



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Directline Assurance Company Limited v Business Registration
Service & 4 others (Commercial Petition E006 of 2023)
[2026] KEHC 540 (KLR) (Commercial and Tax) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL PETITION E006 OF 2023**

MN MWANGI, J

JANUARY 23, 2026

**IN THE MATTER OF: ARTICLES 22(1), 27, 40 & 47 OF
THE CONSTITUTION OF KENYA, 2010**

-AND-

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS OR
FUNDAMENTAL FREEDOMS UNDER ARTICLES 10, 27,
40, 47 & 73 OF THE CONSTITUTION OF KENYA, 2010.**

-AND-

IN THE MATTER OF: THEBUSINESS REGISTRATION SERVICE ACT, 2015

-AND-

IN THE MATTER OF: SECTION 9 OF THE COMPANIES ACT, 2015

**-AND- IN THE MATTER OF: THE ISSUANCE OF ILLEGAL AND FRAUDULENT
CR-12 IN RESPECT OF DIRECTLINE ASSURANCE COMPANY LIMITED ON 21ST
OCTOBER 2022, 10TH NOVEMBER 2022 & 22ND MAY 2023 OF L.R NO. 134/8**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED PETITIONER

AND

BUSINESS REGISTRATION SERVICE 1ST RESPONDENT



REGISTRAR OF COMPANIES	2 ND RESPONDENT
SIDIAN BANK LIMITED	3 RD RESPONDENT
CO-OPERATIVE BANK LIMITED	4 TH RESPONDENT
NCBABANK LIMITED	5 TH RESPONDENT

(Being an application arising from the Ruling delivered in HCCOMMPET/E006/2023 in the High Court of Kenya at Milimani by Hon. Lady Justice Njoki Mwangi on 19th July 2024)

RULING

1. The applicants filed a Chamber Summons application dated 13th February 2025 under the provisions of Order 1 Rule 15 of the Civil Procedure Rules, 2010, seeking an order for leave to issue Third Party Notices against the Insurance Regulatory Authority, Royal Credit Limited, Royal Media Services Limited, Directline Assurance Company Limited, Samuel Kamau Macharia & Purity Gathoni Macharia.
2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Mr. Kelvin Mogeni, an Advocate of the High Court of Kenya and learned Counsel for the applicants. Mr. Mogeni averred that he and Mr. Julius Orege were appointed as Directors of Directline Assurance Company Limited at the instance of Royal Media Services Limited, Royal Credit Limited, Samuel Kamau Macharia and Purity Gathoni Macharia. He stated that the said appointments were duly approved by the Insurance Regulatory Authority. He contended that the applicants' roles as Directors were undertaken at the express invitation of the appointing parties and in a fiduciary capacity, exercised in good faith, with reasonable care and skill, and for the benefit of the company.
3. Mr. Mogeni deposed that by a Ruling delivered on 19th July 2024, this Court ordered that any costs payable to the respondents be borne jointly and severally by Mogeni & Co. Advocates and Julius Orege. That pursuant to the said Order, the applicants were served with a bill of costs dated 16th October 2024 claiming the sum of Kshs.7,451,067.00 He asserted that the applicants cannot be held personally liable for the said costs as their involvement in the matter arose solely from their appointment as Directors of Directline Assurance Company Limited, and as agents of the appointing parties. Counsel averred that during the applicants' tenure as Directors, the said company maintained a Directors' indemnity insurance policy covering acts undertaken in the course of their duties as Directors, hence any liability arising therefrom ought to be covered under that policy.
4. In addition, Mr. Mogeni averred that Mogeni & Co. Advocates held a professional indemnity insurance policy with Directline Assurance Company Limited, covering acts undertaken in their professional capacity as Advocates. He maintained that the applicants acted in a representative capacity, in good faith, and within the scope of their authority, and should not bear personal liability. He averred that the appointing parties having initiated and procured the applicants' appointment as Directors, should bear ultimate responsibility for any costs or liabilities arising from the applicants' actions in that capacity. Counsel therefore asserted that it is just and equitable to grant leave to issue Third-Party Notices against the proposed third parties whose participation he asserted, is necessary for the effectual and complete determination of the issues in dispute.



5. In opposition to the instant application, the intended third parties filed a Notice of Preliminary Objection dated 19th February 2025, raising the following grounds –
 - i. The said Summons is incurably defective;
 - ii. This Honourable Court lacks jurisdiction to entertain the said application as the suit was withdrawn on 19th July, 2024 pursuant to the directions of this Honourable Court issued that day;
 - iii. The Court is functus officio;
 - iv. No appeal was lodged in the Court of Appeal against the Orders made on 1st March 2024 and 19th July 2024, respectively;
 - v. The said Order made on 19th July 2024, has not been reviewed/vacated and the suit revived;
 - vi. This Honourable Court lacks jurisdiction to enjoin persons as parties after a suit has been concluded; and
 - vii. The said Dr. S.K Macharia, Mrs. P.G Macharia, Royal Credit Limited and Royal Media Services were not parties to the said suit.

6. In opposition to the application herein, the petitioner filed a Notice of Preliminary Objection dated 21st February 2025, raising the following grounds –
 - i. The petition herein having been marked as withdrawn with costs on 19th July 2024, this Honourable Court lacks jurisdiction to entertain the present application as the Court is functus officio;
 - ii. The application dated 13th February 2025 purported to have been brought under the provisions of Order 1 Rule 15 of the Civil Procedure Rules (2010) is misconceived, bad in law and fatally defective as the said provisions do not contemplate or provide for the filing of a Third Party Notice after the conclusion of a suit;
 - iii. The proceedings herein having been concluded and the petitioner’s bill of costs slated for taxation, the applicants’ Third-Party Notice seeks to unprocedurally re-open these proceedings and commence fresh hearings on the liability of alleged third parties, not party to the original petition or the application for costs made against the applicants;
 - iv. Whereas the applicants may have a right to pursue parties who allegedly issued them with the irregular instructions that resulted in the unauthorized filing of the petition dated 20th June 2023, such proceedings cannot be undertaken in the said petition dated 20th June 2023 which currently stands as withdrawn;
 - v. If at all the applicants wished to apportion liability to their instructing clients, such application ought to have been made during the hearing of the application for costs against them and not after the Ruling with respect to the same was delivered;
 - vi. Taxation of bills of costs being a matter undertaken by the Deputy Registrar, the Registrar does not have the jurisdiction to determine substantive issues of liability between third parties or hear applications filed under Order 1 Rule 15;
 - vii. The application dated 13th February 2025 is frivolous, vexatious and otherwise an abuse of the Court Process; and



- viii. The application dated 13th February 2025 be struck out with costs.
7. The petitioner also filed a replying affidavit sworn on 25th February 2025, by Mr. Andrew Gathu Mmbogori, an Advocate of the High Court of Kenya and learned Counsel for the petitioner. Mr. Mmbogori averred that the petition dated 20th June 2023 was irregularly instituted, having been filed in the name of Directline Assurance Company Limited by the firm of Mogeni & Company Advocates without proper authority, and was supported by an affidavit sworn by Mr. Julius Orenge, who likewise lacked authority from the petitioner's majority shareholders.
 8. He further averred that the majority shareholders of the petitioner did not authorize either Mogeni & Company Advocates or Mr. Julius Orenge to institute the petition and consequently, the petitioner passed resolutions appointing him to take over conduct of the matter and to seek the striking out or withdrawal of the irregularly instituted petition, with costs to be borne by Mr. Julius Orenge and Mogeni & Company Advocates. Mr. Mmbogori deposed that the regularity of the petition and the issue of liability for costs therefore became central issues for determination, culminating in a Ruling delivered on 1st March 2024, in which the Court found that there was no authority to institute the petition, and another Ruling on 19th July 2024, in which the Court condemned Mr. Julius Orenge and Mogeni & Company Advocates to bear the costs for the irregular institution of the petition. He stated that the Court marked the petition as withdrawn.
 9. Counsel contended that at no time prior to the withdrawal of the petition or during the proceedings leading to the said Rulings, did Mr. Julius Orenge or Mogeni & Company Advocates seek to apportion liability for costs to any other parties alleged to have issued them with irregular instructions. He asserted that the petition having been marked as withdrawn with costs on 19th July 2024, this Court is functus officio and lacks jurisdiction to entertain the application herein. He contended that Order 1 Rule 15 of the Civil Procedure Rules, 2010, does not envisage the issuance of a Third-Party Notice after the conclusion of a suit. He stated that the instant application improperly seeks to re-open concluded proceedings and introduce alleged third parties who were not parties to the original petition or to the application for costs.
 10. Mr. Mmbogori deposed that while the applicants may be at liberty to pursue any parties who allegedly issued them with irregular instructions, such claims cannot be ventilated within a petition that has already been withdrawn. He maintained that any attempt to apportion liability ought to have been made during the hearing of the application for costs and not after the Court had rendered its decision and marked the matter as concluded. Counsel further averred that taxation of costs is a function of the Deputy Registrar, who lacks jurisdiction to determine substantive issues of liability between alleged third parties or to entertain applications under Order 1 Rule 15 of the Civil Procedure Rules.
 11. The application herein was canvassed by way of written submissions. The applicants' submissions were filed on 17th March 2025 by the law firm of Mogeni & Company Advocates, the petitioner's submissions were filed by Andrew Mmbogori Advocate on 4th April 2025. The intended third parties did not file written submissions nor make any oral submissions in opposition to the application herein.
 12. Mr. Mogeni, learned Counsel for the applicants cited the provisions of Order 1 Rule 15(1) of the Civil Procedure Rules, 2010, and the case of *Yafesi Walusimbi v Attorney General of Uganda* [1959] EA 223, and submitted that a third party may properly be joined where the cause of action or issues between the defendant and the intended third party mirror those between the plaintiff and the defendant and ought to be determined together. He stated that the applicants were appointed as Directors of Directline Assurance Company Limited pursuant to an application by Royal Media Services Limited, Royal Credit Limited, Samuel Kamau Macharia and Purity Gathoni Macharia, with the approval of the



- Insurance Regulatory Authority. He asserted that all actions undertaken by the applicants were in their capacity as Directors and agents of the company.
13. Counsel argued that the cause of action now arising relates solely to liability for costs following this Court's Order condemning the applicants jointly and severally to bear costs, pursuant to which a bill of costs dated 16th October 2024 was served upon them. He maintained that there exists a clear nexus between the applicants, the respondents and the proposed third parties, and that the issue of who ought to bear the costs is a triable issue that can only be effectually determined upon joinder of the intended third parties. On the issue of liability of Directors, Mr. Mogeni relied on the case of *Salomon v Salomon & Co Ltd* [1896] UKHL 1, [1897] AC 22 and submitted that company law firmly establishes the separate legal personality of a company from its Directors and agents, save where circumstances warrant the lifting of the corporate veil.
 14. Counsel also relied on the provisions of Section 196 of the *Companies Act*, 2015 and Section 31 of the Fourth Schedule to the Companies (General) Regulations, 2015, and asserted that a company may indemnify its Directors against liabilities incurred in the course of their duties, except in the limited circumstances expressly excluded by Statute. He submitted that a Board decision of Directline Assurance Company Limited resolved that the suit be instituted and that Mogeni & Company Advocates be appointed to act, on the basis that Kelvin Mogeni was a Director approved by the Insurance Regulatory Authority and conversant with the matter.
 15. He maintained that the applicants acted strictly on the instructions of the company and in a representative capacity, and cannot be held personally liable for costs arising from such actions. He argued that Directline Assurance Company Limited, as the principal, ought to indemnify the applicants and bear liability for the bill of costs dated 16th October 2024. In respect to the firm of Mogeni & Company Advocates, Counsel contended that the firm received proper instructions to institute the petition and merely discharged its professional duty as Advocates. He submitted that in any event, the said law firm is indemnified under a professional indemnity policy issued by Directline Assurance Company Limited.
 16. Mr. Mmbogori, learned Counsel for the petitioner relied on the Supreme Court case of *Odinga v Independent Electoral & Boundaries Commission & 3 others* (Petition 5, 4 & 3 of 2013 (Consolidated)) [2013] KESC 8 (KLR) and submitted that once a Court of competent jurisdiction has determined an issue, the doctrine of *functus officio* bars that Court from re-opening or re-litigating the same issues. He contended that the instant application seeks to re-open issues that were already conclusively determined by this Court, namely, whether the applicants were authorized to institute the petition and who should bear the costs arising therefrom. He argued that the applicants' assertion that they cannot be personally held liable for costs and that third parties ought to indemnify them, is a direct challenge to the Court's prior Ruling on liability for costs.
 17. He argued that allowing such arguments to proceed would result in a re-hearing of matters already determined and would lead to a circular process in which the same costs are re-allocated through the back door. Counsel asserted that if the applicants were aggrieved by the Court's findings, their recourse lay in an appeal, or in raising such arguments before the Court rendered its final determination, and not after the suit had been concluded and marked as withdrawn.
 18. Mr. Mmbogori submitted that the application herein is fatally defective for being brought under Order 1 Rule 15 of the Civil Procedure Rules, 2010, after the conclusion of the suit. He stated that the Rule expressly requires an application for leave to issue a Third Party Notice to be made within fourteen (14) days after the close of pleadings.



19. Counsel argued that since in the petition pleadings had long closed and the substantive dispute had been fully determined more than six (6) months before the application herein was filed, the instant application is not only time-barred but was also filed outside the contemplation of the provisions of Order 1 Rule 15 of the Civil Procedure Rules, 2010, which does not envisage the issuance of Third Party Notices after judgment or withdrawal of a suit.

Analysis And Determination.

20. I have considered the application filed herein and the grounds on the face of it, the Notices of Preliminary Objection filed by the intended third parties and the petitioner, as well as the replying affidavit by the petitioner and the written submissions by Counsel for the applicants and the petitioner. The issues that arise for determination are –
- i. Whether this Court is functus officio having marked the petition as withdrawn with costs; and
 - ii. Whether leave to issue Third Party Notices should be granted to the applicants.

Whether this Court is functus officio having marked the petition as withdrawn with costs.

21. This Court delivered a Ruling on 1st March 2024 where it found that the petition dated 20th June 2023 had been instituted without authority, and a subsequent Ruling on 19th July 2024 where it marked the petition as withdrawn and condemned Julius Orenge and Mogeni & Company Advocates to bear the costs of the petition. Evidently, those Orders have neither been appealed against, reviewed or set aside.
22. The doctrine of functus officio is a principle of law that prevents the re-opening of a matter before a Court that rendered the final decision. The Supreme Court of Kenya in expounding on the doctrine of functus officio in the case of *Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others* (Petition 5, 3 & 4 of 2013 (Consolidated)) [2013] KESC 6 (KLR cited with approval an excerpt from an article by Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832, which states as follows-
- 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.
23. Similarly, in the case of *Telkom Kenya Ltd v Ochanda* (Suing on His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Ltd) [2014] KECA 600 (KLR), the Court of Appeal held as follows:-
- The doctrine is not to be understood to bar 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 final judgment has been entered and a decree thereon issued.
24. The import of the above is that the doctrine of functus officio is grounded on the principle of finality of litigation and bars a Court from re-opening matters that it has already conclusively determined. The applicants’ contention is that they should not bear personal liability for the costs ordered by this Court, and that the intended third parties ought to indemnify them. Upon perusal of the Ruling delivered by this Court on 19th July 2024, the question of who was liable for the costs of the petition, and the basis



upon which that liability arose, was directly in issue before this Court and was conclusively determined in the said Ruling. The indemnity now being sought is not ancillary to execution of the Order for costs, but goes to the very foundation of the Court's determination on liability for costs.

25. Accordingly, this Court is of the considered view that the applicants' attempt to introduce third parties for purposes of reallocating or shifting liability would inevitably require this Court to revisit and reconsider issues already determined, including the absence of authority to institute the petition and the consequent personal liability for costs imposed on the applicants. Consequently, this Court agrees with the petitioner that this Court is functus officio in respect of those matters and lacks jurisdiction to reopen them through the instant application.
26. However, even assuming for the sake of argument that this Court was not functus officio, the application would still fail on procedural grounds. Order 1 Rule 15 of the Civil Procedure Rules, 2010, expressly provides that an application for leave to issue a Third-Party Notice shall be made within fourteen (14) days after the close of pleadings. In this case, pleadings had long closed and more significantly, the suit itself had been conclusively determined and marked as withdrawn with costs more than six (6) months before the instant application was filed.
27. On further examination of the provisions of Order 1 Rule 15 of the Civil Procedure Rules, 2010, it is manifest that it does not contemplate the joinder of third parties after judgment or after a suit has been concluded as is the case herein. The procedure is intended to facilitate the determination within a pending suit, of questions of indemnity or contribution connected with the subject matter of that suit, and not to revive concluded proceedings. To hold otherwise would undermine the principle of finality and permit concluded proceedings to be reopened through procedural devices.
28. In the circumstances, this Court finds that issues of substantive liability as between the applicants and intended third parties cannot be properly determined through a third-party procedure in a suit that has since been marked as withdrawn. While the applicants may, if so advised, pursue any indemnity or contribution claims they believe arise against the intended third parties in separate and appropriate legal proceedings, such claims cannot be ventilated within the petition as it was withdrawn on 19th July 2024.
29. The upshot is that the applicants' Chamber Summons application dated 13th February 2025 is incompetent as it offends the principles of finality, certainty, and the efficient administration of justice.
30. The application is hereby dismissed with costs to the petitioner and the intended third parties. Costs shall be borne by Julius Orenge & Mogeni & Company Advocates.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF JANUARY, 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Gitonga h/b for Kelvin Mogeni for the applicants

Mr. Mmbogori for the petitioner/respondent

Mr. Munyori for the intended third parties

Ms B. Wokabi – Court Assistant.

