



Kibira v Board of Management St Teresa Secondary School & another (Environment and Land Case 25 of 2012) [2025] KEELC 509 (KLR) (12 February 2025) (Ruling)

Neutral citation: [2025] KEELC 509 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 25 OF 2012
CK NZILI, J
FEBRUARY 12, 2025**

BETWEEN

JOSEPH WANYAMA KIBIRA PLAINTIFF

AND

**BOARD OF MANAGEMENT ST TERESA SECONDARY
SCHOOL 1ST DEFENDANT**

HASSAN NDAMWE WAKOLI 2ND DEFENDANT

RULING

1. This suit was concluded on 26/1/2021. The plaintiff's suit was dismissed with costs, while the 1st defendant's counterclaim was allowed by an order restraining the plaintiff in the primary suit from trespassing onto plot No. 61 Chepkorok Farm, belonging to St. Teresa Secondary School Sikhendu.
2. By a post-judgment order dated 24/11/2023, the County Surveyor, Trans Nzoia, was directed to implement the decree and file a report before the court. The report dated 5/6/2024 was then filed in court. One of the recommendations or requests in the said report was for the court to give directions on which Registry Index Map (RIM) to use for the survey and other future purposes, since there are in existence three versions of the map that were used to generate the title deeds.
3. After several mentions on 10/12/2024, the Land Surveyor attended court to present the report. The court adopted the same as part of the court record. The land surveyor told the court that his predecessor had fixed the boundaries on the said land, establishing the acreage of the school as 2.906 Ha. The said surveyor equally produced the three maps before the court.
4. Following this report, learned counsel for the decree-holder urged the court to mark the matter as settled. On the other hand, Learned counsel for the judgment debtor submitted that the report was not clear on which RIM was relied upon for the school to get an extra acreage instead of 5 Ha. He asked the court to investigate the same instead of marking the case closed.



5. In a rejoinder learned counsel for the decree-holder submitted that the court cannot descend into the arena of investigations as to who may have lost land, especially when the land surveyor has said that no one had complained. Learned counsel submitted that unless someone else comes up with a claim it was safer to conclude that the matter is settled.
6. A judgment is defined as a judicial determination on the central question in any proceedings or one of the questions if there are many. In *Black Laws Dictionary* 6th Edition, page 950, a judgment is defined as a court's final determination of the rights and obligations of the parties in a case and includes an equitable decree or any order from which an appeal lies.
7. Once a judgment is delivered a court becomes *functus officio*. See *Menginya Salim Murgani v K.R.A.* [2014] eKLR. The doctrine of *functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that has rendered the final decision thereon. See *Telkom Kenya Ltd v John Ombacha* [2-14] eKLR. In *Raila Odinga & 2 Others v IEBC & Others* [2013] eKLR, the court cited Daniel Malam Pretorius. "*The origins of the functus officio doctrine, with special reference to its application in administrative law*" [2005] 122 SALJ 832, that *functus officio* is one of the mechanisms by means of which the law gives expression to the principle of finality and that once a decision is rendered, it becomes final and conclusive. Once a decision is rendered a decision maker may not revisit the matter on a merit-based re-engagement.
8. In this matter, the decree of the court has not been appealed against by the judgment debtor. There is no pending application for review. The order leading to the report by the land surveyor was made after the decree-holder, through a post-judgment application, sought for the implementation of the decree. The land surveyor has confirmed the implementation of the decree to the satisfaction of the parties.
9. This court, therefore, is *functus officio* and cannot, in the absence of a formal application, descend to investigating matters inconsistent with the decree or the judgment which are outside the mandate of this court. The file is marked closed.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALA ON THIS 12TH DAY OF FEBRUARY, 2025.

In the presence of:-

Court Assistant - Chemutai

Kiarie for the plaintiff present

Miss Chilaka for the respondents present

HON. C.K. NZILI

JUDGE, ELC KITALA.

