



**Geke v Gusii Mwalimu Sacco Ltd (Cause 340 of 2015)  
[2022] KEELRC 3794 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3794 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 340 OF 2015**

**CN BAARI, J  
JULY 28, 2022**

**BETWEEN**

**ALFRED TINEGA GEKE ..... APPLICANT**

**AND**

**GUSII MWALIMU SACCO LTD ..... RESPONDENT**

**RULING**

1. Before court is the respondent's Notice of Preliminary Objection dated May 30, 2022, against the claimant's application of May 10, 2022, wherein, the claimant seeks that this court varies, sets aside and/or review its orders of March 10, 2022, and allows him to file his submissions.
2. The respondent challenges the competence of the entire application, contending that this court is *functus-officio* having already pronounced itself on the matter. The respondent further contend that this court lacks jurisdiction to entertain the instant application.
3. The respondent avers that the application is bad in law, incurably defective and not provided for under the law, and further that the application is *res-judicata* having already been dealt with.
4. Parties urged the preliminary objection orally on June 27, 2022.
5. The respondent argues that this court dismissed the suit herein on June 22, 2021, and that the application seeking its reinstatement was also dismissed in a ruling delivered on March 10, 2022.
6. The respondent argues that that there is no suit for reinstatement having already been dismissed. The respondent further asserts that the claimant seeks to reinstate the dismissed suit through the back door by seeking to file submissions. The respondent had reliance in the holding in [National Land Commission vs Johnson Okiro Misiga](#) (2021) eKLR to buttress her position.
7. The respondent's prayer is that this application be dismissed as the court lacks jurisdiction to entertain it, as it is not one that can be redeemed by way of amendment.



8. Counsel for the claimant in response, argued that submissions were filed for the claimant on the application of July 22, 2021 as had been directed by the court, but that their submissions were not placed in the court file by the registry clerks.
9. The claimant further argues that when the matter came up for ruling on March 10, 2022, both parties logged in but were not admitted. The claimant argues that they wrote a letter to the court to inquire on matter and were informed that a ruling had been delivered dismissing their application.
10. It is the claimant's submission that their earlier application was determined without consideration of their submissions and thus the court is not *functus-officio* and that it can still hear their application.

### **Analysis and determination**

11. I have considered the preliminary objection vis-à-vis the claimant's application of May 10, 2022, and heard the oral submissions by counsels for both parties. The issue that falls for determination is whether this court is *functus-officio* as to lack jurisdiction to entertain the claimant's application.
12. The principle of *functus officio* was considered by the Court of Appeal in the case of *Telkom Kenya limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited)* [2014] eKLR, where the court opined: -
 

“*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.”
13. The principle of *functus-officio* demands that once a decision has been given, it is final and conclusive and subject only to any right of appeal to a superior body, such a decision cannot be reviewed or varied by the decision maker.
14. The Supreme Court of Kenya in the case of *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, 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 which reads: -
 

“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...”
15. The claimant herein filed the application dated July 22, 2021, seeking to reinstate his suit upon its dismissal for want of prosecution. The application was heard and determined resulting in its dismissal vide a ruling rendered on March 10, 2022.
16. The claimant then filed the application subject of the instant preliminary objection, seeking to vary, set aside and/or review the ruling/orders of March 10, 2022, on the ground that their submissions on that application were not placed on the court and hence were not considered by the court when it arrived on its decision of March 10, 2022.
17. The claimant's prayer in his application of May 10, 2022, is that the orders of this court of March 10, 2022, be varied, set aside and/or reviewed, and that he be allowed to file his submissions. To allow the claimant to file submissions, confirms that the claimant seeks that the court revisits the application on a merit-based re-engagement, notwithstanding that the court had already rendered its ruling on the application.



18. This court had rendered its final decision on the claimant's application through the ruling delivered on March 10, 2022. I find and hold that this court is *functus-officio* having rendered a final decision in the claimant's application of July 22, 2021, on the reinstatement of the claimant's suit.
19. Having found that the court is *functus-officio*, thus means that the court lacks jurisdiction to entertain the claimant's application of May 10, 2022.
20. The upshot is that the preliminary objection succeeds, and the application is hereby dismissed with no orders as to costs.
21. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 28<sup>TH</sup> DAY OF JULY, 2022.**

**CHRISTINE N BAARI**

**JUDGE**

**Appearance:**

**N/A for the claimant**

**N/A for the respondent**

**Christine: Court assistant**

