



Achina & another (Suing in her own Capacity as Administrator of David Suing in her own Capacity as Administrator of David Keya Ajina alias Keya Achina) v Muswayi (Environment & Land Case 194 of 2013) [2024] KEELC 7074 (KLR) (22 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7074 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 194 OF 2013
DO OHUNGO, J
OCTOBER 22, 2024**

BETWEEN

JAMEN LANGWEN ACHINA 1ST PLAINTIFF

ELIZABETH ASENA KEYA 2ND PLAINTIFF

**SUING IN HER OWN CAPACITY AS ADMINISTRATOR OF DAVID SUING IN
HER OWN CAPACITY AS ADMINISTRATOR OF DAVID KEYA AJINA ALIAS
KEYA ACHINA**

AND

ELGANA IDANYUKHU MUSWAYI DEFENDANT

RULING

1. Judgment was delivered in this matter on November 16, 2017 by N. A. Matheka, J. The Court found no merit in the Plaintiffs' case and dismissed it. The Court further found that the Defendant had established his counterclaim and entered judgment in his favour.
2. Pursuant to a consent order made on February 22, 2021, the decree was reviewed to read as follows:
 1. That the title deed of LR No. Kakamega/Kapsotik/378 measuring 0.42 HA currently registered in the joint names of the 1st plaintiff one Jasmin Langwen Achina and the 2nd plaintiff's late husband one Keya Achina alias David Keya Ajina be cancelled and the same be registered in the name of the defendant one Elgana Idanyokhu Muswanyi who has been in adverse possession peacefully, uninterrupted and without evasion or secrecy ever since 1973.
 2. That there will be no orders as to costs.
3. The matter then remained dormant until the Defendant filed Notice of Motion dated March 9, 2024, seeking the following orders:



1. That this Honourable Court be pleased to direct the Deputy Registrar of this court to sign all the transfer instruments in respect to L.R.No. Kakamega/Kapsotik/378 measuring 0.42 HA.
2. That the costs of this application be in the cause.
4. The application is based on the following grounds:
 - a. That this matter has been determined by this Honourable Court and a decree issued which ordered the transfer of L.R. No. Kakamega/Kapsotik/378 measuring 0.42HA to the applicant.
 - b. That the respondents have refused to sign the transfer instruments in the applicant's favour.
 - c. That the said land parcel cannot be transferred to the applicant without registered instruments.
 - d. That the applicant is desirous to be registered as the proprietor of the said land parcel.
5. The application is further supported by an affidavit sworn by the Defendant. He deposed that a decree was issued pursuant to the judgment and that the Plaintiffs had refused to sign the transfer documents.
6. When the application came up for inter parte hearing, the Plaintiffs had not filed any response despite evidence of service being availed. The Defendant/Applicant urged the Court to allow the application in terms of prayer 1 thereof.
7. I have considered the application, the supporting affidavit and the submissions. The judgment and decree, as reviewed by consent is specific that "the title deed of LR No. Kakamega/Kapsotik/378 measuring 0.42 HA currently registered in the joint names of the 1st plaintiff one Jasmin Langwen Achina and the 2nd plaintiff's late husband one Keya Achina alias David Keya Ajina be cancelled and the same be registered in the name of the defendant one Elgana Idanyokhu Muswanyi..."
8. The Court did not make any order that the Deputy Registrar signs any transfer instruments on behalf of any party. If the parties needed such an order, they should have sought it in their pleadings. Judgment having been delivered, the Court became functus officio as regards reliefs that could be issued. I am concerned that the parties keep returning to court to change the judgment incrementally. If the parties are allowed to continue in that course, the final decree will be totally different from the judgment rendered by the trial Judge.
9. The doctrine of functus officio was discussed by the Supreme Court in *Raila Odinga & Others vs. IEBC & Others* [2013] eKLR, where the Court cited, with approval, a paper by Daniel Malan Pretorius, titled *The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,* (2005) 122 SALJ 832. The author discussed the concept 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 a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker."
10. I am not persuaded that I should change the decree in the manner that the Defendant/Applicant has invited the court to do. He should enforce the decree as issued. If he omitted to include any prayer in his counterclaim, the principle of finality does not permit the court to insert it now, after judgment.
11. I find no merit in Notice of Motion dated March 9, 2024 and I therefore dismiss the application. Considering that the Plaintiffs did not resist the application, I make no order as to costs.



DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF OCTOBER 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the Plaintiffs

No appearance for the Defendant

Court Assistant: M Nguyayi

