



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Ragi & 3 others v Bosibori & 3 others (Land Case E038 of 2025)
[2026] KEELC 2021 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2021 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E038 OF 2025**

MD MWANGI, J

APRIL 10, 2026

BETWEEN

**ALLAN GACHIRI RAGI 1ST PLAINTIFF
NJUGUNA WAHOME 2ND PLAINTIFF
WILSON WAKABA 3RD PLAINTIFF
JAMES MAINA 4TH PLAINTIFF**

AND

**FENNY BOSIBORI 1ST DEFENDANT
GESUMWA MAYIEKA 2ND DEFENDANT
NYAGATE MAYIEKA 3RD DEFENDANT
JEREMIAH MWEBI 4TH DEFENDANT**

(In respect of the Notice of Motion dated 2nd March 2026 by the 1st Plaintiff seeking arrest of a ruling in respect of an application by the 4th Defendant and for leave to prosecute a preliminary objection in response to the 4th Defendant's application)

RULING

Background

1. The application under consideration was filed under Certificate of Urgency, first and foremost seeking to arrest a ruling scheduled for 5th March 2026 in respect of an application by the 4th Defendant dated 3rd November 2025. The court upon considering the application ex parte temporarily arrested the ruling as sought to allow the Applicant an opportunity to prosecute the present application.



2. The main prayer by the Applicant is that he be allowed an opportunity to prosecute a preliminary objection against the 4th Defendant's application dated 2nd March 2026. His justification is that he only became aware of the application seeking that the eviction notice be upheld and an eviction order be issued in respect of the suit premises recently.
3. The Applicant asserts that the eviction notice is defective since the suit property has three (3) buyers with ongoing cases before various courts, including a criminal case number HCCR/E264/2024. The alleged eviction notice was issued during the pendency of these cases and that the orders sought are final in nature.

Response to the application.

4. The 4th Defendant responded to the 1st Plaintiff's application by way of a preliminary objection dated 11th March 2026 and a lengthy Replying affidavit of even date.
5. In the preliminary objection, the 4th Defendant asserts that this court lacks jurisdiction to hear and determine the application under the provisions of the *Environment and Land Court Act*, the *Land Act* and the *Civil Procedure Act* or the subsidiary legislations or any other provision of the law. He further asserts that the court is functus officio to the extent of re-opening the proceedings upon the conclusive ex-parte hearing of the 4th Defendant's application dated 3rd November 2023.
6. The 4th Defendant further opines that the issues raised in the 1st Plaintiff's application are res judicata having been conclusively determined by this court in its ruling dated 31st July 2025. No appeal nor review has been preferred against the said ruling of this court.
7. It is further alleged that the application is defective and offends section 34 of the *Advocates Act* & the *Oaths and Statutory Declarations Act* since the supporting affidavit is commissioned by an unqualified Advocate. The 4th Defendant does not elaborate further on this allegation.
8. In the Replying Affidavit, the 4th Defendant avers that its application for eviction was filed after the expiry of the statutory period of three (3) months after the Plaintiffs failed to voluntarily vacate the suit property in spite of the notice. He alleges that the 1st Plaintiff's application is predicated on deception, subterfuge, falsehood and chicanery in an attempt to manipulate the court to set aside or arrest the regular ex-parte proceedings yet he was duly served with the application as stated in the affidavit of service dated 10th November 2025.
9. The 4th Defendant further avers that the Plaintiff indeed appeared in court on 10th December 2023 when the hearing was stood over to 29th January 2026. He however did not appear on 29th January 2026 and the court proceeded to issue directions on the filing of submissions and also set a ruling date. It is therefore clear that the Plaintiffs were all along aware of the 4th Defendant's application and cannot therefore be heard to say that they only became aware of it recently.
10. The 4th Defendant too alleges that the supposed preliminary objection by the 1st Plaintiff in response to its application was filed out of time and without leave of the court.

Court's Directions.

11. The Court's directions were that the 1st Plaintiff's application be canvassed by way of written submissions. The 1st Plaintiff and the 4th Defendant complied with the directions and filed their respective submissions which this court has duly considered in the writing of this ruling.



Issues for Determination.

12. The 1st Plaintiff simply seeks an opportunity to respond to and defend the 4th Defendant's application dated 30th November 2025 for the reasons stated on the face of the application and in the supporting affidavit. As I already stated at the beginning of this ruling, the court temporarily arrested the ruling that had been scheduled for 5th March 2026 to await the outcome of the 1st Plaintiff's application, which is this ruling.
13. I note that the 4th Defendant's advocate has made a storm out of the use of the word 'arrest', submitting that the court has no jurisdiction to arrest its own ruling as espoused in the preliminary objection dated 11th March 2026.
14. Arresting a judgement or a ruling simply means pausing the delivery of the said judgement or ruling awaiting a certain outcome.
15. Off course the court has the inherent jurisdiction to pause the delivery of its ruling or judgement to allow it consider any relevant application by a party who is likely to be affected by the said judgement or ruling as this court did in this instance or for any other reason, dependent on the circumstances of each particular case. That jurisdiction of the court which is comprised within the term "inherent" is the one that enables the court to fulfil itself properly and effectively, as a court of law.
16. The Halsbury's law of England, 4th Edition Vol 37 Paragraph 14, explains the inherent power of the court as follows;

“The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between parties and to secure a fair trial between them.”
17. The 4th Defendant too submitted that the court was functus officio to the extent of re-opening of its application dated 3rd November 2025. This submission is totally off the mark. A court is only functus officio after it has performed all its duties in a particular case.
18. The Supreme Court of Kenya in *Raila Odinga vs IEBC & 3 others* PET. No. 5 of 2013, cited with approval a passage from “The origins of the functus officio doctrine with specific Reference to its application in administrative law” by Daniel Malan Pretorious, to the effect that;

“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.”



19. The Supreme Court further referred to the case of Jersey Evening Post Ltd vs A. Thani (2002) JLR 542 at P. 550, where the court stated that;

“ A court is functus when it has performed all its duties in a particular case. Proceedings are only fully concluded and the court functus, when its judgement 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.”

20. The sole issue for determination in the court’s opinion is whether the 1st Plaintiff’s application is merited.

Analysis and determination.

21. The sole ground upon which the 1st Plaintiff’s application is grounded is that he was not aware of the application by the 4th Defendant. He asserts that he only became aware of it recently. In essence, what he is saying is that he was not served with the application. He does not say how and when he became aware of it though.

22. The record of the court as correctly pointed out by the 4th Defendant, indicates that on 10th December 2025 when the 4th Defendant’s application was first slated for hearing, the 1st Plaintiff was represented by one, Mr. Mongeri who was holding brief for Mr. Manani. Mr. Mongeri informed the court he was not able to proceed as he was unwell. Indeed the Court noted on its record that Mr. Mongeri was apparently unwell and was speaking in a strained voice and also coughing. The court therefore stood over the matter for directions on the hearing of the 4th Defendant’s application to the 29th January 2026.

20. The 1st Plaintiff did not appear on 29th January 2026 either in person or through his advocate. He too had not filed any response to the 4th Defendant’s application. The Court therefore cognizant that the date was taken in the presence of the 1st Plaintiff’s advocate proceeded to issue directions on the filing of submissions and also issued a ruling date.

21. It is therefore incorrect for the 1st Plaintiff to allege that he only became aware of the application recently. He was aware of the application and was duly afforded an opportunity to put his response to the same. He however squandered the opportunity and cannot now be heard to say that he will be prejudiced unless he is allowed to prosecute his preliminary objection against the 4th Defendant’s application. This is the preliminary objection that was filed after directions had already issued. The 1st Plaintiff did not even bother to seek leave of the court to file the same out of time.

22. In making this determination, I am guided by the decision of the Court of Appeal in the case of Union Insurance Co. of Kenya Ltd vs Ranzan Abdul Dhanji, Civil application No. 179 of 1998, as cited by Odunga J (as he then was) in the case of Alphonse Kondi Riaga vs Commissioner for Co-op Development {2016} KEHC 7675 (KLR) where the court held that,

The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard and once that opportunity is given and is not utilized, then the only point on which the party not utilizing the opportunity can be heard is why he did not utilize it.”

23. The 1st Plaintiff has not given a reasonable explanation as to why he did not utilize the opportunity to respond to the 4th Defendant’s application in spite of service. The court therefore finds and holds that the 1st Defendant’s application is not merited. It is hereby dismissed with costs to the 4th Defendant.



24. That said the court will proceed to conclude its ruling on the 4th Defendant's application dated 3rd November 2025 for delivery on 23rd April 2026 at 2:30 pm, virtually.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 10TH DAY OF APRIL 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Manani for the Plaintiff

Mr. Mr. Gesumwa for the Defendants/Respondents

Court Assistant: Philomena

