



**Link Properties Ltd v Kenya Power & Lighting Co. Ltd; Chege & 7 others (Interested Party)  
(Environment and Land Case Civil Suit 114 of 2010 & Environment & Land Case 795 of 2007  
& 615 of 2010 (Consolidated)) [2024] KEELC 13842 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13842 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 114 OF 2010 &  
ENVIRONMENT & LAND CASE 795 OF 2007 & 615 OF 2010 (CONSOLIDATED)**

**AA OMOLLO, J**

**DECEMBER 9, 2024**

**BETWEEN**

**LINK PROPERTIES LTD ..... PLAINTIFF**

**AND**

**KENYA POWER & LIGHTING CO. LTD ..... DEFENDANT**

**AND**

**SIMON CHEGE & 7 OTHERS ..... INTERESTED PARTY**

**RULING**

1. For determination is the notice of motion application dated 29<sup>th</sup> January 2024. The Orders sought were:
  - a. That the court does refer this matter to court annexed mediation since the attempted negotiations did not work as the Plaintiff did not give appointment.
  - b. That the Link Properties and Choka residents/squatters be considered as having uncompleted buy and seller transaction and are ready.
  - c. The Plaintiff to transfer their trustee grant to Links Properties and Chokaa residents/squatters
  - d. The costs of the application be provided for.
2. The application is supported by the grounds listed on its face and the joint affidavit sworn by Mary Wanjiku, Sophia Muthoni, Benson Maina, Samuel Onyango and Jane Thairu in support. In brief, they deposed to approaching the advocate of the Respondents with intention to buy the land after learning of the eviction notice.



3. The application was opposed vide grounds of opposition dated 10<sup>th</sup> June 2024 and the preliminary objection dated 15<sup>th</sup> May 2024. Both raised similar grounds *inter alia*;
  - a. The court is functus officio.
  - b. The Applicants lack locus standi to bring the application as the interests of the squatters were comprehensively adjudicated in *ELC 114 of 2010*.
  - c. That there is a pending appeal before the court of appeal (*Civ. Appeal No. 879 of 2022*) which is challenging the judgement delivered on 12<sup>th</sup> July 2022.
4. The parties argued the application by way of written submissions. The submissions rendered by the Applicants set out facts which are more of evidence in a trial and in no way this court can delve into since this matter was heard and determined. The Applicants state that they were served with an eviction order yet they did not know about this case while in this application, they have not applied to set aside the judgement. They urged this court to enforce the agreement between them and Link Properties Ltd which is a matter that ought to have been litigated before the conclusion of this matter.
5. The application is brought after the judgement was entered. The Respondents cited the case of *Raila Odinga and Others v IEBC & Others* (2013) eKLR where the Supreme Court held that, “the functus officio doctrine is one of the mechanisms by means of which the law gives expressions to the principle of finality.”
6. Once a matter is heard and judgement is entered, there is nothing pending for determination which is why the court is considered functus officio. The Applicants are seeking that this court refer the case to a court annexed mediation without first applying to re-open the case. Neither can this court make a determination on the question of the existence of a sale agreement between the applicants and Link Properties Ltd as the issues in dispute were already determined.
7. If the Applicants felt there is a pending matter that was not addressed, they either apply for review or appeal the judgement. In this instance, there is an appeal which has already been lodged which then takes away the Applicants’ right for review. This is so because the Respondents submitted that the rights of squatters in the matter were substantially addressed in *ELC 114 of 2010*. Since the Chokaa squatters were part of the proceedings and judgement being appealed vide Court of Appeal *Civ Appeal no 879 of 2022*, they cannot move this court under review.
8. I conclude by holding that this court lacks powers to grant the orders sought on account of the functus officio doctrine. Therefore, the application dated 29<sup>th</sup> January, 2024 is hereby dismissed with an order that each party bear their respective costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF DECEMBER, 2024  
THROUGH EMAIL TO THE PARTIES**

**A. OMOLLO**

**JUDGE**

