



**Kipkirui t/a Koskei Monda & Company Advocates & another v Nkoyo & another
(Civil Appeal E755 of 2021) [2025] KEHC 5089 (KLR) (Civ) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E755 OF 2021

SN MUTUKU, J

APRIL 30, 2025

BETWEEN

**JOEL KOSKEI KIPKIRUI T/A KOSKEI MONDA & COMPANY
ADVOCATES 1ST APPELLANT**

**RODGERS MONDA T/A KOSKEI MONDA & COMPANY
ADVOCATES 2ND APPELLANT**

AND

LETOYA ALEX OLE NKOYO 1ST RESPONDENT

EVA RESIATO DIKIRR 2ND RESPONDENT

RULING

The Notice of Motion

1. Under determination is the Notice of Motion dated 11.02.2025 (the Application) filed by Joel Koskei Kipkirui T/A Koskei Monda & Company Advocates and Rodgers Monda T/A Koskei Monda & Company Advocates (hereafter the 1st and 2nd Applicants). The Application is anchored on various provisions of the law as shown on the face of it and in the Supporting Affidavit sworn on 11th February 2025. The Application seeks a substantive order that the sum of Kshs. 2,800,000/- being the balance of the decretal amount herein, be paid to Letoya Alex Ole Nkoyo and Eva Resiatio Dikirr (the 1st and 2nd Respondents) within a period of 12 months. The Applicants are further seeking an order for costs.
2. It is deposed in the Supporting Affidavit that judgment in this matter was delivered on 19.12.2024, with the appeal partially succeeding; that upon delivery thereof, the court granted a stay of execution for a period of 30 days which lapsed on 12.02.2025; that previously, the Applicants herein had deposited a sum of Kshs. 2,000,000/- in court as a condition for the order of stay of execution pending the appeal,



which sum they now wish to utilize as part settlement of the decretal amount and that the Respondents do not object to having the aforesaid sum released to them.

3. It is deposed that the Applicants are unable to pay the remaining balance of the decretal amount (being a sum of Kshs. 2,800,000/-) as a lump sum, due to financial constraints, hence the instant Application and that it would, therefore, be in the interest of justice for the Application to be allowed.

The Replying and Supplementary Affidavits

4. The Application is opposed through a Replying Affidavit of the 1st Respondent sworn on 24.02.2025. the 1st Respondent is against granting of the orders sought for the reasons, inter alia, that this court is functus officio pursuant to the judgment delivered in the appeal. The 1st Respondent has stated that the judgment sum awarded exceeds the sum of Kshs. 4,800,000/- alluded to in the Application, and includes interest thereon which stands at a sum of Kshs. 4,000,000/-.
5. It is the averment of the 1st Respondent that the Applicants have not acted in good faith and that they have not provided sufficient reasons to warrant an exercise of this court's discretion in their favour. The 1st Respondent has averred that should the court be inclined to grant the order sought in the Application, then the Applicants should be ordered to pay the decretal balance of Kshs. 2,800,000/- in two (2) instalments, plus costs and interest thereon. Otherwise, the court is urged to dismiss the instant Application with costs.
6. The 1st Applicant filed a Supplementary Affidavit sworn on 25.02.2025 in a rejoinder. He has deposed that contrary to the averments made in the Replying Affidavit, the High Court sitting on appeal, set aside the lower court award of Kshs. 7,818,000/- and substituted it with an award in the sum of Kshs. 4,818,000/- whilst directing each party to bear its own costs of the appeal and that no interest was awarded to the Respondents, whether in the suit or on appeal, and hence the question of interest does not arise here.
7. It is equally the assertion by the 1st Applicant that the Applicants herein paid a sum of Kshs. 500,000/- to the Respondents on 8.02.2025, being part settlement of the outstanding decretal sum and that in view of that, the Applicants propose that the remaining balance of Kshs. 2,318,000/- be settled within 12 months or within such period as the court may direct.

Oral Submissions

8. The Application was dispensed with by way of oral arguments. Mr. Maondo advocate for the Applicants, submitted by reiterating the contents of the affidavits supporting the Application, particularly on the subject of costs and interest. He further proposed that the Applicants are willing to pay a sum of Kshs. 500,000/- within the next 30 days and to thereafter settle the remaining decretal balance in six (6) equal monthly instalments of Kshs. 300,000/-.
9. Mr. Mbanda advocate for the Respondents, submitted that the subject of interest was not an issue for determination on appeal but that the same was awarded by the lower court and therefore ought to apply here. Counsel reiterated the averments earlier made, that this court is functus officio in the matter, by virtue of the judgment on appeal. He argued that should this court find that it has jurisdiction to entertain the instant Application, it ought to decline the orders sought therein.
10. In his brief rejoinder arguments, Mr. Maondo has submitted that the trial court award was substituted on appeal and hence the appropriate decree to be executed is the one emanating from the High Court and that the Respondents did not seek any interest from the lower court and hence the same was not awarded.



Analysis and Determination

11. I have read and considered the Application and the grounds advanced in support of the same. I have read and considered the Replying Affidavit and the rival oral submissions.
12. Before considering the merits of the Application, I deem it necessary to first address a preliminary issue raised here that this court is functus officio in view of the fact that the present appeal has already been conclusively determined.
13. The doctrine of functus officio was considered by the Court in *Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited)* [2014] eKLR, where upon considering the aforesaid doctrine, it was held 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 Vs 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:

- i. Where there had been a slip in drawing it up, and,
- ii. Where there was an error in expressing the manifest intention of the court. See *Paper Machinery Ltd. vs. J.O. Rose Engineering Corp.*, [1934] S.C.R. 186”

14. The Court went further to state that:

“The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. There do therefore exist certain exceptions and these have been captured thus in *Jersey Evening Post Ltd Vs Ai Thani* [2002] JLR 542 at 550, also cited and applied by the Supreme Court;

“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 or adjudication must be taken to a higher court if that right is available.”

15. The Supreme Court in *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR stated 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 superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”

16. With that understanding of the applicability of the doctrine of *functus officio*, I now turn to the record of the court in this matter. It shows that the present appeal was heard and determined by Nang’ea, J. vide the judgment delivered on 19.12.2024. In his judgment, the learned Judge set aside the sum of KShs. 7,818,000/- awarded by the trial court and substituted it with an award of KShs. 4,818,000/-.
17. The Applicants have now brought the instant Application, seeking to have the remaining balance of the decretal sum awarded, settled by way of instalments. To my mind the instant application concerns itself with the execution of the decree emanating from the judgment on appeal which this court has jurisdiction to entertain. In the circumstances therefore, it is my considered view that the doctrine of *functus officio* is not applicable in this matter and that this court has jurisdiction to entertain the instant application.
18. Turning to the Application, it is my understanding that the substantive order sought therein is to allow the Applicants to settle the remaining balance of the decretal sum by way of instalments. I have noted that in the Application, the Applicants are seeking to have the amount settled within a period of 12 months in unspecified instalments, whereas in their submissions they have proposed that a sum of KShs. 500,000/- be paid within 30 days while the remaining balance of KShs. 1,800,000/- be settled within six (6) months in equal monthly instalments of KShs. 300,000/-.
19. The Respondents are opposed to the proposal but are amenable to settlement of the balance in two (2) instalments.
20. My reading of the court record shows that the lower court had previously entered judgment in favour of the Respondents and against the Applicants, thereby awarding the Respondents a sum of KShs. 7,818,000/-. The Applicants were dissatisfied with the award. They moved the High Court by way of the present appeal and filed an application seeking an order for a stay of execution pending the appeal. On 30.11.2021 the court granted a temporary order of stay conditional upon the Applicants depositing a sum of KShs. 2,000,000/- in court as security, within 21 days thereof. The Applicants complied with the said condition.
21. The record shows that the appeal was subsequently heard and determined, with the Court further ordering the parties to cater for their own costs of both the appeal and the suit.
22. From the record of the court, the parties conceded to having the deposited sum of KShs. 2,000,000/- released to the Respondents. What this court should concern itself, therefore, is the remaining decretal balance of KShs. 2,818,000/-. The record of the court, further, shows during pendency of this instant Application, the Applicants paid an additional sum of KShs. 500,000/- to the Respondents, which payment was confirmed by the Respondents’ counsel on 25.02.2025. Therefore, my calculations show that the remaining balance of the decretal amount is KShs. 2,318,000/.
23. Upon considering the competing interests of the respective parties here, the court observed that while the Applicants have alleged their inability to settle the above sum as a lumpsum due to financial constraints, they did not tender any credible material to support such claims. The court has also taken into consideration the payments so far made by the Applicants towards settling the decretal amount, as well as their proposal to settle a further sum of KShs. 500,000/- within 30 days from 4.03.2025.



24. Upon considering all the foregoing circumstances and in serving the substantive interest of justice, the court finds it reasonable to allow the Applicants to settle the decretal amount by way of reasonable instalments.
25. On the question of costs and interest thereon, I have read judgment on appeal. I have noted that the Court did not award costs to any of the parties, but instead ordered each party to bear their own costs of both the appeal and the suit. There is nothing on the record to indicate that the said order has been varied and/or set aside. In the premises, the court finds that the Respondent would not be entitled to costs of the present appeal or in respect of the suit.
26. However, it is apparent from the record that the lower court awarded interest on the amount awarded in judgment, to be tabulated from the date of filing suit until payment in full. The judgment on appeal is silent on the issue of interest in respect of the amount awarded. Be that as it may, the court is satisfied that the Respondents would be entitled to interest on the awarded sum, pursuant to Section 26 of the CPA which stipulates that:
- (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
 - (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.
27. Consequently, the Application dated 11.02.2025 is hereby allowed on the following terms:
- a. The 1st and 2nd Appellants/Applicants shall pay a sum of Kshs. 500,000/- (constituting part of the outstanding decretal sum of Kshs. 2,318,000/-), to the 1st and 2nd Respondents, on or before 4.05.2025.
 - b. The 1st and 2nd Appellants/Applicants shall thereafter pay the remaining balance of the decretal sum (being Kshs. 1,818,000/-) in four (4) equal instalments of Kshs. 454,500/- each beginning the month of June, 2025 until September, 2025. For the avoidance of doubt, the first instalment shall be payable on or before 5.06.2025 and subsequent instalments shall be payable on or before the 5th of every month thereafter, ending September, 2025.
 - c. In the event of failure to comply with any instalment payments set out under order b), the 1st and 2nd Respondents shall be at liberty to commence execution proceedings accordingly.
 - d. The 1st and 2nd Respondents shall also be entitled to interest on the entire decretal sum of Kshs. 4,818,000/- at court rates, from the date of filing suit until payment in full.
 - e. Each party shall bear their own costs of this application.
28. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF APRIL 2025.

S. N. MUTUKU

JUDGE



In the presence of:

1. Mr. Maondo for the Applicants
2. Ms Mwangi for Mr. Mbanda for the Respondent

