



REPUBLIC OF KENYA



KENYA LAW
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**Ondwori v Stewan General Merchants Limited & 2 others (Civil Appeal
E001 of 2023) [2025] KEHC 9245 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E001 OF 2023
MA ODERO, J
JUNE 27, 2025**

BETWEEN

FLAVIAN WANDERA ONDWORI APPELLANT

AND

STEWAN GENERAL MERCHANTS LIMITED 1ST RESPONDENT

STEPHEN WAMBUGU 2ND RESPONDENT

PAUL MAINA MWAI 3RD RESPONDENT

RULING

1. Before this court is the Notice of Motion application dated 20th January 2025 by which the Applicant Flavian Wandera Ondwori seeks the following orders;-
 - “1. Spent
 2. That the court be pleased to have on record the firm of Mwaniki Kevin & Associates Advocates in place of Munene Wambugu & Kaplagat.
 3. Spent
 4. Spent
 5. That the court be pleased to restrain the 1st Respondent either by themselves, their agents, assignees from auctioning the Applicants motor vehicle registration number KBJ 438K Lorry by Beta base auctioneers and due for sale by public auction on 24/01/2025 pending hearing and determination of this application.



6. That the court be pleased to restrain the 1st Respondent either by themselves, their agents, assignees from auctioning the Applicants motor vehicle registration number KBJ 438K Lorry by Stewan auctioneers and due for sale by public auction on 24/01/2025 pending hearing and determination of the declaratory suit against the insurer Kenya Orient Insurance Company.
 7. That the court be pleased to order the unconditional release to the Applicant Motor Vehicle registration number KBJ 438K held by Beta base auctioneers and due for sale by public auction on 24/01/2025.
2. The application which was premised upon order 9 Rule 9[a] and Order 22 Rule 22 of the Civil Procedure Rules was supported by the affidavit of even date sworn by the Applicant.
 3. The Applicant opposed the application through their Grounds of Opposition arguing that the High Court having rendered a judgment on 12th July 2024 is now 'Functus Officio'. It is further argued that this application is not tenable as it seeks to stay execution of the decree in this suit pending hearing and determination of a declaratory suit which the Applicant "is in the process" of filing against his Insurer.
 4. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated 17th February 2025 whilst the Respondents did not file any submissions.

Background

5. Vide a judgment delivered on 12th July 2024 the High Court awarded the Respondent a sum of Kshs 3,080,230 plus costs of the suit and interest at court rates from the date of the judgment until payment in full.
6. The Applicant states that he presented a copy of the said judgment to his Insurer Kenya Orient Insurance Company Ltd. To his surprise the Applicant learnt that the 1st Respondent instructed Beta Auctioneers to execute the decree against himself through the sale by auction of the Applicants Motor Vehicle Registration Number KBJ 438K Lorry Blue in colour.
7. The Applicant argues that the insurer ought to take up liability and pay the decretal sum. The Applicant states that he is in the process of filing a declaratory suit against the insurance company. He prays that execution of the decree be stayed pending the hearing and determination of intended declaratory suit and seeks orders for the unconditional release of his motor vehicle.
8. As stated earlier the application was opposed.

Analysis And Determination

9. I have carefully considered the application before this court as well as the written submissions filed by both parties.
10. Prayer 2 of the application has not been opposed. As such I do allow prayer [2] and direct that the firm of Mwaniki Kevin and Associates be placed on record for the Applicant in place of the firm of Munene Wambugu and Kiplagat.
11. It is not in any doubt that the High Court delivered judgment in this matter on 12th July 2024. That judgment has not been set aside through an appeal neither has the same been reviewed thus the said judgment remains valid and enforceable.



12. The Applicant seeks to stay the judgment of 12th July 2024 on grounds that he intends to file a declaratory suit as against his insurer. No particulars of any such suit already filed have been provided. In any event it would be ridiculous for the court to issue orders in this case on account of a suit which may or may not be filed against the insurer.
13. In expounding on the doctrine of *functus officio*, the Supreme Court of Kenya in *Raila Odinga v IEBC & 3 Others* Petition No. 5 of 2013 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 as follows:-
- “The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principles 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.”
14. In the case of *Telcom Kenya Ltd v John Ochanda*[2014] eKLR the doctrine of ‘*functus officio*’ was 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 the general rule that 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 of the appellate division.”
15. Additionally the Supreme Court of Kenya also referred to the case of *Jersey Evening Post Limited v A. Thani* [2002] JLR 542 at Pg. 550 where the Court stated as follows:-
- “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.” [Own emphasis]
16. In this case the High Court delivered its judgment on 12th July 2024. No application for review of that judgment has been made. The fact that the Applicant intends to file a declaratory suit against his insurer cannot be a bar to execution proceeding in this case.
17. In a similar case on all fours with the present case *Buzeki Enterprises Ltd v African Merchant Assurance Ltd*[2021 eKLR the Court held as follows:-
- “.....[iii] The 1st respondent was thus justified in seeking a declaratory judgment against the 2nd respondent, its alleged insurer. I also note that the judgment delivered in the *Siaya PMCC 75 of 2016* has not been challenged by way of an appeal or review. However, whereas an insured may well be entitled to file for a declaration that its insurer is obliged to settle decree against the insured under the insurance policy, that statutory right of action does not bar



a person who is injured from executing the decree issued in its favour against the insured directly....” [Own emphasis]

18. The fact of the matter is that the High Court is now ‘functus officio’ in this case and cannot entertain the present application.
19. For the above reasons I find no merit in the present application. The same is dismissed in its entirety. Costs will be met by the Applicant.

DATED IN NYERI THIS 27TH DAY OF JUNE, 2025.

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MAUREEN A. ODERO

JUDGE

