



Nandeka (Suing as the Legal Representative of the Estate of the Late George Nzuiko) v Manthi & 2 others (Sued in their Capacity as the Legal Representatives of the Estate of the Late Gideon Manthi Nzyuko) & another (Environment & Land Case E145 of 2021) [2024] KEELC 761 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 761 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E145 OF 2021**

**EK WABWOTO, J
FEBRUARY 15, 2024**

BETWEEN

**MARY MAINA NANDEKA PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE
GEORGE NZUIKO**

AND

**MONICAH MWENGA MANTHI , JOHN MUKULYA MANTHI & AARON
MUTHIANI MANTHI (SUED IN THEIR CAPACITY AS THE LEGAL
REPRESENTATIVES OF THE ESTATE OF THE LATE GIDEON MANTHI
NZYUKO) 1ST DEFENDANT
JOHN MUKULYA MANTHI 2ND DEFENDANT**

RULING

1. This ruling is in respect to a Notice of Motion application dated 23rd June 2023 accompanied by a supporting affidavit sworn by Mary Maina Nandeka. The Plaintiff/Applicant sought orders for execution of a Sale Agreement for property known as House No A17, Kimathi Estate. In default, orders for execution by the Deputy Registrar. The Plaintiff also sought for order of payment of Kshs 860,000 being 10% deposit of the purchase price with the balance being deposited to in a joint interest earning account in the Advocates' name.
2. The Application was opposed by the 2nd Defendant vide a Replying Affidavit dated 11th July 2023 sworn by John Mukulya Manthi. The court was urged to dismiss the application. It was argued that the Parties were involved in negotiations which had not been settled. It was averred that the proposal of financing through mortgage and the subsequent registration of a charge against the property would prejudice him and the 1st Defendant's Estate.



3. I have considered the application and rival affidavits of the parties and the penitent issues that the Court must determine are as follows;
 - i. Whether it has jurisdiction to hear and determine the particular application?
 - ii. Whether the Plaintiff's application is merited?
4. This is a post judgment application and hence the Court must determine whether it is *functus officio* in carrying out its duties. The *Black's Law Dictionary*, defines *functus officio* as: -

“ [having performed his or her office]” (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.”
5. In *Raila Odinga –Vs- IEBC & 3 Others* Petition No. 5 of 2013 the Supreme Court of Kenya cited the following passage from “*The Origins of the Functus Officio Doctrine with Specific Reference to its Application in Administrative Law*” by Daniel Malan Pretorius:-

...“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....”
6. In this instance, the question of disposition was dealt with in finality by this court in its judgment delivered on 4th August 2022 when an order for the transfer of the suit property was made subject to consideration of Kshs 8,600,000/-. The Applicant now seeks to invite the Court to determine the modalities under an Agreement of Sale not previously before this Court. It is on this premise that the Court arrives at the conclusion that it is functus officio since the court cannot direct and dictate to the parties on the modalities and terms of their sale agreement in the manner proposed by the Applicant.
7. In view of the foregoing, it is the finding of this court that the Plaintiff's Application dated 23rd June 2023 is not merited and the same is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF FEBRUARY 2024.

E. K. WABWOTO

JUDGE

In the presence of;

N/A for Plaintiff/Applicant.

N/A for 1st Defendant/Respondent.

Ms. Mutuku for 2nd Defendant/Respondent.

Court Assistant; Caroline Nafuna.

