



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL NO. E020 OF 2024

ARTHUR KIRIMI RIMBERIA.....
.....APPELLANT

VERSUS

NAIROBI CITY COUNTY.....
RESPONDENT

JUDGEMENT

1. By a Memorandum of Appeal dated 19th February 2024, the Appellant appealed the Ruling and Order delivered on 12th October 2023 by Hon. Grace A. Omodho (Principal Magistrate) in **MCELC No. 1055 of 2020; Arthur Kirimi Rimberia v Nairobi City County.**

BACKGROUND

2. The Plaintiff instituted this suit vide a Plaint dated 19th February 2020 seeking the following orders:-

a) An order directed to the Defendant to allocate and register in favour of the Plaintiff an alternative Parcel of Land in the same locality of the same value and acreage as Plot No. 62, Nairobi/Block 63/646, Jamuhuri Estate, Phase II.

b) In the alternative to (a) above, an order directed to the Defendant to pay the Plaintiff the current open market price of the parcel of land known as Plot No. 62, Nairobi/Block 63/646, Jamuhuri Estate Phase II.

c) An order directed to the Defendant to refund to the Plaintiff the sums paid as legal fees to his Advocates both in the High Court and Court of Appeal, plus costs of the suit paid to the Advocates for Frankline Kamathi Kamau, both for the High Court and Court of Appeal.

d) General and Punitive Damages.

e) Costs of this suit together with interest thereon at court rates.

f) Such other or further order as this Honourable Court may deem appropriate.

3. The Defendant filed a Statement of Defence dated 30th June 2020 in which it denied the Plaintiffs' claim.
4. The Plaintiff filed a Notice of Motion dated 3rd December 2020 seeking to strike out the defence and for judgment to be entered as prayed in the Plaint.
5. In response, the Defendant filed a Notice of Preliminary Objection dated 17th April 2021, raising the following grounds:-
 - a) The suit herein is statutorily time-barred**
 - b) This Honourable Court, in the circumstances, lacks jurisdiction except to strike out the entire suit.**
6. The court upheld the preliminary objection in its ruling delivered on 12th October 2023 and struck out the suit with costs.
7. Being aggrieved, the Appellant filed a Memorandum of Appeal dated 19th February 2024 on the following grounds:-

1. That the Learned Trial Magistrate erred in law and in fact in failing to appreciate that a similar ruling touching on the same issues she based her findings in striking out the entire suit had already been dealt with by the same court in a previous ruling of 28th June 2021.

2. That the Learned Trial Magistrate erred in law and in fact in disregarding the fact that on 28th June 2021 the Honourable Trial Magistrate D.M Kivuti while presiding over the same court had already delivered a ruling where he found that the suit was filed within the statutory time limits and the decision having not been overturned on appeal culminated into a final finding of the court on the question whether the suit was time barred to which the court had no jurisdiction to render itself again.

3. That the Learned Trial Magistrate erred in law and in fact in striking out the suit on account of a preliminary objection raised by the Respondent

and failing to appreciate that the court had already rendered itself on the said preliminary objection in a ruling delivered on 28th June 2021 and in the circumstances the same issues could not be relitigated on once again owing to the twin legal doctrines of functus officio and res judicata.

4. That the Learned Trial Magistrate erred in law and in fact in failing to appreciate that in striking out this suit vide its ruling of 12th October 2023 the trial court was literally sitting on appeal on its earlier decision a jurisdiction that the trial court did not have in overturning its previous decision.

5. That the Learned Trial Magistrate erred in law and in fact in her ruling by failing to confine herself strictly to the issues in the Notice of Motion dated 3rd December 2020 that was due for ruling on 12th October 2023, which application

had sought to strike out the Respondent's statement of defence.

6. That the Learned Trial Magistrate erred in law and in fact in taking into account extraneous issues in her ruling while striking out the suit suo moto contrary to the rule of law and the tenets of natural justice and fair hearing enshrined under Article 50 of the Constitution of Kenya.

7. That the Learned Trial Magistrate erred in law and in fact by failing to appreciate that cases are decided on the issues on record, and if it is desired to raise other issues, they must be made on the record by amendment. In the present case, the issue on which the trial court relied in striking out the entire suit for being time-barred was raised by the court itself without amending the relevant pleadings, which course infringed on the Appellant's right to a fair hearing under Article 50 of the Constitution, as he was never

afforded an opportunity to respond or submit on the issue.

8. The Appellant prays for;

a) This appeal be allowed.

b) That the ruling and order of the Chief Magistrate's court at Milimani Commercial Courts delivered on 12th October 2023 in MCELC No.1055 of 2020-Arthur Kirimi Rimberia v Nairobi City County be set aside.

c) That this Honourable court do substitute the same with an order that the suit filed at the Chief Magistrate's court at Milimani Commercial Courts in MCELC No.1055 of 2020, Arthur Kirimi Rimberia v Nairobi City County, be reinstated for hearing and determination on merit.

d) The costs of this Appeal be awarded to the Appellant.

9. The Appeal was canvassed by way of written submissions.

THE APPELLANT'S SUBMISSIONS

10. The Appellant filed his submissions dated 12th March 2025.

11. On behalf of the Appellant, Counsel submitted that the only issue for determination is whether the trial court lacked

jurisdiction to entertain the preliminary objection dated 17th March 2021.

12. Counsel submitted that the trial court erred in striking out the suit on the basis of the Preliminary Objection dated 17th March 2021 while disregarding the fact that the same objection had been previously dismissed in a ruling delivered on 25th June 2021.

13. Counsel submitted that the Respondent having not appealed against the orders issued on 25th June 2021, it follows that the said decision settled the issues. Counsel contended that this created a situation where the same court made two rulings on the same matter, thus violating the doctrine of *functus officio*. Counsel submitted that once a court has pronounced itself on a matter, it is deemed to have performed all its duties, and in this case, it became *functus officio*. To support this argument, reliance was placed on the case of **Mwathe Julius Musili v IEBC & anor Petition No.16 of 2018, Alba Petroleum Limited v Total Marketing Kenya Limited Civil Appeal No.43 of 2015, Moyale Liner Bus v Gachu Ibrahim Civil Appeal**

No.141 of 2019, Raila Odinga & 2 others v Independent Electoral and Boundaries Commission & 3 others [2013] eKLR, Telkom Kenya Limited v John Ochanda (Suing on his own behalf and on behalf of 996 Former Employees of Telkom Kenya Limited) [2014] eKLR, and Gladys Boss Shollei v Judicial Service Commission and Another Civil application No.10 (E016) of 2022

14. Counsel argued that since there was no appeal against the ruling of 25th June 2021, the issues arising from the preliminary objection were final and could not be revisited. It was further contended that the trial court, having issued its decision on the preliminary objection in that ruling, had become functus officio.

THE RESPONDENTS SUBMISSIONS

15. The Respondent filed its submissions dated 26th May 2025. On behalf of the Respondent, Counsel outlined the following issues for the court's determination:-
- a) *Whether the order and ruling of the lower court delivered on 12th October 2023 should be set aside?*

b) Whether the instant appeal is merited?

16. Counsel acknowledged that Hon. D.M. Kivuti (P.M.) addressed the Preliminary Objection in the ruling of 25th June, 2021, and noted that the ruling only addressed the form of the Preliminary Objection but ignored its substance. It was submitted that the Learned Magistrate found that the Preliminary Objection had failed to confine itself to pure points of law, as it disclosed contested facts, and held that the issue would be determined at the hearing of the main suit.
17. It was submitted that Hon G. Omodho was within her rights to make a finding on the issue of limitation of time as it was raised in the Statement of Defence and Grounds of Opposition to the Appellant's Notice of Motion dated 3rd December 2020. Consequently, the Court was not functus officio on that matter.
18. . Counsel further submitted that the ruling of 12th October 2023 is not res judicata as the issue of limitation of time was not conclusively determined in the Ruling by Hon D.M Kivuti (P.M). Counsel pointed out that the issue of

limitation of time was still pending, having been raised in the statement of defence and grounds of opposition. Counsel maintained that Hon G. Omodho exercised her jurisdiction judicially by determining the issue of limitation of time. Therefore, the Order and Ruling of the Chief Magistrate's Court issued on 12th October, 2023 are justified. Counsel cited the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR**, to emphasize that jurisdiction is of utmost importance.

19. Further reliance was placed on the cases of **Patrick Kirimi M'nganabu v Njeru Muchai [2021] KEELC 1419 (KLR)**, **Eremoto v Omolo & 2 others (Environment & Land Case 128 of 2015) [2023] KEELC 20635 (KLR) (12 October 2023) (Ruling)**, **JMM v CWN (Civil Appeal E007 of 2022) [2023] KEHC 20991 (KLR) (31 July 2023) (Ruling)**, **United India Insurance Co. Limited V East African Underwriters (Kenya) Ltd (1985) EA and Jumbo North (E.A.) Limited v Wilder Wangira [2020] eKLR.**

ANALYSIS AND DETERMINATION

20. Having considered the entire record of appeal and the submissions by the parties, the issue that arises for determination is whether the trial court lacked jurisdiction to entertain the Notice of Preliminary Objection dated 17th March 2021.
21. The Appellant argued that the trial court lacked jurisdiction to determine the preliminary objection dated 17th March 2021 because the same issue had already been determined by the court in its ruling of 25th June 2021 and therefore, the court was functus officio.
22. The Respondent argued that the decision of 12th October, 2023, was made judiciously, as the Court was within its rights to consider the issue of limitation of time.
23. In the ruling of 25th June 2021, Hon. D.M Kivuti stated as follows while addressing the Respondent's preliminary objection dated 17th March 2021:-

“I will decline the preliminary objection and hold that the preliminary objection is

declined.....further ventilate that issue at trial”

24. The Appellant contended that the court was functus officio, given that it had previously issued a ruling on the issue of limitation time.

25. The **Black’s Law Dictionary 9th Edition** defines functus officio as:-

“Having performed his or her office (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.”

26. The doctrine of functus officio was articulated by the Supreme Court in **Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR** as follows:-

“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.”

27. Similarly, the Court of Appeal 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, held 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. The general rule that the final decision of a court cannot be reopened 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,”

28. Based on the above authorities which are binding on this court, it is clear that when a Court has already pronounced itself on a matter, it is deemed to have performed all its duties in the case and it becomes *functus officio*.

29. In my view, the ruling of 25th June 2021 by Hon. D.M. Kivuti disposed of the issue of limitation of time raised by the Defendant and deferred it to the trial.

30. In the circumstances, Hon. Grace A. Omodho (Principal Magistrate) lacked jurisdiction to revisit the same issue of limitation of time in her ruling dated 12th October 2023, owing to the principle of finality.

31. In the end, I find that the Appeal is merited and the same is hereby allowed in the following terms:-

a) The ruling and order of the Chief Magistrate’s Court at Milimani Commercial Courts delivered on

**12th October 2023 in MCELC No. 1055 of 2020-
Arthur Kirimi Rimberuia v Nairobi City County is
hereby set aside.**

**b) The suit filed at the Chief Magistrate's Court
at Milimani Commercial Court's in MCELC No.
1055 of 2020 is reinstated for hearing and
determination.**

c) Costs to abide by the outcome of the suit.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA
MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025.**

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF: -

Wangui holding brief for Mungai for the Appellant

Gichuki for the Respondent

Ahmed - Court Assistant