



**Kamau (Suing as Legal Representative of Kamau Kiuri Karongo) v Karongo & Karongo
(Sued as Legal Representatives of the Estate of Rongo Kiuri) & another (Environment
& Land Case 25 of 2018) [2024] KEELC 13382 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 25 OF 2018
AA OMOLLO, J
NOVEMBER 14, 2024
FORMERLY HCCC NO. 1566 OF 1994**

BETWEEN

**HANNAH WANJIKU KAMAU (SUING AS LEGAL REPRESENTATIVE OF
KAMAU KIURI KARONGO) PLAINTIFF**

AND

**JANE NJERI KARONGO & HARRISON MUNGA KARONGO (SUED
AS LEGAL REPRESENTATIVES OF THE ESTATE OF RONGO
KIURI) 1ST DEFENDANT**

**MARGARET WAMAITHA KARANJA & STEPHEN NJENGA KARANJA
(SUED AS LEGAL REPRESENTATIVES OF THE ESTATE OF KARANJA
KIURI) 2ND DEFENDANT**

RULING

1. Before the Court for determination is the 1st Defendant’s (hereinafter ‘Applicant’) Notice of Motion dated 15th May 2024 and brought under Sections 1A, 1B 3A and 34 of the *Civil Procedure Act* and Order 51 Rule 1, Order 9 Rule 9 and Order 22 of the *Civil Procedure Rules*. The Applicant is seeking orders that:
 - a. The firm of Njeri Karanja and Associates Advocates be granted leave to come on record as advocates for the Applicant herein in place of Mburu Machua & Co. Advocates.
 - b. Upon granting prayer (a), the Court be pleased to order the Regional Surveyor, County Kiambu or any other appointed surveyor to amend the mutation forms and consequently the Registry Index map for Kiambaa/Kihara/573 (now sub-divided into parcels 9113-9114) (hereinafter ‘the suit property’) comprised in the mutation form serial number 04692062.



- c. The Court be pleased to issue an order allowing the Applicant's or any other surveyor to carry out a survey of the suit property and excise a portion measuring approximately 0.607 hectares as per the proposal and prepare mutations in respect thereof.
 - d. Costs of the application be provided for.
2. The application is based on several grounds and supported by an affidavit sworn by Jane Njeri Karongo. She averred that the Respondent has partially executed the decree leading to the subdivision of the suit property with the Respondent's parcel being No. 9114 measuring approximately 0.607 hectares. The deponent averred that if the mutations and beacons are effected as they are, the Respondent will require the Applicant and her family including her 87 year old sister-in-law to demolish houses they have lived in for more than 50 years. Additionally, the Applicant stated that some graveyards shall end up being on the Respondent's land.
3. The deponent averred that the Respondent has been in occupation of property measuring 10.7 metres in width on the suit property. Additionally, the Respondent has another portion of land that is located near Red Hill road towards the river. The deponent proposed that the Respondent should retain the above-mentioned small portion of the suit property while the rest of the 0.607ha should be hived off from the parcel near Red Hill road as there are no houses to be demolished on that parcel of land. The deponent averred that the Respondent's parcel near Red Hill road and towards the river should be increased to compensate for the portion she is entitled to from the suit property.
4. In conclusion the Applicant averred that they are willing to comply with the Court's judgement and decree issued on 30th October 2019 following a dismissal of their appeal in April 2024.
5. The Respondent filed a replying affidavit dated 19th June 2024 and sworn by Hannah Wanjiku Kamau. She averred that the Applicant is the author of her own misfortune for failing to comply with the Court's decree leading the Deputy Registrar to execute the required documentation. The deponent averred that judgement was entered in her favour on 30th October 2019. Due to the Applicant's non-cooperation the Applicant obtained orders from the Court directing the Land Registrar, Kiambu to register the Court's decree and partition the suit property. This was done on 27th January 2022. The Court also directed the Deputy Registrar to execute the transfer documents.
6. The Respondent noted that the Applicant registered a restriction on the suit property on 28th March 2022 despite the Court's judgement and he had to formally apply to have the cautions removed. The deponent also noted that the Applicant was not enjoying any stay orders as applications for the same had been dismissed by the trial and appellate Courts. The deponent also noted that the Applicant has not approached the Court with clean hands as some of the houses and graves referred to by the Applicant were put while the case was still in Court thus offending the *lis pendens* principle.
7. In conclusion the Respondent asked the Court to dismiss the application as the Court became *functus officio* when it decided the matter in the Respondent's favour. The Respondent also noted that she is 84 years old and should be left to enjoy the property that she has fought for decades.
8. As at 4th November 2024 none of the parties had filed submissions.

Analysis and Determination

Based on the foregoing, the following issue arises for determination.

Whether the Court is *functus officio* in this Matter



9. The Applicant is seeking the assistance of the Court in amending mutations and beacons relating to the suit property. However, as per the Applicant's own admission, a final judgement and decree was issued on 30th October 2019 and the Applicant's appeal on the same was dismissed on 26th April 2024. The Respondent has opposed the application on two main grounds. The first being that the Applicant was not cooperative in executing the decree of the Court. The relevant documents were thus executed by the Deputy Registrar of the Court. The second is that the Court is *functus officio* in this matter.
10. The Supreme Court in the case of *Odinga v Independent Electoral & Boundaries Commission & 3 others* [2013] KESC 8 (KLR) stated as follows concerning the *functus officio* doctrine:

We, therefore, have to consider the concept of "*functus officio*," as understood in law. Daniel Malan Pretorius, in "*The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law*," (2005) 122 SALJ 832, has thus explicated this concept:

"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."

This principle has been aptly summarized further in *Jersey Evening Post Limited v A1 Thani* [2002] JLR 542 at 550:

"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" [emphasis supplied].

11. Elsewhere 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] KECA 600 (KLR) 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. It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19th Century. In the Canadian case of *Chandler v Alberta Association Of Architects* [1989] 2 S.C.R. 848, Sopinka J. traced the origins of the doctrines as follows (at p. 860);

"The general rule that a final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal *In re St. Nazaire Co.*, (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the



formal judgment had been drawn up, issued and entered, and was subject to two exceptions:

Where there had been a slip in drawing it up, and,

Where there was an error in expressing the manifest intention of the court. See *Paper Machinery Ltd. v. J.O. Rose Engineering Corp.*, [1934] S.C.R. 186”

12. The application falls for consideration on the law as set out above. In the instant case the judgement was issued on 30th October 2019. A decree was issued on 28th July 2020. Orders giving directions on how the suit property ought to be subdivided were issued on 27th January 2022. On 12th July 2023, the Court gave orders permanently restraining the lodging of cautions on the suit property and also marking the file as closed. This is unequivocal evidence of the fact that the judgement was issued, perfected and the case closed. The Court rendered its decision which cannot at this stage be reviewed nor altered. In other words, the Court is functus officio in this case. The Applicant’s recourse was in filing an appeal. However, having admitted that the appeal was dismissed the Applicant cannot run back to the trial Court. The Court cannot entertain the application nor issue the orders sought as it was and continues to be functus officio in the matter.
13. In view of the foregoing, the application is allowed in terms of prayer (a) allowing the firm of Njeri Karanja and Associates advocates to come on record for the 1st Defendant. The remainder of the prayers are dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED ON THIS 14TH DAY OF NOVEMBER, 2024.

A. OMOLLO

JUDGE

