



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E & L APPEAL NO. 2 OF 2015**

**DIVISON ENTERPRISES LTD.....APPELLANT/RESPONDENT**

**VERSUS**

**MARGARET M. NASSIUMA.....RESPONDENT/APPLICANT**

**RULING**

There are two applicants on record thus the application dated 7<sup>th</sup> February 2017 and the application dated 19.1.2018 filed by the respondent in this appeal. In the former application, the respondent seeks orders that the court be pleased to unconditionally review its ruling and order delivered on 24.11.2016 and dismiss the appeal with costs. The application is based on grounds that the respective appeal was anchored on the issue of jurisdiction of the subordinate court in the original suit. The court allowed the appeal, however, the Court of Appeal subsequently reviewed the legal position on the jurisdiction of subordinate courts in land related matters. In the supporting affidavit, the applicant reiterates the grounds of the application.

In his reply, the appellant/respondent states that there is a similar application dated 7.2.2017 that is pending ruling. The respondent obtained orders of the court without disclosing that there was a pending ruling. The respondent contends that the statute to applicant seeks to rely on came into force after the filing of the suit and the ruling of the court. The decision of the court of appeal sought to be relied upon came into force after the decision of this court.

In the second application dated 19<sup>th</sup> January 2018, the Respondent seeks orders similar to the orders sought in the application dated 7<sup>th</sup> February 2017 save that the respondent further seeks injunctive orders. I have considered the application and the response and rival submissions by counsel and do find that the suit in the Lower Court was filed on 15.1.2015. The decision of this court was made on 25.11.2016 whose import was that the Magistrate's Court lacked jurisdiction to entertain land disputes arising after the Environment & Land Court was established. In essence, the appeal was allowed. This court after rendering its decision on jurisdiction became *functus officio*.

This court is guided by the case of **Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR**, where the Supreme Court of Kenya rendered itself thus:

**“[18] ... 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.”**

**[19] 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”**

Similarly, in Menginya Salim Murgani v Kenya Revenue Authority [2014] eKLR, the Supreme Court of Kenya held that:

**“It is a general principle of law that a Court after passing Judgment, becomes *functus officio* and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law.”**

This court cannot sit on appeal of its own decision. The applicant ought to have appealed to the Court of Appeal.

Order 45, Rule 1 of the Civil Procedure Rules allows the court to review its decision where there is discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree has passed or the order made or an account of some mistake or error apparent on the face of record or for any sufficient review. There is no discovery of any new and important matter. The issues raised are that the Court of Appeal has now made a decision that the Magistrate’s Courts have jurisdiction to entertain disputes relating to title the land, land use, occupation.

I do find that I have no powers to review my decision on jurisdiction as it does not amount to an error apparent on the face of record and that the Court of Appeal’s decision was made after I had rendered my decision. The only option open to the applicant is to appeal. Application is dismissed with costs.

**Dated and delivered at Eldoret this 8<sup>th</sup> day of April, 2019.**

**A. OMBWAYO**

**JUDGE**