



**Ngatia v Mwaniki (Environment & Land Case 2081 of 2007)
[2024] KEELC 4247 (KLR) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4247 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 2081 OF 2007**

MD MWANGI, J

MAY 14, 2024

BETWEEN

LINAH NYOKABI NGATIA PLAINTIFF

AND

CHARLES MWANIKI DEFENDANT

(In respect to the Plaintiff's application dated 1st March, 2024 seeking for an order of status quo after delivery of judgement dismissing the Plaintiff's case)

RULING

Background

1. This Court delivered its judgment in this matter on 22nd December, 2023 dismissing the Plaintiff's claim as well as the Defendant's counter-claim.
2. The Plaintiff/Applicant moved the Court vide the application dated 1st March, 2024. Amongst the prayers sought was a prayer that leave be granted to the Law Firm of Mururu Peter Advocates to come on record for the Plaintiff/Applicant in place of the former Advocates after judgment. That prayer was allowed on 20th March, 2024 placing the Law Firm of Mururu Peter Advocates properly on record for the Plaintiff/Applicant.
3. Prayers number 3, 4, 5, 6 and 7 in the Plaintiff's application were orders sought pending the hearing and determination of the application. For purposes of this ruling, the prayers are spent and the court will accordingly not consider them.
4. The prayer due for consideration is prayer 8 and off course prayer number 9 on costs. Under prayer number 8, the Plaintiff/Applicant prays that this Court be pleased to issue an order that the status quo, being that M/s Smart Homes Ltd, to (continue to) manage and collect the rent from the suit property



and share it equally between the Applicant and the Respondent, be maintained until the transfer and the registration of equal title in the suit property to the Applicant has been completed.

5. This prayer is supported by ground (d) on the face of the application where the Applicant states that while the suit was pending in Court, there were orders issued on 26th September, 2008 by Lady Justice Mary Ang'awa that appointed M/s Smart Homes Ltd to manage and collect the rent from the suit property and then remit 60% to the Applicant and 40% to the Respondent. The Applicant further states that she is amenable to having the rent collected split equally between her and the Respondent.
6. The Applicant laments that the Respondent is adamant on seeking to deny her the fruits of a judgment delivered after 16 years.

Response by the Respondent

7. The application was opposed by the Respondent who filed his Replying Affidavit sworn on 8th April, 2024. The Respondent who is the deponent of the Replying Affidavit asserts that he is the sole registered owner of the suit property. He terms the claim by the Applicant as baseless.
8. The Respondent further submits that this court is functus officio having fully determined the rights of the parties over the suit property in its judgment of 22nd December, 2023. He asserts that the Plaintiff/Applicant by filing the current application after judgement has been delivered by the court, seeks to revisit and relook into issues relating to the rights of the parties over the suit property.
9. The Respondent asserts that the Plaintiff's claim over the suit property if any, lies at the High Court Family Division and not this Court.

Issues for Determination

10. The issues in this application are rather straight forward. The issues are whether this court is functus officio or not and whether the court can issue the orders sought by the Plaintiff/Applicant.

Determination

11. It is not disputed that there were interim orders in this matter issued pending the hearing and determination of this suit, as has been asserted by the Plaintiff/Applicant. The interim orders were issued by Hon. Lady Justice Ang'awa, on 26th September, 2008, pending the hearing and determination of this suit.
12. Interim orders automatically come to an end with the conclusion of the suit. The court need not make any pronouncement to that effect. In this case therefore, the interim orders referred to, came to an end with the conclusion of this suit on 22nd December, 2023. They cannot therefore be the basis of a post judgement application. The judgment of this Court delivered on 22nd December, 2023, dismissed the Plaintiff's claim for an injunction against the Defendant, a declaration that the suit property is owned by the Plaintiff and the Defendant equally and for an order that the suit property be sold and the proceeds therefrom be shared equally between the Plaintiff and the Defendant. The three prayers sought by the Plaintiff against the Defendant were dismissed. The Decree issued on 11th January 2024 says it all. There is nothing more for this Court to decide in respect to the Plaintiff's claim against the Defendant. The decision was final and conclusive. The court became functus upon rendering the decision.



13. In the case of Raila Odinga –Vs- IEBC [§ 3 others Petition No 5 of 2013](#), the Supreme Court of Kenya cited with approval a paragraph from, ‘The origins of the Functus Officio Doctrine with Specific Reference to its Application in Administrative Law’ by ‘Daniel Malan Pretorius’ as follows:-

.....”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.”

14. The Supreme Court also referred to the case of Jersey Evening Post Limited –Vs- A. Thani (2002) JLR 542, at page 550 where the court stated that: -

“ 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.”

15. The Supreme Court of Kenya nonetheless noted that the doctrine does not prevent the court from correcting clerical errors, under the slip rule. 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.

16. In the case of Telkom Kenya Ltd –Vs- John Ochanda (2014) eKLR, the Court of Appeal too while discussing the principle of functus officio stated 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. 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.”

17. The court pointed out the various exceptions to the principle of functus officio, notably: - Application for stay (of execution) Application to correct the decree (under the slip rule) Application for accounts; Application for execution including garnishee proceedings; Application for review, and Applications under section 34 of the [Civil Procedure Act](#).

18. The Plaintiff/Applicant’s application does not fit under any of the above exceptions. The Plaintiff/Applicant in her submissions before the court correctly submitted that questions relating to execution and satisfaction of decrees shall be determined by the court executing the decree.

19. Is the Plaintiff/Applicant in this case a decree holder? The answer to this question is a capital, NO!; certainly not from the judgement of this court delivered on 22nd December 2023. The court dismissed the Plaintiff’s suit in its entirety. There are no questions relating to execution and satisfaction of a decree for this court to determine in this case. There are no ‘fruits’ from the judgement of this court for the Plaintiff to enjoy.



20. In the said judgement, the court framed three issues in respect to the Plaintiff's claim against the Defendant and made its findings in respect to each of the issue as follows;

A. What is the import of the certificate of confirmation of grant issued in Nairobi High Court succession Cause No. 460B of 2010, In the matter of the estate of Linah Nyokabi Ngatia distributing the properties L.R No. 12151/2 and L.R No. Ngong/Ngong/124830 -the subject matter of this suit?

Court's Finding: The court's determination as clearly stated at paragraph 63 of the judgement is that upon confirmation of the grant in the matter of the estate of Linah Nyokabi Ngatia, this suit became superfluous; otiose. There was nothing left for this court to determine.

B. Whether the Plaintiff's suit as framed discloses a cause of action against the Defendant

Court's Finding: At paragraph 70 of the judgement, the court pronounced that the Plaintiff's case as initiated was non-starter ab initio. It did not disclose a cause of action against the Defendant and ought to have been struck out under the provisions of Order 2 rule 15(2) of the Civil Procedure Rules.

C. Whether the Plaintiff's case was supported by the evidence adduced

Court's Finding: At paragraph 74 of the judgement, the court found that the marriage between the Plaintiff and the Defendant was not formalized. At paragraph 75, the court's finding was that matrimonial property vests in the spouses according to their contribution. The court concluded that the evidence adduced by the Plaintiff did not support her claim against the Defendant. From the foregoing, the Plaintiff's case must fail in its entirety.

D. On the issue of costs, the court at paragraph 82 of the judgement stated that, since the Plaintiff's case had failed on the one hand and the Defendant's counter-claim too had failed on the other hand, it was appropriate that each case bears its own costs.

21. This court is therefore functus officio having made a final decision on all the issues in this case and is therefore barred from reviewing or relooking into its judgment of 22nd December, 2023.

22. If the Plaintiff/Applicant's intention, as she states in her application is to execute the decision of the Family Court, she should move that Court for appropriate orders.

23. Accordingly, this application has no basis in law and is hereby dismissed with costs to the Respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF MAY, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Shikali for the Defendant/Respondent

No appearance for the Plaintiff/Applicant.

Yvette: Court Assistant

M.D. MWANGI

JUDGE

