

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 783 OF 2017**

CHRISTOPHER MWENDIAH OMWANDO.....PLAINTIFF

-VERSUS-

KENYA INDUSTRIAL ESTATES LIMITED.....1<sup>ST</sup>  
DEFENDANT

GEORGE MAINA.....2<sup>ND</sup>  
DEFENDANT

LAND REGISTRAR KAJIADO.....3<sup>RD</sup>  
DEFENDANT

ATTORNEY GENERAL.....4<sup>TH</sup>  
DEFENDANT

**RULING**

***(In respect of the application by the 2<sup>nd</sup> Defendant/Applicant seeking for an order for the removal of the caution on the title to the suit property)***

**Background**

1. The application under consideration is the 2<sup>nd</sup> Defendant's application dated 18<sup>th</sup> November 2025 seeking an order for the removal of a caution on the title of suit property known as L.R. No.

Kjd/Kisaju/2664. The caution was lodged on the title of the said property by the Plaintiff herein on 3<sup>rd</sup> October 2012.

2. The Applicant asserts that the Plaintiff filed this suit against him claiming a proprietary interest in it. However, the suit was finally determined on 22<sup>nd</sup> March 2022. The Applicant affirms that the caution was registered pending the hearing and determination of this suit. In spite of the Plaintiff's suit being dismissed, the caution is yet to be removed.
3. The Applicant affirms the jurisdiction of this court to direct the removal of the caution under the provisions of section 78 of the Land Registration Act.
4. The record of the court indicates that indeed judgment was delivered in this matter on 22<sup>nd</sup> March 2022 by my predecessor, Justice M.N. Gicheru. The Learned Judge dismissed the Plaintiff's suit in its entirety with costs.
5. The Applicant asserts that the Plaintiff moved the Court of Appeal after delivery of the judgement, for an order of stay of execution vide the Nairobi Court of Appeal Civil application No. E436 of 2022 but the same was dismissed on 30<sup>th</sup> November 2022. A copy of the ruling is attached as an annexure in the supporting affidavit of the Applicant in support of the application.

#### **Issues for determination**

6. Considering that a judgment has already been rendered in this matter, the glaring issue for determination is whether the court has the power to entertain the application before it.

#### **Analysis and determination.**

7. The doctrine of *functus officio* dictates that once a court has rendered its final decision, it ceases to have jurisdiction over the matter save for specific exceptions.

8. In the case of **Raila Odinga -Vs- IEBC & 3 others Petition No 5 of 2013**, the Supreme Court of Kenya cited with approval a paragraph from, **'The origins of the Functus Officio Doctrine with Specific Reference to its Application in Administrative Law'** by **'Daniel Malan Pretorius'** 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 superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker."***

9. The Supreme Court also referred to the case of **Jersey Evening Post Limited -Vs- A. Thani (2002) JLR 542**, at page 550 where the court 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.***

10. The Supreme Court of Kenya nonetheless noted that the doctrine does not prevent the court from correcting clerical errors, under the ship rule. 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.

11. In the case of **Telkom Kenya Ltd -Vs- John Ochanda (2014) eKLR**, the Court of Appeal too while discussing the principle of functus officio stated as follows: -

***“Funtus 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 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.”***

12. The court pointed out the various exceptions to the principle of functus officio, notably: -

- ***Application for stay (of execution)***
- ***Application to correct the decree (under the slip rule)***
- ***Application for accounts;***
- ***Application for execution including garnishee proceedings;***
- ***Application for review, and***
- ***Applications under section 34 of the Civil Procedure Act.***

13. Upon a careful perusal of the application, the judgment of the court and the pleadings in this file, the application is not an application to execute orders arising out of the judgment of the court; it does not fall under any of the exceptions outlined above.

14. The judgment of the court simply dismissed the Plaintiff's suit and no other orders were made.

15. Further, a careful look at the copy of the caution attached to the application shows that it was actually lodged prior to the filing of the suit. It was prohibiting transactions on the suit property pending hearing and determination of a suit 'to be filed'. It was not a restriction pursuant to any court order in this matters. It is not an issue that was determined by the court in the judgment.

16. This court therefore lacks the jurisdiction to entertain the matter. The court is functus officio; it ceased to have jurisdiction over the matter the moment it delivered its judgement dismissing the Plaintiff's suit.

17. The Applicant must move in accordance with the provisions of Section 78 of the Land Registration Act. If he is to seek the

assistance of the court, he can only do so in a fresh matter/application; not in this matter.

18. This file is closed. The court has nothing more to do in it. The 2<sup>nd</sup> Defendant's Applicant is struck out but with no orders as to costs.

**Dated Signed and Delivered at Kajiado Virtually this 29<sup>th</sup> Day of January 2026.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Odongo h/b for Mr. Makau for the 2<sup>nd</sup> Defendant/Applicant

N/A by the Plaintiff, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Court Assistant: MPoye

**M.D. MWANGI**

**JUDGE**