



REPUBLIC OF KENYA



KENYA LAW
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**Cherogony v Rono & 10 others (Environment and Land Case
212 of 2013) [2025] KEELC 8407 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 212 OF 2013
A OMBWAYO, J
DECEMBER 3, 2025**

BETWEEN

MATHEW CHEBON CHEROGONY PLAINTIFF

AND

KIPKURUI ARAP RONO 1ST DEFENDANT

JOSEPH TANUI TINDIRET 2ND DEFENDANT

ELIJAH KOMEN KATYA 3RD DEFENDANT

BENSON MUCHAI 4TH DEFENDANT

SAMUEL KAIRU 5TH DEFENDANT

JOSEPH K BIRIR 6TH DEFENDANT

DAVID KENDAGOR 7TH DEFENDANT

JOHN WACIRA CHIRI 8TH DEFENDANT

MATHEW KIPYEGON SANGA 9TH DEFENDANT

DAVID MBUGUA KAHURIA 10TH DEFENDANT

JOHN NDUNGU 11TH DEFENDANT

RULING

Applicants Case

1. David Mbugua Kahuria and John Ndungu (hereinafter referred to as applicants) have come to court vide application dated 8th October 2025 seeking orders that this Honorable Court be pleased to grant leave to Nakuru Community Justice Center. Kituo Cha Sheria – Nakuru Branch C/O Joseph



Kimotho to come on record for the 1st and 2nd Applicants, in place of their respective former Advocates after Judgment, pursuant to Order 9 Rule 9 of the Civil Procedure.

2. Upon being granted leave as under (2) above, this Honorable Court be pleased to issue an order of eviction as against Mathew Chebon Cherogony (herein after referred to as the Respondent) including his servants, agents or any other persons claiming under them, from all those parcels of land known as Nakuru/Municipality Block 29/1130 (Ronda) and Block 29/1048 (Ronda). Upon being granted the orders as under (3) above, this Honorable Court be pleased to make an order authorizing Applicants to take vacant possession of their respective parcel of land thereof.
3. The applicants further seek an order that the Office Commanding Station (OCS) be directed to oversee and supervise the eviction exercise and ensure compliance with the directions of the Honorable Court and that costs be provided for.
4. The application is based on facts that the Honorable Court entered judgment dated March 23, 2025, wherein, it found inter alia, that the Plaintiff/Respondent failed to establish ownership by adverse possession and therefore was not entitled to the parcels of land belonging to the and 2nd Applicants herein, that is Nakuru/Municipality Block 29/1130 (Ronda) and Nakuru Municipality Block 29/1048 (Ronda).
5. Moreover, that the 1st and 2nd Applicants are the registered owners and proprietors of the said parcels of land, and they pray to be allowed to assume occupation of their respective parcels of land.
6. The said resumption of occupation on their lands has been greatly derailed as a result of the Plaintiff/Respondent's continued occupation, all the while being hostile to the Applicants.
7. The applicants now wish to take vacant possession of their respective parcels of land but the Plaintiff/Respondent has declined to vacate, necessitating the intervention of this Honorable Court.
8. Prior to the judgment, both Applicants had engaged their respective former Advocates, and for whom they now wish to engage the services of a different Counsel, thus prompting the need to seek the leave of the Honorable court to have Nakuru Community Justice Center, Kituo Cha Sheria- Nakuru P.O. 2870-20100, NAKIJRU to now come on record and be allowed to prosecute this instant Application.
9. The interests of the administration of justice and the principles of fairness do favor the grant of the orders sought, as the Applicants believe that the Plaintiff/Respondent is out to frustrate their efforts to reclaim their right to quiet and vacant possession to the suit parcels of land.
10. The Applicants are apprehensive that unless this Honorable Court grants them the orders sought, they risk losing their proprietary interests to the suit parcels of land to the Plaintiff/Respondent through illegal means unsupported by any procedure known by law, to their unfortunate detriment.
11. It is on this basis, therefore, that the Applicants are seeking for the orders directing the Plaintiff/Respondent to immediately vacate the suit parcels of land, and surrender quiet and vacant possession of the suit parcels of land to the Applicants herein. The Applicants herein thus make the instant Application seeking to be vested with the requisite orders as prayed. It is, is such, in the best interests of the Applicants well as in the interests of administration of justice that this Honorable Court grants the Applicants the reliefs sought. The interests of the administration of justice and fairness favors the grant of the reliefs sought. The application is supported by the affidavit of David Mbugua Kahuria on his behalf and on behalf of John Ndungu. The said affidavit reiterates the grounds of the application.



Response

12. In the replying affidavit the Respondent states that the court cannot issue the order of eviction against him from title No. Nakuru/Municipality Block29/1130 (Ronda) as there is no positive judgment in favour of the applicants in the suit. The applicant did not file a counter-claim for the hearing and determination by the court. The applicant can't use the judgment to execute as there was no order for eviction.

Applicants' Submissions

13. The applicants submit that they are entitled to the relief sought because they are the registered proprietors of the parcels of land by dint of their respective Certificates of Title Deeds registered in their names. The applicants argue that under Sections 24(a) and 25(1) of the [Land Registration Act](#), 2012, the registration of a person as the proprietor vests in that person absolute ownership together with all rights and privileges appurtenant thereto, including right to possession and quiet enjoyment and that under Section 26(1) of the [Land Registration Act](#), 2012, the Act affirms that the title is the prima facie evidence of ownership, only impeachable on grounds of fraud, misrepresentation, or illegal acquisition- none of which has been established by the Plaintiff/Respondent herein.
14. The applicants rely on the case of Sisto Wambuqu versus Kamau Niuquna (1983) KECA 69 KLR, the Court of Appeal made reference to the English case of Walli's Cayton Bay Holiday Camp Ltd versus Shell-Mex & BP Ltd (1975) QB 94, wherein the Court affirmed that the courts are reluctant to allow an encroacher or squatter to acquire good title to land against the true owner. The general principle being that until the contrary is proved, possession in law follows the right to possess, and that in order to acquire (by adverse possession) which has a known owner, said owner must have lost his right to the land, either by being dispossessed of it, or by having discontinued his possession of it. That if the title of the owner has not been extinguished, the owner remains to be the lawful proprietor. That unless the validity of the Certificates of Title Deed issued to the applicants herein have been challenged, which is yet to be done, the applicants herein remain to be the registered owners of their respective suit parcels of land. The Plaintiff/Respondent's continued and unjustified occupation after judgment warrants the intervention of the Honorable Court.
15. The applicants contend that once the Honorable Court issued its Judgment dated March 23, 2025, essentially dismissing the Plaintiff/Respondent's claim over the respective suit parcels of land, the Plaintiff/Respondent herein ceased to have any color of right over the parcels of land. His continued occupation amounts to trespass, and is in total disregard of the Applicants' proprietary interests to their respective parcels of land, as enshrined in Section 24 and 25 of the [Land Registration Act](#), 2012. Having failed to prove adverse possession to the sufficiency of the Honorable Court, the Respondent herein has no right to remain on the Applicants' parcels of land. Therefore the only proper post-judgment recourse is an order for eviction to give effect to the Court's determination, and to ensure that the registered proprietors' right to the parcels of land are guaranteed and safeguarded.

Respondents Submissions

16. The respondent on his part, submits that none of the Applicants herein filed any counter suit seeking any orders of eviction against the Respondent herein. The suit herein belonged to the Respondent and there being no counter-claim by the Applicants herein the orders sought cannot be granted. It is trite law that parties are bound by their pleadings such that the court can only determine a matter based on the pleadings before it and a party cannot obtain relief which has not been requested or



sought in the Pleadings. There are no pleadings by the Applicants herein to support the prayers now being sought by the Applicants herein in the application. What the Applicants are doing is introducing a fresh claim by way of an application in a matter where judgment has already been delivered. The plaintiff contends that the application herein is incompetent, bad in law, frivolous and an abuse of the court process. According to the plaintiff, the Applicants application is attempting to indirectly reopen the case in favour of the Applicants. The moment the court dismissed the Respondent's case, this Honorable Court became functus officio and as such the court cannot deal with the application herein. The judgment of the court gave a negative order. The respondent relies on the Supreme Court of Kenya while expounding on the doctrine of functus officio in Election Petitions Nos. 3, 4 & 5 Raila Odinga & Others vs. IEBC & Others [2013] eKLR cited with approval an excerpt from an article by Daniel Malan Pretorius, in "The Origins the functus officio Doctrine, with Specific Reference to its Application in Administrative Law, (2005) 122 SAW 832:

“The functus officio doctrine is one of the mechanisms by means 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 of functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.

The Supreme Court of Kenya also relied on the case of Jersey Evening Post Limited vs Al Thani (2002) JLR 542 at 550 which stated that:-

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. "

17. Ultimately, the respondent submits that this court is functus officio and as such, it cannot determine the application dated 8th October 2025. Further, the law provides for the manner in which a party can move the court for an order of eviction. The recourse for the Applicants herein is to formally file their own suit seeking the orders that they now seek through the application before the court dated 8th October, 2025.

Analysis and Determination

18. I have considered the application and the submissions on record and do find that the applicants seek leave of this court for an order that Nakuru Community Justice Center. Kituo Cha Sheria – Nakuru Branch C/O Joseph Kimotho be allowed to come on record for the 1st and 2nd Applicants, in place of their respective former Advocates after Judgment, pursuant to Order 9 Rule 9 of the Civil Procedure. The same is not opposed, has merit and is allowed.
19. This court in its judgment dated March 23, 2025 dismissed the application for adverse possession made by the respondent by way of Originating Summons. The applicant is now seeking an order of eviction of the respondent in execution of the judgment. To begin with, the court never issued such an order that can be executed by the applicant. In the suit, the respondent prayed for an order of adverse possession in respect of the two properties registered respectively in the names of the applicants but



failed to obtain the orders because the respondent did not prove the possession of the suit land for 12 years. The court dismissed the suit with costs. Having dismissed the suit this court is functus officio on any matter arising out of its judgment other than execution of the decree. The applicants ought to have filed a counter suit when the suit for adverse possession was still running. This court finds that a respondent in a suit of adverse possession should file a counter claim for eviction when the suit is subsisting which should be granted by the court when the suit fails, and ultimately apply for eviction after judgment. This because after judgment the court becomes functus officio and cannot entertain the suit anymore.

20. The doctrine of functus officio is one of the expressions in law on the principle of finality. The Black's Law Dictionary, Ninth Edition defines functus officio as: -
 1. “[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.”
21. 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] eKLR held that: -
 - i. “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.”
22. The Court of Appeal followed the Supreme Court decision in *Raila Odinga & 2 Others V Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, where the Supreme Court cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 which reads: -
 - a. ... “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.”
23. A person/entity that wishes to evict unlawful occupants from their land must first issue a notice of not less than three months before the date of the intended eviction to the said occupants stating the intention to evict. In a case involving private land, such notice must be issued by the owner or the person in charge. This notice which relates to private land as provided for under Section 152E of the [Land Act, 2012](#) must: –
 - i. Be in writing and in a national and official language;
 - ii. Be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land since this case involves a large group of persons;
 - iii. Specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
 - iv. Be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.



24. The court finds that granting an order of eviction under this circumstances will untidy the suit and amount to re-opening the case for grant substantive orders. The only avenue left for the applicants is to apply in a separate suit, for eviction of the respondent under section 152E of the Land Act 2012. Otherwise the application lacks merit is dismissed with costs.

RULING DATED SIGNED AND DELIVERED ELECTRONICALLY THIS 3RD DAY OF DECEMBER, 2025.

A .O .OMBWAYO

JUDGE

