



**Kariuki & another v Mugo (Environment and Land Case
35 of 2023) [2025] KEELC 5680 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5680 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND CASE 35 OF 2023
JM KAMAU, J
JULY 31, 2025
(FORMERLY NYAHURURU ELC NO. 28 OF 2017)**

BETWEEN

PETER WAKIAMA KARIUKI 1ST PLAINTIFF

TARASHO NDIRANGU THUITA 2ND PLAINTIFF

AND

SAMUEL MUNIU MUGO DEFENDANT

RULING

1. What falls for determination in this Ruling is the Application dated 16/6/2025 for an inhibition pending Appeal in the Court of Appeal Civil Appeal No 043 of 2025.
2. The Applicant prays that the sought for order of inhibition be granted in order to inhibit all dealings with Title No's Nyandarua/ Simbara/1503 and 1504 pending the hearing and determination of Court of Appeal Nakuru Civil Appeal No. E043 of 2025 between the parties herein.
3. The same is grounded on the Supporting Affidavit of one Samuel Muniu Mugo, the Defendant/ Applicant herein all of which have also been concretized in the Grounds on the face of the Application.
4. It is contended that the Judgment herein delivered on 21/11/2024 directed, among other things the excision and transfer of parcels of 3.45 Acres and 1.5 Acres in favour of 1st and 2nd Plaintiffs respectively out of the Defendant's land parcel No Nyandarua/Simbara/236.
5. The Defendant was aggrieved by the aforesaid judgment and has already proceeded to the Court of Appeal at Nakuru to appeal against the Judgment. The Appeal is Nakuru Court of Appeal Civil Appeal No. E043 of 2025.



6. The Plaintiffs herein, the Respondents in the Court of Appeal have already executed the said judgment/Decree by way of processing several Titles in their names which the Applicant came to learn much later. According to the Applicant, this made the Application filed by him for stay of execution to be overtaken by events and eventually the Applicant had to withdraw the said Application. The same was dated 2/4/2025.
7. The Applicant pleads that his delay in filing the Application for stay of execution was occasioned by the lack of the court file which by now was in the typing pool for the preparation of the proceedings and Judgment and could therefore not be accessed for purposes of filing the now withdrawn Application.
8. The Applicant claims that the new Titles are likely to be further sub-divided, sold, transferred, charged or mortgaged and the same would defeat the pending Appeal.
9. The Respondents on the other hand filed grounds of opposition dated 24/6/2025 where they contend that the Applicant's Application is misconceived, incompetent, bad in law, an abuse of the Court process, untenable, fatally and incurably defective, frivolous, vexatious and is without merit and that the same should be dismissed with costs.
10. I did allow the parties to file written submissions which they did.

What was the judgment of this court?

11. The 2 Respondents herein had sought Judgment in 2 separate suits against the Applicant herein for adverse possession in Nyeri High Court Civil Suit No 62 of 2005 (O.S) and Nyeri High Court Civil Suit No. 63 of 2005 (O.S) respectively.
12. The two cases were transferred to High Court, Nakuru before finding their way to E.L.C Nyahururu and ultimately in this Court.
13. The Defendant/Applicant equally filed counterclaims alongside his respective Defences against the 2nd Plaintiff as follows:-
 - a. A declaration that the sale transaction between the 2nd Defendant and Samuel Karaho Mugo was unlawful, fraudulent, null and void ab initio.
 - b. A declaration that the 2nd Defendant has not acquired adverse possession over a portion of 1.5 Acres in L.R Nyandarua/Simbara/236 and the Plaintiff's title thereto has not been extinguished.
 - c. A declaration that the 2nd Defendant was permitted to occupy a portion of 1.5 Acres by the Plaintiff in L.R Nyandarua/Simbara/236.
 - d. An order of eviction of the 2nd Defendant and his entire family from the portion of 1.5 Acres that he occupies and/or uses in L.R Nyandarua/Simbara/236.
 - e. A permanent injunction restraining the 2nd Defendant , his family, kin , agents, employees. Servants or anyone claiming under them from trespassing upon , claiming , subdividing, transferring, renting, leasing cultivating, selling disposing off, charging, alienating or in any other manner interfering with the Plaintiff's quiet possession and ownership of L.R Nyandarua/Simbara/236.
 - f. Mesne profits from 12.08.2005 the date of filing this suit.
 - g. General damages for trespass.



- h. Costs of the suit with interest.
 - i. Any other relief that this Honourable Court may deem just and fair to order.
- And also against the 1st Plaintiff in the same terms word for word.
- 14. And the Plaintiffs did file their Replies to Defence. After the pre-trial conference, the case kicked off for hearing.
 - 15. The Trial Judge considered the materials and evidence on record. The Court was impressed with the evidence of the Plaintiff and found the evidence of the Defendant not credible.
 - 16. Finally, the Honourable Mr. Justice Y. A. Angima pronounced the following Judgment in favour of the Plaintiffs.
 - a. A declaration is hereby made that the 1st Plaintiff, Peter Wakiama Kariuki has become entitled to be registered as proprietor of a portion of 3.45 Acres out of Title No Nyandarua/Simbara/236 by virtue of the doctrine of adverse possession.
 - b. The Defendant is hereby directed to excise and transfer the said portion of 3.45 Acres out of Title No Nyandarua/Simbara/236 to the 1st Plaintiff within 30 days from the date hereof in default which the Deputy Registrar of the Court shall sign all the necessary forms, documents and instruments to facilitate the sub-division and transfer of the said portion of land to the 1st Plaintiff, Peter Wakiam Kariuki.
 - c. A declaration is hereby made that the 2nd Plaintiff. Tarashisio Ndirangu Thuita, has become entitled to be registered as the proprietor of a portion of 1.5 Acres out of Title No Nyandarua/Simbara/236 by virtue of the doctrine of adverse possession.
 - d. The defendant is hereby directed to excise and transfer the said portion of 1.5 Acres out of Nyandarua/Simbara/236 to the 1st Plaintiff within 30 days from the date hereof in default of which the Deputy Registrar of the Court shall sign all the necessary forms, documents and instruments to facilitate the sub-division and transfer of the said portion of land to Tarashisio Ndirangu Thuita.
 - e. The Defendants counterclaim in the consolidated suits are hereby dismissed.
 - f. The 1st and 2nd Plaintiffs are hereby awarded costs of the suit and counterclaim.
 - 17. It is out of this Judgment that an Appeal has been preferred and in the pendency of the said Judgment the orders herein are sought.
 - 18. The doctrine of *functus officio* is a very important concept in bringing matters to an end. Has this Court's role become wholly redundant, and it may no longer entertain the relevant question before it?
 - 19. This court determined this matter with finality through its Judgment delivered on 21/11/2024 and it is thus restrained by the doctrine of *functus officio* from re-opening and re-hearing the same.
 - 20. The concept of *functus officio* has its roots in English law and has evolved through centuries. The doctrine was firmly established by the *Judicature Act* of 1873, which fused common law and equity jurisdictions in England. The Acts promoted the idea of finality in judicial Decisions, prohibiting courts from revisiting Decisions unless under exceptional circumstances.



21. The fundamental reason behind the principle of *functus officio* is to ensure finality in legal decisions. If courts or tribunals were permitted to revisit their decisions at any time, it would lead to prolonged litigation, erode trust in the judicial process, and prevent closure for the parties involved.
22. Some of the key purposes and advantages of the doctrine are as follows:
 1. Promoting Legal Certainty: Litigants, after a decision is rendered, can move forward with confidence, knowing that their matter has been conclusively settled.
 2. Judicial Efficiency: This doctrine prevents courts from being bogged down by repeated hearings of the same matter, allowing them to focus on new and ongoing cases.
 3. Fairness: Once a decision is rendered, the parties involved are entitled to appeal to a higher forum rather than continually reopening the case. This ensures procedural fairness and prevents abuse of the legal system.
23. The principle of *functus officio* was aptly reiterated by the Court of Appeal in the case of [Telkom Kenya Limited v John Ochanda \(Suing on His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited\)](#) [2014] eKLR that:

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. 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 v 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.”

24. Daniel Malan Pretorius, in [“The Origins of the *functus officio* Doctrine, with Special Reference to its Application in Administrative Law](#)” (2005) 122 SALJ 832 in which the learned author stated;

“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 superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”

25. This principle has been aptly summarized further in *Jersey Evening Post Ltd v. Ai 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. (Emphasis mine). 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 or adjudication must be taken to a higher court if that right is available.”



26. The Applicant is seeking some stop gap measures before the Decree of this court delivered on 21/11/2024 is subjected to Appeal. It is thus clear that he is not seeking a re-engagement of the Court with its earlier Decision. A court does not become functus officio merely because it has delivered a final decision in civil proceedings. The court retains its power to undertake several actions including but not limited to stay, review, execution proceedings and such other acts and steps towards the closure of the file. In *Leisure Lodge Ltd v Japhet Asige and another* (2018) eKLR the court said and held:

“On the question that this court is functus officio, I do find that a trial court retains the duty and jurisdiction to undertake and handle all incidental proceedings even after a final judgment is delivered provided such proceedings do not amount to re-trying the cause but geared towards bringing the litigation to an end. That is the reason, the court must undertake settlement of a Decree, if parties cannot agree, handle applications for stay, review, setting aside and even execution proceedings including Applications under Section 94 of the Act.”

27. In the Supreme Court of Kenya, Petition No. 7 of 2019 #Between# 1. Geoffrey M. Asanyo Lenaola, SCJJ) held that:

The *Origins of the Functus officio Doctrine, with Special Reference to its Application in Administrative Law*”, in South African Law Journal, Vol. 122 (2005), at p. 832, in the following terms:

“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 taken, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision-maker.” In determining whether the Appellate Court was functus officio, we need to ask ourselves whether that Court resolved the matter before it with finality.....”

28. However it is not within the powers of this Court to halt the process of execution of its own Decree once the execution has gone this far and the properties have changed hands.

29. In the case of *Telkom Kenya Ltd v John Ochanda*, Court of C.A No 60 of 2013 (Nairobi) the Court of Appeal held that ...

“.....The doctrine is not to be understood to bear 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 filed Judgment has been entered and a Decree thereon issued.....”

30. In *Jersey Evening Post Cd -v- Al Thani* (2002) jlr 542 AT 550 the Supreme Court observed:-

“.....Proceedings are only fully concluded and the Court is functus when its Judgment or Order has been perfected. The purpose of the doctrine is to provide finality.....”



- 31. In fact, in my view, the Applicant should have requested for the file from the typing pool since it was being typed on his instruction. This would have enabled him to file the Application before returning the file for further typing of the proceedings.
- 32. The *Civil Procedure Rules* talk of Stay of Execution on the available step gap measure between the passing of the Decree and the Appeal. It is too late and any other order granted now in another name will beto reopening the case.
- 33. I therefore order that the Application dated 16/6/2025 concerning Nyandarua/Simbara/1503 and 1504 be dismissed with costs.

RULING READ AND DELIVERED IN NYANDARUA THIS 31ST DAY OF JULY 2025.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson

.....for Plaintiff

.....for Defendant

