

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT MILIMANI**  
**JUDICIAL REVIEW NO E002 OF 2023**

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<b>REPUBLIC</b>	-	<b>APPLICANT</b>
	<b>VS</b>	
<b>CHAIRMAN, THE BUSINESS PREMISES RENT TRIBUNAL AT NAIROBI</b>	-	<b>RESPONDENT</b>
	<b>AND</b>	
<b>BERNARD WANYONYI PARTY</b>	-	<b>INTERESTED</b>
<b>OBWARI ENTERPRISES LTD APPLICANT)</b>	-	<b>(EXPARTE</b>

**RULING**

**(In respect of the Interested Party's Applications dated 30/7/2025)**

1. For determination before this Court is the Interested Party's application dated 30/7/2025 with the heading of Tenant's Notice of cross-examination/Interrogation/Show case. The Notice is anchored under the provisions of Order 19 Rule 2 of the Civil Procedure Rules. The Interested Party, seeks that;
  - a. Summons do issue requiring Emily Odora, Nyanchama Simeon Masongo, Katila Eunice Katsiya, Gatoto Humprey Chege and Oaenge Evans Omosa to appear before Court for interrogation in respect of their false sworn affidavits and conflict of interest respectively.
2. The application is based on the grounds that the deponents swore to facts beyond their knowledge, amounting to hearsay and fraud. It alleges that Emily Kerubo, claiming third-party occupation, broke into his business premises in his absence and stole his goods during non-

operational hours. He further asserts that Katila Eunice Katisya, Gatoto Humphrey Chege, and Oaeye Evans Omosa, Advocates, participated in scheming, commissioning, and filing false sworn affidavits. Specifically, it is stated that Simeon Mosongo denied, at the police station during investigations into the vandalism and removal of the applicant's goods, that a supporting affidavit sworn and filed in the Tribunal Court on 13/10/2022 in his name was not his, nor was he aware of it.

3. The Interested Party further calls upon Kelvin Busuku to appear for clarification regarding the existence of two different investigation reports, the authenticity of an undated report, his inspection of the premises—alleged to have been the mandate of the Rent Inspector—and his failure to inspect rent books, instead supposedly producing a doctored report based on the premises being empty, despite machinery having been removed by the landlord and employees under court orders. He also asserts that Kelvin Busuku should be held responsible for alleged fraud concerning monies paid as official Judiciary inspection fees, as referenced in his complaint letter filed in BPRT/905/2019, which are still pending determination. He therefore seeks that the deponents appear before the court so they can be interrogated to verify the truthfulness of their statements, and to consider proceedings for perjury, conflict of interest, and fraud, respectively.
4. Alongside the above notice, the Interested Party also filed an undated and unsigned application seeking the postponement of the judgment pending cross-examination of Ms Vanice Kemunto, Counsel for the Applicant.

### **The Replying Affidavit**

5. The application is opposed by the Exparte Applicant through the Replying Affidavit of Vanice Kemunto, their Counsel, dated 13/2/2026. The deponent states that the Interested Party requested a deferment of the Judgment concerning the Judicial Review Application dated 27/2/2023, the main application. The deponent asserts that the reason for seeking the postponement was to allow for the correction of errors in

the typed proceedings related to Nairobi BPRT Case No. 905 of 2019, and for these to be presented to the court. Counsel also notes several court appearances where the Interested Party was granted leave to file a response, but failed to do so.

6. Counsel for the Exparte Applicant states that the matter was subsequently scheduled for Judgment on 31/7/2025. The Interested Party, being absent from court when the matter was set for Judgment, was served with the Judgment Notice and was present at the delivery of Judgment.
7. The deponent contends that the reliefs sought by the Interested Party in the two applications are overtaken by events. That the Interested Party ought to set aside the Judgment or appeal against it if at all he is aggrieved. She argues that the application is an abuse of court process and ought to be struck out with costs to the Applicant.

#### **Court's direction**

8. On 12/11/2025, the Court directed the parties to file their respective submissions. The Interested Party complied and filed his submissions dated 10/2/2026. However, the Applicant in the main application, despite objecting to the application, did not file any submissions. The Court has had a chance to read through the said submissions and considered them in its decision herein.

#### **Analysis and Determination**

9. I have considered the application, the Replying Affidavit, the Interested Party's written submissions, and the key issue to be determined is whether the application has any merit. Put differently, whether this Court is functus officio and therefore lacks jurisdiction to entertain the application, and by extension, if the court did have jurisdiction, whether the application before it is competent, and whether the orders sought are sustainable.
10. Before determining the main issues set out above, it is necessary to highlight the litigation history of this matter. This substantive judicial review motion was initiated by the Exparte Applicant and filed on

27/2/23 following the court's grant of leave on 8/2/23. The record shows that the judgment was initially scheduled for 18/6/2024 but was deferred at the interested party's behest vide an application dated 13/6/24. On 29/10/24, the said application was marked overtaken by events, and the Interested Party was granted 30 days to respond to the substantive application.

11. On 5/2/25, the court reserved judgment in the suit for 6/3/25. However, on the eve of that material date, specifically on 4/3/25, the interested party filed an application seeking to defer the judgment to allow time to present certain proceedings from the Tribunal. By consent, the application was granted, and the court vacated the judgment delivery date, setting strict deadlines for the interested party to file his further affidavits by 1/4/2025. The record shows that the interested party complied and filed his replying affidavit dated 21/3/25 by the set deadline.
12. On 7/5/25, the judgment was scheduled for delivery on 31/7/25. It is clear from the record that the said judgment was delivered on the scheduled date in the presence of the Ex parte applicant and the Interested party. According to the Case Tracking System, the Interested Party filed the instant application on 30/7/2025 at 22:19 hours. Directions for the said application could only be issued after the delivery of the judgment and not earlier.
13. As stated earlier, the Interested party also filed an unsigned and undated application on record. Ownership of pleadings is very important in litigation. If a pleading is not signed by a party, their advocate, or recognised agent, it may be struck out. This is because signing pleadings authenticates them and serves as a safeguard that the case is genuine. Such a defect is fatal and is not a procedural technicality that can be cured under Article 159 of the Constitution. See *Cheraik Management Ltd -vs- NSSF Board of Trustees & Another* (2012) eKLR and *JR 176 of 2017 Nairobi City County Government -vs- KRA & Another* (2017) eKLR.

14. For completeness of the record, I hereby strike out the undated and unsigned application filed in this court on 30/7/2025 with no orders as to costs.
15. Returning to the main issue, the doctrine of functus officio states that once a court has issued its final decision, it no longer has jurisdiction over the matter, except for specific cases such as review or correction of clerical or arithmetical errors or for execution purposes.
16. In expounding on the functus officio doctrine, the Supreme Court in **Odinga -vs- Independent Electoral & Boundaries Commission & 3 Others (Petition 5,4 & 3 of 2013) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling)** where the Supreme Court held that once a court delivers its judgment, it becomes functus officio and cannot review or reopen the matter unless provided under specific provisions of the law to ensure legal certainty and justice.
17. The functus officio principle serves to ensure finality in judicial decisions and prohibits courts from revisiting matters already conclusively determined, except where expressly permitted by law. It promotes judicial efficiency, certainty, and the integrity of the judicial process.
18. In the present matter, Judgment was delivered on 31/7/2025 and the issues between the Applicants (in the main Judicial Review application) and the Respondents were fully adjudicated. That Judgment remains on record and has not been set aside through a successful review or Appeal.
19. The application before the court seeks, inter alia, summons to call certain persons to appear in court for cross-examination in respect of false affidavits they swore in the Tribunal.
20. Order 19 Rule 1 of the Civil Procedure Rules provides that:

“Any court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing. On such conditions as the court thinks reasonable;

Provided that, where it appears to the court that either party bona fides desires the production of a witness for cross-examination and that such witness can be produced an order shall not be made authorizing the evidence of such witnesses to be given by affidavit.”

21. The above provisions envisage a live suit that is still ongoing in court. In this particular case the substantive motion between the Ex parte applicant and the Respondent was fully adjudicated on 31/7/2025. I therefore find that this court is now functus officio and entertaining the application will amount to reopening the case afresh. Litigation. must come to an end. In undertaking any litigation, the rule of thumb is that parties are required to present their evidence and arguments fully and comprehensively during the trial or at any relevant stage of the trial. The principle of finality in litigation is a sound legal principle that is intended to bring litigation to a conclusion and prevent parties from litigating endlessly.
22. It is, therefore, my finding that this court, having delivered its judgment in this matter, is functus officio. The court lacks jurisdiction to hear and determine the impugned application.
23. Had Judgment not been entered, would the application be merited? I have checked the Case Tracking System and note that the application is not supported by an affidavit. The application is out rightly defective, hence a candidate for striking out.
24. The proceedings involve judicial review, and the court was concerned with the decision of the Tribunal, which was challenged by the Ex parte applicant. Perhaps the Interested Party/Applicant ought to have challenged the said affidavits before the proceedings in the Tribunal. In my view, the basis of the application in these judicial review proceedings has not been adequately explained.
25. For the reasons stated above, the application herein is misconceived, and consequently, the Interested Party’s application dated 31/7/2025 lacks merit. It is hereby dismissed with no order as to costs.

26. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF  
MARCH 2026 THROUGH MICROSOFT TEAMS.**

**J G KEMEI  
JUDGE**

Delivered online in the presence of;

1. Ms. Kemunto for Applicant
2. N/A for Respondent
3. Interested Party present in person
4. CA- Ms Yvette