.
  - b. That the 1<sup>st</sup> Plaintiff herein Mr. Surinderpal Singh Syan be committed to civil jail for six months for serious yet deliberate contempt of court during the subsistence of this suit and more especially with respect to the violation of court order (2) made by BM Eboso J on 14<sup>th</sup> January 2021 where he transferred the ownership of ½ part of LR No.1/205 to himself, as a joint owner.
  - c. That the Honourable court issue an order to sever the joint tenancy subsisting on LR No.1/205 Kahahwe Road into 2 equal parts for the reasons previously expoused in this suit and since 2008.
  - d. That the costs of this application be provided for, with the 1<sup>st</sup> Plaintiff in any event paying the cost of (b) above.



2. The application is premised on grounds on its face and on the Defendant's supporting affidavit. He avers that by transferring half a share of LR No. 1/205 to himself without informing the Court, the 1<sup>st</sup> Plaintiff is in contempt of order of Hon. Judge Eboso's orders issued on 14<sup>th</sup> January 2021.
3. He annexed a Search certificate dated 28<sup>th</sup> February 2025 indicating that the registered proprietors of LR No.1/205 (orig. No. 1/48/3&1/79/1) are the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs as tenants in common in equal shares.
4. I note the Defendant's averments at paragraphs 3-11 of his supporting affidavit are in support of his Counterclaim which was already struck out vide this Court's Ruling of 8<sup>th</sup> February 2024 and is therefore spent.
5. The application is not opposed.

### **Analysis and Determination**

6. Upon consideration of the instant Notice of Motion application including the supporting affidavit, the only issue for determination is whether the 1<sup>st</sup> Plaintiff Mr. Surinderpal Singh Syan should be cited for contempt of the Court Orders issued by Justice Eboso on 14<sup>th</sup> January 2021 and if the joint tenancy of LR No. 1/205 (Kayahwe Road) should be severed into two equal parts.
7. For the avoidance of doubt, I wish to point out that this Court vide its Ruling of 8<sup>th</sup> February 2024 struck out the Defendant's Defence and Counterclaim. Further, the Court delivered its final Judgement on the 9<sup>th</sup> July, 2025 in favour of the Plaintiffs where the Defendant was directed to pay the rent arrears amounting to Kshs. 6,120,000/= from the date of filing this suit until the 23<sup>rd</sup> November, 2020, when he was evicted from the suit premises.
8. The question we hence need to ponder is whether this Court can grant the Orders as sought post judgement.
9. The Supreme Court stated as follows in *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR;

“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.”

10. 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:

“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....” Emphasis Mine

11. I note the Court already determined the issues in dispute herein through the impugned judgement. Further, that the Applicant is actually the judgement debtor herein. I note the Applicant has not even demonstrated how the 1<sup>st</sup> Plaintiff is in contempt of the impugned Orders, nor how the ownership of the suit premises affects him, as he was only a tenant.
12. Based on the facts before me while associating myself with the decisions cited, I opine that since this Court already delivered its judgement and determined all the questions in dispute, it is hence functus officio and cannot grant the orders as sought.
13. In the foregoing, I find the instant Notice of Motion application unmerited and will dismiss it.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Ndirangu for Respondents

No appearance for Hon. Wanyiri Kihoro

Court Assistant: Joan

