



**Muganda v Kenya Wildlife Services (Cause E877 of 2021)
[2024] KEELRC 13589 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E877 OF 2021
SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

LYNETTE WASHIALI MUGANDA CLAIMANT

AND

KENYA WILDLIFE SERVICES RESPONDENT

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion Application dated 10th September 2024 in which she seeks an order to have the firm of K. Itonga & Company Advocates formally come on record for her after judgment in place of Onindo Onindo & Associates Advocates.
2. The Application is premised on the grounds set out on its face and is supported by the Affidavit sworn on 10th September 2024 by Lynnete Washiali Muganda, the Claimant herein.
3. The Claimant avers that she has been prosecuting this claim through the firm of Onindo Onindo & Associates and that a consent judgment was finally adopted by this Honourable Court on 12th February 2024. She has now instructed the firm of K. Itonga & Company Advocates to take over the Conduct of this suit on her behalf after judgment henceforth, from the firm of Onindo Onindo & Associates Advocates necessitating the instant Application.
4. The Claimant further states that it is only fair and just that the firm of K. Itonga & Company Advocates be allowed to come on record on her behalf after Judgment in place of the firm of Onindo Onindo & Associates Advocates in order to protect her interests in the matter.
5. The Respondent has opposed the Application through a Replying Affidavit sworn on 5th November 2024 by its Legal Officer, Diana Sigei. Ms. Sigei avers that the Respondent settled the matter fully on 26th July 2024. It is her contention that judgment having been entered on 12th February 2024 and the matter settled fully, the court is functus officio.



6. She further deposes that the Claimant has not advanced any reasons to appoint a new advocate in this matter, the same having been settled vide the consent judgment.
7. To this end, Ms. Sigei urged the Court to dismiss the Claimant's Application as there are no further interests to be protected in this matter.
8. It is worth pointing out that the firm of Onindo Onindo & Associates Advocates did not respond to the Application by the Claimant despite being duly served hence I take it that they don't oppose the same.

Submissions

9. The Application was canvassed by way of oral submissions. Mr. Itonga submitting in support of the Application, argued that Order 9 Rule 9 of the Civil Procedure Rules, 2010 does not require a party to give reasons for changing an Advocate. It was Mr. Itonga's position that a party has a right to choose their Advocate. He further submitted that the court is not functus officio as the matter is still alive and there is a pending Advocate/Client Bill of Costs. That in that regard, the Claimant feels safe being represented by another Advocate.
10. Opposing the Application, Ms. Feksi counsel for the Respondent submitted that this court is functus officio as it has already discharged its functions. She further argued that the Advocate/Client Bill of Costs is between the Claimant and her Advocate and nothing stops her from appointing a counsel in that matter. According to her, the reason for the appointment of a new Counsel does not touch on this suit. It was her argument that there is no pending review or any application in the suit herein.

Analysis and Determination

11. Evidently, the singular issue for determination is whether the instant Application is merited.
12. The Respondent's main contention is that the court is functus officio as judgment was entered on 12th February 2024 and the matter settled fully.
13. In interrogating the principle of functus officio, the Court of Appeal in the case of Telkom Kenya Ltd vs John Ochanda (2014) eKLR, stated as follows:

“Funtus 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.” Underlined for emphasis
14. In this case, the Claimant seeks through the instant Application to substitute her advocates on record. It is therefore apparent that the orders sought by the Claimant do not require the court to undertake a merit-based decisional re-engagement with the case.
15. As was rightly stated by the Court in the case of Telkom Kenya Ltd vs John Ochanda (supra), the doctrine of functus officio is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on.
16. As such, what is prohibited under the doctrine of functus officio is the reopening of the court's decision for reconsideration based on its merits. By all means, this does not extend to an application for a change of advocates after judgment. If this were to be the case, it follows that the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010, would be rendered irrelevant and inoperable.



17. The aforementioned Order 9 Rule 9 provides as follows: -

“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court —

- a. upon an application with notice to all the parties; or
- b. upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be”

18. In the case of *Nyeri Motor Services Ltd v Kanuti & 2 others (Miscellaneous Application 25 of 2023)* [2023] KEHC 17734 (KLR) (18 May 2023) (Ruling) the Court observed that the mischief intended to be cured under Order 9 Rule 9 aforementioned, was to protect advocates who are retained by a client until the tail end of a case and sack them immediately after judgment is delivered with a view to reaping the fruits of labour in total disregard of the labourer who is the advocate that conducted the trial. (See also the case of *Connection Joint v Apollo Insurance* [2006] KEHC 3281 (KLR).

19. Therefore, and noting that the firm of Onindo Onindo & Associates Advocates has not opposed the Claimant’s Application, there is no reason to refuse the same.

20. The upshot of the foregoing is that the Respondent’s objections to the Claimant’s Application are unmerited.

21. Accordingly, the Claimant’s Application dated 10th September 2024 is allowed as follows: -

- a. The firm of K. Itonga & Company Advocates is granted leave to come on record as advocates for the Claimant/Applicant in place of Onindo Onindo & Associates Advocates.
- b. The Notice of Change of Advocates annexed to the Application is hereby deemed as duly filed and served upon payment of the prescribed court fees.

22. There will be no orders as to costs.

23. These orders shall apply to ELRC Constitutional Petition No. E075 of 2022; Lynette Washiali Muganda vs Kenya Wildlife Services and another.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2024.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Itonga for the Claimant/Applicant

Ms. Feksi for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They



have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

