



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO 411 OF 2008**

BETWEEN

**DATINI MERCANTILE LTD
PLAINTIFF**

VERSUS

**KENYA COMMERCIAL BANK LTD 1ST
DEFENDANT**

**JOSEPH KAMANDE MUIRURI 2ND
DEFENDANT**

**PATRICK MAINA KAMAU 3RD
DEFENDANT**

**JOHN KIARIE 4TH
DEFENDANT**

**ASHUT ENGINEERING LIMITED 5TH
DEFENDANT**

**GENERAL PLASTICS LIMITED 6TH
DEFENDANT**

**JUDITH KANYI NYOIKE 1ST PROPOSED INTERESTED
PARTY**

**JIMMY WATITU NYOIKE .. 2ND PROPOSED INTERESTED
PARTY**

RULING

Background and Introduction

- 1.** For determination is the proposed interested parties' application dated 23rd June 2025. The application, brought under **Order 1 Rule 11 and Order 50 Rule 1 of the Civil Procedure Rules** as well as **Section 1A and 3A of the Civil Procedure Act**, seeks joinder of the applicants as interested parties. It further seeks that there be a declaration that the Judgement emanating from this suit constitutes proceeds of the estate of Humphrey Nyoike within the meaning and context of probate matter **No. P&A 2164 of 2012**.
- 2.** The application is predicated upon the joint affidavit of JUDITH KANYI NYOIKE and JIMMY WATITU NYOIKE sworn on 23rd June 2025. The affidavit sets out their averments in their capacity as children and lawful beneficiaries of the estate of the late Humphrey Nyoike. It is their contention that the deceased was the bona fide director of the plaintiff company, and consequently, as beneficiaries of his estate, they have a legitimate interest in determining the account into which the proceeds arising from the judgment delivered on

the 1st day of March 2024 ought to be deposited, as well as in the eventual distribution of such proceeds.

3. The application is opposed by the plaintiff through Grounds of Opposition dated 14th October 2025, the 1st defendant by Grounds of Opposition dated 3rd December 2025 and the 5th defendant through the Replying Affidavit of AMIT SHAH sworn on 25th August 2025.
4. The respondents have raised several objections to the application. They contend, firstly, that the proposed interested parties lack locus standi to institute the present proceedings, as they are not the duly appointed administrators of the estate of the late Humphrey Nyoike. Secondly, they maintain that the 1st, 2nd and 3rd respondents have already lodged an appeal against the Judgment of this Court delivered on the 1st day of March 2024, and that the Court of Appeal is presently seized of the matter in **Civil Appeal No. E624 of 2024: KCB Bank Kenya Limited & Others V Datini Mercantile Limited & Others.**

5. Thirdly, they argue that this Court is therefore *functus officio* and that any application for joinder ought properly to have been made before the appellate court. Fourthly, they submit that this Court lacks jurisdiction to issue orders touching upon the estate of the deceased, such matters being within the exclusive province of the succession court. Finally, they contend that, owing to the pendency of the appeal, the decretal sum together with interest and costs awarded does not constitute free property available for distribution among the beneficiaries of the estate of Humphrey Nyoike.

Analysis and Determination

6. I have duly considered the respective submissions filed by the parties in support of their positions. The respondents have specifically raised issue with the jurisdiction of this Court to entertain the application presently before it. Jurisdiction being a threshold matter, it must be determined *in limine*, as it bears directly upon the course and disposition of the application. The central question for

determination, therefore, is whether this Court is functus officio in respect of the suit.

7. According to the *Black's Law Dictionary (8th Edition)*, the term functus officio is a Latin expression meaning "having performed his or her office". It denotes a state in which a body or tribunal is without further authority or legal competence, its duties and functions having been fully discharged.
8. The Supreme Court in **Odinga V Independent Electoral & Boundaries Commission & 3 Others, [2013] KESC 8** cited with approval the determination in **Jersey Evening Post Limited V A1 Thani, [2002] JLR 542** at page 550. In that decision, it was observed as follows:

"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.”

9. Turning to the application before me, it is not in dispute that this Court rendered its judgment on the 1st day of March 2024. It is equally undisputed that an appeal arising therefrom is presently pending before the Court of Appeal in **Civil Appeal No. E624 of 2024.**

10. In the circumstances, I am persuaded by the respondents' submissions that the cumulative effect of the foregoing is that this Court has become *functus officio* and its jurisdiction over the

substantive issues in dispute has been exhausted. As such, it cannot now reopen, revisit, or re-litigate matters already determined or which ought to have been determined. To do so would offend the doctrine of finality and undermine the hierarchical structure of judicial adjudication.

- 11.** The only residual jurisdiction that remains is limited to correction of clerical or typographical errors, or to enforcement of its perfected orders. Beyond that, any further recourse lies exclusively with the appellate court. Accordingly, this Court is divested of competence to entertain the present application, and the proper forum for such relief is the Court of Appeal.
- 12.** An additional preliminary issue is whether the applicants have the requisite standing to properly move this Court. It is trite that absence of locus is akin to a Court proceeding without jurisdiction, and the consequences are equally fatal. The applicants have invoked the jurisdiction of this Court solely on the basis that they are children of the deceased and beneficiaries in his estate. The pertinent inquiry, therefore, is whether such filial

relationship, without more, vests them with the legal capacity to advance prayers on behalf of the Estate.

- 13.** The holding of the Court of Appeal in the case of **Trouistik Union International & Another V Jane Mbeyu & Another, [2008] IKLR (G&F) 730** speaks for itself. The Court of Appeal held that:

“To determine who may agitate by suit any cause of action vested in the deceased at the time of his death, one must turn to section 82 (a) of the Law of Succession Act. That section confers that power on personal representatives and on them alone.”

- 14.** The applicants have not stated that they are administrators of the Estate, nor have they produced any authority empowering them to sue on its behalf. The only document placed before this Court is a Certificate of Confirmation of Grant. That Certificate does not confer authority to institute

proceedings in the name of the Estate. It follows, therefore, that the applicants lack the necessary locus standi to sustain the prayers sought herein.

- 15.** For the foregoing reasons, it is manifest that the application before this Court is unsustainable. Nevertheless, and purely in the interest of finality, I shall proceed to consider the application *arguendo*. In that regard, I agree with the respondents that the proper procedure for joinder of parties is governed by **Order 1 Rule 10(2) of the Civil Procedure Rules**, which provides:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just, order that the name of any party improperly joined be struck out, and that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all

questions involved in the suit, be added.”

16. The central issue for determination is whether this Court retains the power to order joinder of a party in proceedings that have already been concluded. That question, fortunately, is no longer *res integra*. In **Everton Coal Enterprises Limited v Karanja & 5 Others, [2023] KESC 98**, the Supreme Court pronounced itself with clarity on the matter, holding that once proceedings have been finalized and judgment rendered, the Court becomes *functus officio* and cannot reopen the cause to admit new parties.

17. The rationale is that joinder serves the purpose of enabling the Court to effectually and completely adjudicate upon all questions in controversy. Where the controversy has already been settled, the jurisdiction to order joinder is extinguished. The Court stated as follows in this regard:

“A joinder contemplates a situation where proceedings are still pending before the court and in terms of Rule 5(d) (ii) of the

Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) which is in pari materia with Order 1 Rule 10(2) of the Civil Procedure Rules, a party will only be added to on-going proceedings in order to enable the court adjudicate fully upon and settle all the questions involved in the particular proceedings before it.”

- 18.** The Supreme Court also cited the decision in ***JM K V MWM & Another, [2015] eKLR***, to the effect that:

“...an application for joinder of parties can be filed only in pending proceedings; that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings, either before, or during the trial; and that it is only when a suit or

proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable.”

19. Flowing from these authorities, and the undisputed facts namely the judgment of 1st March 2024 and the pending appeal, the prayer for joinder is either way, unsustainable.

Disposition

20. The application dated 23rd June 2025 is dismissed with costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 11TH DAY OF MAY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Ms Kibii h/b for Munyithia for the plaintiff
Court Assistant: Lillian & Gloria