



**Mwangi v Republic; Cooperative Bank of Kenya Ltd & another (Interested Parties)
(Criminal Revision E150 of 2025) [2026] KEHC 615 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E150 OF 2025
DKN MAGARE, J
JANUARY 29, 2026**

BETWEEN

PAUL KAMWETI MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

AND

COOPERATIVE BANK OF KENYA LTD INTERESTED PARTY

STARTRUCK AUCTIONEERS INTERESTED PARTY

RULING

1. The applicant made an application against two parties who are not parties to the case. The original order sought review of orders given in MCCCCR E328 of 2025. It relates to an order issued by the court below. The jurisdiction invoked related to the exercise of this court's supervisory jurisdiction under Article 165(6) of the *Constitution*. In the earlier ruling I made the following orders:
 - a. The application dated 10.9.2025 is merited and is allowed.
 - b. The decision and Order of the trial court declining to release motor vehicle Registration Number KDC XXXY is set aside.
 - c. Motor vehicle Registration Number KDC XXXY is hereby released forthwith to the Applicant.
 - d. The Officer Commanding Karatina Police Station is directed to comply with and implement this Order.
 - e. The file is closed.



2. Upon exercise of those powers, this court became *functus officio vis-à-vis* the said proceedings. The only other party in this matter is the office of the Director of Public Prosecutions. Now the orders sought are civil in nature and not against the office of the Director of Public Prosecutions. It is unnecessary to set the orders sought herein, *verbatim*.
3. The two parties sued in the application are not parties to the application. There is no substantive suit to hear. Having finished the case before it, the high court is now *functus officio*. The Supreme Court of Kenya in *Raila Odinga – Vs- Iebc & 3 Others* Petition No. 5 Of 2013 cited with approval the following passage from *The Origins of the Functus Officio Doctrine with Specific Reference to its Application in Administrative Law* by Daniel Malan Pretorious:

...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...
4. It is a legal and constitutional obligation of any court, from the basic-level to the highest level, to preserve and protect the adjudicatory forum of governance, and to uphold decorum and integrity in the scheme of justice-delivery. The court cannot wade into a civil controversy against non-parties. The applicant ought to seek civil remedies against parties who he has disputes with. It is against the principle of *Audi alteram partem* to issue an order against non-parties. Such an order is a nullity *ab initio*.
5. There cannot be, as far as third parties are concerned, an order against non-parties. An order made against such non-parties has no legal basis. In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
6. A case belongs to the parties, and third parties cannot be ordered when they are not a subject of the case. As this is a criminal matter, the bank and the auctioneer cannot have any interest. In the case of *Methodist Church in Kenya v Fugicha & 3 others* [2019] KESC 59 (KLR), the court held as follows:

What should we make of a cross-petition fashioned as such? Yet this court has been categorical that the most crucial interest or stake in any case is that of the primary parties before the court. We did remark, in *Francis Kariuki Muruatetu & another v Republic & 5 others*, Sup Ct Pet 15 & 16 of 2015 (consolidated); [2016] eKLR, as follows (paragraphs 41, 42):“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties’ before the court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us. Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the court will always remain the



issues as presented by the principal parties, or as framed by the court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the court. That stake cannot take the form of an altogether a new issue to be introduced before the court” [emphasis supplied].

54. In like terms we thus observed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others*, Civil Appeal No 290 of 2012 (paragraph 24):“A suit in court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

7. Consequently, the court cannot, in a criminal matter, issue an order that is basically a civil remedy against non-parties. Finally, an order must rise out of the pith and substance of the case. The application is worlds apart from the original case. Consequently, the court must save the application from the ignominy of its own incompetence by striking the said application out. The file remains closed.

DELIVERED, DATED AND SIGNED AT NYERI, VIRTUALLY ON THIS 29TH DAY OF JANUARY, 2026. RULING DELIVERED EXTEMPORE.

KIZITO MAGARE

JUDGE

In the presence of: -

N/A for parties

Court Assistant - Michael

