



REPUBLIC OF KENYA



Njuguna (Now Deceased) & another v Muthumbi; Njuguna (Applicant) (Environment & Land Case 775 of 2017) [2025] KEELC 306 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 306 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 775 OF 2017
JA MOGENI, J
JANUARY 30, 2025**

BETWEEN

VERONICAH WAIRIMU NJUGUNA (NOW DECEASED) 1ST PLAINTIFF

MARGARET WANJIKU NJAU 2ND PLAINTIFF

AND

PAUL GATUNDU MUTHUMBI DEFENDANT

AND

ELIUD IKUMU NJUGUNA APPLICANT

RULING

1. This Ruling is in respect of the Notice of Motion dated 19/06/2024 brought under Order 24 Rule 1, 2 and 3 (1), Order 8 Rules 3 and 5, Order 51 of the Civil Procedure Rules, Sections 1A, 1B and 3 A of the *Civil Procedure Act* where the Applicant seeks the following:
 - a. That this Honorable Court be pleased to grant leave and/or liberty to the Applicant to be substituted as the first Plaintiff in lieu of Veronica Wairimu Njuguna, now deceased.
 - b. That the Honorable Court be pleased to order that the Applicant be deemed as the 1st Plaintiff suing for and on behalf of the estate of Veronica Wairimu Njuguna- now deceased.
 - c. That that pleadings on record be amended to reflect the said changes
 - d. That the amended Originating Summons be deemed as duly filed and served upon payment of the Court's requisite fees
 - e. That the costs of this Application be in the cause.



2. The Application is supported by the grounds on the face of it and the Supporting Affidavit of Eliud Ikimu Njuguna the Applicant sworn on even date.
3. The Application is opposed. The Defendant filed Grounds of Opposition dated 14/08/2024 seeking to have the Application struck out with costs on the grounds that the suit is filed without authority and that:
 1. That the Court is functus officio having rendered its final Judgment in the case and there is no case before the Court capable of revival
 2. The Originating Summons is not capable of amendment, the case has been finalized
 3. The Application is fatally defective and bad in law
4. The Application is an abuse of the Court's process, is frivolous and vexatious and should be dismissed with costs.
4. On 9/10/2024 the Court gave directions on disposal of the suit vide written submissions. Both parties filed their submissions, the Applicant's submissions are dated 23/10/2024 and the Defendant/ Respondent's submissions are dated 25/10/2024 which I have considered and the authorities cited.
5. The issue for determination is whether the Court is functus officio and whether the Application is merited.
6. I have considered the reasons given by the Applicant seeking to substitute the 1st Plaintiff with the Applicant and I have also considered the Grounds of Opposition by the Respondent/Defendant.
7. On the issue whether the Court is functus officio having delivered a Judgment in the instant suit and dismissed the Plaintiff's Plaint on 15/09/2022, I am persuaded to consider and refer to the Supreme Court of Kenya decision that discussed the doctrine of functus officio in Election Petitions Nos. 3, 4 & 5 Raila Odinga & Others –vs- IEBC & Others [2013] eKLR and cited with approval an excerpt from an article by Daniel Malan Pretorius, in "The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law," (2005) 122 SALJ 832:

“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.”
8. The Defendant's objection is that this Court having determined the present suit against the Plaintiffs, it has become functus officio. The prayer for adverse possession by the Plaintiffs against the Defendant was dismissed where the Court stated that the Plaintiffs have failed to prove their case. Further the Court's final orders were that; "The suit fails and it is dismissed with costs to the Defendant." The suit was dismissed based on the evidence adduced at the hearing and on a balance of probabilities.
9. Having analyzed the Application, the submissions by Counsel, I notice that the Application is not tenable as there is no suit, the suit having been dismissed on 15/09/2022 and therefore there is no Originating Summons to amend as prayed by the Applicant in the Application.
10. The pivotal role that the doctrine of functus officio plays and has played in turning the wheels of justice is critical. It brings finality, certainty and orderliness to the legal process by enforcing a cutoff point. As



important as its role is, its Application, particularly in the administrative context has not been without difficulty. The existence of conflicting jurisprudence furnishes evidence of trouble.

11. It is essential to the administration of justice to have a clear stopping place, a point of no turning back; otherwise, there would be no end to the case, nor any beginning of enforcement.

12. In this breath I agree with the holding in the case of Joseph Odhiambo –vs- Nyakundi Omari [2016] eKLR, where the Hon Judge stated that;

“In this case, the Court’s jurisdiction is limited to enforcing its Judgment and must not allow for an open window within which parties can relitigate decided matters.”

13. I therefore find that indeed the Court in this instant Application is functus.

14. The legal framework on substitution of a deceased Plaintiff is contained in Order 24 Rules 1, 2, and 3 of the Civil Procedure Rules which provide as follows:

“

“1. The death of a Plaintiff or Defendant shall not cause the suit to abate if the cause of action survives or continues.

2. Where there are more Plaintiffs or Defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving Plaintiff or Plaintiffs alone or against the Defendants dies surviving Defendant or Defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants.

3.

(1) Where one of two or more Plaintiffs dies and the cause of action does not survive or continue to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the cause of action survives or continues, the Court, on an Application made in that behalf, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no Application is made under sub-rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the Application of the Defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff:

Provided the Court may, for good reason on Application, extend the time.”

15. From my interpretation of the legal framework in Order 24 is that any party to a suit can apply for the substitution of a deceased Plaintiff or deceased Defendant within one year following the death of the deceased party. The Judgment in this suit was delivered on 15/09/2022 and the 1st Plaintiff who the Applicant seeks to replace died on 11/07/2023. It is however not in order that the Applicant seeks to have the substitution so that the pleadings in a case that has already been determined can be amended to reflect the substitution of Veronica Wairimu Njuguna who was the 1st Plaintiff.



16. The Applicant has failed to realize that Veronica was alive and that she even participated in the proceedings of the instant suit until determination of the same by this Honorable Court. So the prayers made are tantamount to seeking to rehear the suit afresh which violates the principle of res judicata.
17. Therefore, since the Applicant brought an Application which seeks to have a determined suit heard afresh, it is clear that the Application is misconceived and improper before the Court.
18. Whereas the prayer for substitution, may properly be before the Court, the issue is whether the prayer is merited. The Applicant argues that the 1st Plaintiff died after they lost an Application for stay before the Court and therefore she need to be substituted as the 1st Plaintiff and the entire suit amended to reflect the said changes. I have carefully scrutinized the records she filed and there is none that show that the deceased did not participate in hearing of the instant suit and thus the Judgment delivered was a regular Judgment.
19. The upshot is that the Application fails in entirety. Since costs follow the event and the Application has failed, I am constrained to direct that each party bears their own costs this being a family matter.
Orders accordingly. File Closed.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT THIKA THIS 30TH DAY OF JANUARY, 2025.

MOGENI J.

JUDGE

In the presence of:-

Mr. Makori for the Defendant

Ms. Ochiel holding brief for Mr. Gathuka for Plaintiff and Applicant

Melita - Court Assistant

