Karanja v UAP Insurance Company Limited (Civil Appeal E797 of 2021) [2026] KEHC 5613 (KLR) (Civ) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5613 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E797 OF 2021

AC MRIMA, J

APRIL 30, 2026

BETWEEN

JANE NJERI KARANJA ..... APPLICANT

AND

UAP INSURANCE COMPANY LIMITED ..... RESPONDENT

RULING

Background

1. The Applicant herein, Jane Njeri Karanja, sued the Respondent, UAP Insurance Company Limited, in Milimani Chief Magistrates Commercial Courts, Civil Suit No. 7184 of 2018 (hereinafter referred to as 'the suit'). She sought indemnification for medical expenses incurred during her treatment in Kenya and India, pursuant to a medical insurance cover.

2. On 5th November 2021, the trial Court delivered a judgment in favour of the Applicant, awarding her various sums of money plus the costs of the suit and interest. Dissatisfied with that decision, the Respondent moved this Court on appeal. On 27th February 2025 this Court delivered its judgment, finding the appeal partly successful. The Court set aside the trial Magistrate's judgment and substituted it with a specific award totalling Kshs. 2,514,609.015. While the Court awarded the Respondent half the costs of the appeal, it was silent on the costs previously awarded to the Applicant by the trial Court, hence, the current application.

The Application:

3. Through an application by way of a Notice of Motion dated 20th May 2025, the Applicant sought the following orders: -

1. That this Honourable Court be pleased to uphold costs awarded by the lower court to the Applicant.

2. That costs of this Application be provided.

4. The application was supported by the affidavit of Joseph Kanyi, sworn on 20th May 2025. It was his case that while the Court pronounced itself on the costs of the appeal, it did not make any pronouncement regarding the costs awarded by the trial Court. He further stated that costs should follow the event as the Applicant had incurred significant disbursements and efforts in prosecuting the matter before the trial Court.

The submissions:

5. In her submissions dated 9th October 2025, the Applicant argued that the costs awarded by the trial Court were never a subject of the appeal and, therefore, could not have been set aside. It was her case that the Respondent's Memorandum of Appeal revealed that none of the grounds of appeal specifically contested the award of costs in the lower Court. Pursuant to Section 27 of the *Civil Procedure Act*, it was her case that costs follow the event unless the Court otherwise directs. The Applicant cited several authorities to bolster this position including the case of Haraf Traders Limited -vs- Narok County Government [2022] eKLR, where the Court noted that costs are for compensating a successful party for the trouble taken in pursuing a remedy.

6. The decision in Robert Nyonga Angatia -vs- Aggrey Taikosh Azelwa [2021] eKLR, was further cited where it was held that a party who succeeds in an action is generally entitled to costs. The Applicant sought further support from the case of Cecilia Karuru Ngayu -vs- Barclays Bank of Kenya & Another [2016] eKLR, emphasizing that the Court's discretion on costs must be exercised judicially and in accordance with reason and justice.

7. Finally, the Applicant stated that in the case of Jasbir Singh Rai & Others -vs- Tarlochan Singh Rai & 4 Others [2014] eKLR, it was observed that the Court ought to identify good reasons for departing from the general rule on costs.

The Respondent's case:

8. UAP Insurance Company Limited opposed the application through a Replying Affidavit deposed to by Nannette Miingi on 25th July 2025. She stated that the application was incompetent and an abuse of the Court process as it attempted to reopen a matter where the Court had already pronounced itself with finality.

9. The Respondent stated that by the High Court entirely setting aside the judgment and decree of the trial magistrate on 27th February 2025, the trial Court's award of costs was automatically vacated. She argued that there was no longer a judgment of the trial Court upon which any award of costs could be based. She asserted that this Court was functus officio and lacked the jurisdiction to revisit or amend its final judgment.

The Submissions

10. In its written submissions dated 15th October 2025, the Respondent identified the central issue for determination as whether the Court was functus officio. It submitted that a Court becomes functus officio once it renders a final and conclusive decision on the merits. To support the doctrine of functus officio, the Respondent relied on the case of Telkom Kenya Limited -vs- John Ochanda [2014] KECA

600 (KLR), which defined the doctrine as an enduring principle preventing the reopening of a matter before a Court that rendered a final decision.

11. Further aid was drawn from the case of Raila Odinga -vs- Independent Electoral & Boundaries Commission & 3 Others [2013] KESC 8 (KLR), where the Supreme Court noted that a person vested with adjudicative powers may exercise those powers only once in relation to the same matter.

Analysis:

12. Based on the application, the response and the submissions, the following issues emerge for determination: -

    i. Whether this Honourable Court is functus officio.

    ii. Depending on (i) above, whether the Applicant is entitled to the costs of the suit as awarded by the trial Court.

13. A look at the above issues now follows in seriatim.

(a) Whether this Honourable Court is functus officio:

14. The Respondent raised an objection of this Court's jurisdiction based on the doctrine of functus officio. In Telkom Kenya Ltd -vs- Ochanda (Suing on His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Ltd) [2014] KECA 600 (KLR), the Court of Appeal discussed the principle of as follows;

> .... Functus officio is an enduring principle of law that prevents the re-opening of a matter before a Court that rendered the final decision thereon. 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);
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> 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:
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> Where there had been a slip in drawing it up, and, 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" The Supreme Court in Raila Odinga v IEBC cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, "The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law" (2005) 122 SALJ 832 in which the learned author stated;...
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> ... 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.

15. In this case, the judgment of 27th February 2025 was a final determination of the appeal. However, the core of the Applicant's grievance is not merit based review of the Court's pronouncement. It is that the

Court, while substituting the trial Court's judgment with its own award, remained silent, on the trial Court's costs. The Respondent's argument was that the act of setting aside the trial judgment entirely meant the costs award perished with it.

16. The Court of Appeal in Leonard Mambo Kuria -vs- Ann Wanjiru Mambo [2017] KECA 782 (KLR) approvingly referred to its decision in Republic -vs- Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 others [2010] eKLR, where the slip rule was discussed as an exception to the doctrine of functus officio in the following terms;

> .... It is a codification of the common law doctrine dubbed 'the Slip Rule', the history and application of which has a wealth of authorities both locally and from common law jurisdictions. It is a rule that applies as part of the inherent jurisdiction of the court, which would otherwise become functus officio upon issuing a judgment or order, to grant the power to reopen the case but only for the limited purposes stated in the section.

17. The Slip Rule is provided for under Section 99 of the *Civil Procedure Act* as follows: -

> Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

18. In Peter Maina Munina -vs- Anne Wanjiru Wachira [2021] eKLR, the Respondent argued that the Court was functus officio upon delivering its final judgment. However, the Court recognized that an omission to pronounce on costs or clarify an award fell under the Slip Rule as provided for in Section 99 of the *Civil Procedure Act*, which operates as an exception to the functus officio doctrine. The Court observed thus;

> .... It is the general principle of law that the court after passing judgment becomes functus officio and cannot revisit the judgment or purport to exercise a judicial power over the same matter... [However] The slip rule is provided for in S.99 of the CPA for High Court and Magistrate Courts. It provides that Clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties

19. Deriving from the foregoing, the doctrine of functus officio ought to be appreciated purposefully and departed from within permissible bounds. The Court of Appeal in the Telkom Kenya Ltd -vs- Ochanda case (supra) spoke to subject as follows;

> 24. 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. There do therefore exist certain exceptions and these have been captured thus in Jersey Evening Post Ltd Vs Ai Thani [2002] JLR 542 at 550, also cited and applied by the Supreme Court;
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> 25. 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 or adjudication must be taken to a higher court if that right is available.

20. Inescapably, this Court is not functus officio until it has perfected its judgment. The Appellant's Memorandum of Appeal dated 2nd December 2021 prayed inter alia for the appeal to be wholly allowed with costs and, likewise, the suit to be dismissed with costs. The suit was, however, not dismissed, but the principal judgment sum varied from Kshs. 3,042,276.15 to Kshs. 2,514,609.15. Therefore, the net effect of the suit on appeal is that it succeeded in the sum of Kshs. 2,514,609.15. Therefore, Section 27[1] of the *Civil Procedure Act* which provides that costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise orders set in.

21. In this case, since the appellate Court did not interfere with the provision of Section 27[1] of the *Civil Procedure Act* on costs, then the appellate judgment can be perfected in tandem with the law to the effect that the costs of the suit followed event. In sum, this Court is not caught up by the doctrine of functus officio since the application seeks to perfect the Court's judgment and does not deal with any merit review of the matter. As such the first issue is answered in the negative.

(b) Whether the Applicant is entitled to the costs of the suit as awarded by the trial Court:

22. This issue has, to a great extent, been answered in the course of dealing with the first issue. As stated above, the general rule in Section 27 of the *Civil Procedure Act* is that costs shall follow the event unless the Court or Judge shall for good reason otherwise direct. There is no doubt that the effect of the appellate judgment is that the Respondent herein remained the successful party as against the Appellant.

23. Costs are intended to compensate the successful party for the legitimate steps taken in pursuit of a remedy. The Applicant successfully prosecuted her claim in the suit and defended her right to compensation on appeal. The appellate Court's silence on trial costs, while finding the appeal partly successful and awarding half the costs of the appeal to the Appellant, did not explicitly deprive the Applicant of her entitlement to trial costs as the successful litigant in the primary suit.

24. In Kenya Maritime Authority -vs- Patrick Mutua Mbithi [2012] eKLR, the Court reviewed a previous order where a Judge had awarded costs contrary to the outcome without providing for a reason. The Court determined that such an omission was an error on the face of the record. It observed thus;

> .... The Applicant argued that under section 27(1) of the *Civil Procedure Act*, costs should follow the event (i.e., be awarded to the successful party) unless the court provides good reasons otherwise. The court found that the learned judge failed to articulate reasons for the cost award, which constituted an apparent error requiring review.

25. Similarly, in Fast Choice Company Ltd & another -vs- Joseph Wanyiri Mwangi [2011] eKLR, the appellate Court found the trial Court's award of Kshs. 450,000/= in general damages to be excessive. The Court set aside the trial Court's judgment and substituted it with a lesser award of Kshs. 150,000/=. Despite the Appellant winning the appeal by getting the damages reduced, the Court explicitly preserved the Respondent's right to the trial Court costs and stated as follows: -

> .... For all these reasons, the award is hereby set aside and is substituted with an award of Kshs. 150,000 as general damages... The appellant will have costs of the appeal. Costs of the Lower Court to Respondent.

26. It is, hence, apparent that the setting aside of a trial Court's award by an appellate Court and substituting it with a lower award does not automatically extinguish the right of the successful party at trial from costs unless the appellate Court expressly states as much. This is simply because when an appellate Court sets aside a trial Court's judgment merely to reduce or substitute the quantum

of damages, the Plaintiff in the suit often remains the successful party and is entitled to costs unless otherwise ordered.

Disposition:

27. As I come to the end of this judgment, I wish to apologize to the parties for the late delivery of this decision which was to be in February 2026. The delay was occasioned by my engagement at the Judicial Service Commission where I serve as a Commissioner given that the Commission has been running interviews since December 2025 to date. Once again, galore apologies.

28. Having exhaustively considered the application, it is this Court's finding that the omission by the Judge to address trial costs in the judgment of 27th February 2025 can be cured under the slip rule so as to perfect the judgment and to prevent an injustice.

29. Accordingly, the following final orders hereby issue: -

    (a) The Notice of Motion dated 20th May 2025 is hereby allowed to the extent that the costs and interest awarded by the trial Court in Milimani CMCC No. 7184 of 2018 to the Applicant [Jane Njeri Karanja] are hereby reinstated and/or upheld.

    (b) The Respondent [UAP Insurance Company Limited] shall shoulder the costs of the application.

    Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL,2026.

A.C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Lundi, Learned Counsel for the Respondent.

Mr. Achoka, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.