



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC NO 70 OF 2008

ANTHONY **NDUNDA**
MWANIKI.....PLAINTIFF

VERSUS

WAVINYA **BERNARD** **NZOMO.**
.....DEFENDANT

RULING

1. This ruling pertains to an unopposed post-judgment notice of motion dated 15/11/2024, filed by the plaintiff. The motion is presented as being made in accordance with **Order 40 Rule 1** of the **Civil Procedure Rules, Sections 3A** and **63 (e)** of the **Civil Procedure Act, Cap 21, Section 18** of the **Land Registration Act No. 3 of 2012, Laws of Kenya**, and all other relevant statutory provisions. The plaintiff seeks the following orders from this court: -

a. Spent.

b. Spent.

c. THAT, this honourable court do issue an order directing the demolition of any structures or developments illegally erected by the defendant on the suit property.

d. THAT the defendant pays the costs of this application.

2. The motion is supported by the grounds set out in the body thereof and the plaintiff's supporting affidavit, sworn on the instant date, and in a nutshell, he states that the court delivered judgment in this matter on 4/10/2019, confirming the plaintiff's ownership of the **MBIUNI/KABAA/1055 ("suit property")**. Following this judgment, Eastern Auctioneers lawfully carried out an eviction order on 16/03/2025. Despite the valid court judgment and eviction order, the defendant has ignored the order, re-entered the property without permission, and is now cultivating and occupying the premises, thereby undermining the court's authority. **Mr Muema**, the plaintiff's counsel, who appeared before this court on 2/10/2025, urged this court to allow the motion

3. This court has meticulously examined the motion, including its grounds and affidavit. Considering all these elements, two issues emerge for resolution: **(a) whether this court is *functus officio***, and **(b) whether the motion possesses merit**. These two issues shall be addressed concurrently.

4. The first limb is fundamentally rooted in the common law doctrine of *functus officio*, which precludes the reopening of a matter once the court has issued its final decision. It additionally prohibits a merit-based reconsideration of the case following the entry of a final judgment or ruling and the issuance of a decree or order thereon. The origins, purpose, and exceptions of this doctrine are elucidated in the judgment of **Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited) [2014] KECA 600 (KLR)** as follows:

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“It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19th Century. In the Canadian case of CHANDLER vs ALBERTA ASSOCIATION OF ARCHITECTS [1989] 2 S.C.R. 848, Sopinka J. traced the origins of the doctrines as follows (at p. 860);

“The general rule that a final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal In re St. Nazaire Co., (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up,

issued and entered, and was subject to two exceptions:

- 1. Where there had been a slip in drawing it up, and,***
- 2. Where there was an error in expressing the manifest intention of the court. See Paper Machinery Ltd. vs. J.O. Rose Engineering Corp., [1934] S.C.R. 186”***

5. The Supreme Court of Kenya, in the case of **Odinga v. Independent Electoral & Boundaries Commission & 3 others [2013] KESC 8 (KLR)**, cited with approval the publication by **Daniel Malan Pretorius** titled **“The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law” (2005) 122 SALJ 832**, which elucidates this legal doctrine 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.”

6. It therefore follows that the exception to the doctrine is found in our **Section 99** of the **Civil Procedure Act**, which allows courts to correct clerical or arithmetical mistakes or errors arising therein from any accidental slip or omission either on its own motion or on the application of any of the parties.

7. In the present case, the plaintiff possesses a judgment in his favour, which he has informed the court that he has executed. Additionally, he reports to the court that the defendant re-entered the suit property after the execution of this judgment. To this court, this constitutes a new cause of action for trespass. This court is *functus officio* and lacks the authority to issue the orders sought, including demolition orders. This court need not say more on the second limb. This court therefore finds it is *functus officio* and as a result, the motion dated 15/11/2024 is hereby dismissed with the plaintiff bearing his own costs.

Orders accordingly.

Delivered and Dated at Machakos this 3rd February, 2026.

**HON. A. Y. KOROSS
JUDGE**

03.02.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Muema for Plaintiff/ Applicant

No appearance for Respondent/ Defendant

ORIGINAL