



**Kakiya v Mutente & another (Environment & Land Case
47 of 2017) [2025] KEELC 2982 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2982 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 47 OF 2017
MD MWANGI, J
MARCH 26, 2025
(FORMERLY MACHAKOS HCCC 163 OF 2010)**

BETWEEN

STEPHEN LEISIAYIA OLE KAKIYA PLAINTIFF

AND

MOISARI MBUSIA MUTENTE 1ST DEFENDANT

GEORGE KANATI MPUIA 2ND DEFENDANT

RULING

(In respect to the Plaintiff's application dated 22nd September 2023. Seeking that the court reviews its ruling of 14th February 2023 by cancelling or setting aside the stay of execution order issued therein).

1. The Plaintiff's application as expressly stated at paragraph 12 of his submissions is premised on the ground that the court lacked jurisdiction to grant the orders of stay of execution as it did in its ruling of 14th February 2023. It is the Plaintiff's position that there was a mistake on the part of the court in granting the order of stay of execution devoid of jurisdiction. The basis of that assertion by the Plaintiff is that the appeal was filed in the Court of Appeal. The Plaintiff submits that the High Court can only grant stay of execution in respect of an appeal pending before it and not where an appeal is pending in the court of appeal. The application for stay in case the appeal is filed before the Court of Appeal, according to the Plaintiff, ought to have been made to the Court of Appeal under rule 5 (2) (b) of the Court of Appeal rules.
2. I understand the plaintiff's application, from the above analysis to be based on the ground that there was an error apparent on the face of record in the ruling of 14th February 2023.



3. The Plaintiff further premises his application on the principle of *functus officio* alleging that once the court pronounced itself in the final judgment it downed its tools; in other words it became *functus officio* as far as this matter is concerned.
4. In response to the Plaintiff's application, the Defendants categorically state that this court had the jurisdiction to grant orders of stay pending appeal citing the provisions of Order 42 rule 6 of the Civil Procedure Rules. They further cite various authorities affirming that the principle of *functus officio* does not bar a court from undertaking specified actions even after judgment including but not limited to review, execution proceedings and such other acts. The principle of *functus officio* only bars merit-based decisional re-engagement with the case once final judgment has been entered.

Determination

5. Order 42 rule 6 (1) of the Civil Procedure Rules is clear on the power of the court to grant stay of execution pending appeal. It allows the court appealed from as well as the court appealed to, for sufficient cause, to order stay of execution of a decree or order.
6. In fact a further reading of Order 42 at rule 2(4) reveals that it specifically mentions an 'appeal to the Court of Appeal' and provides that for the purposes of rule 2 (on grant of orders of stay of execution), an appeal shall be deemed to have been filed to the Court of Appeal once notice under the Court of Appeal rules has been given.
7. The clear implication from a reading of rule 2(4) is that Order 42 rule 6(2) applies to appeals to the Court of Appeal too. I need not say more. This court has the jurisdiction to grant orders of stay of execution of its judgment or decree pending the hearing and determination of an appeal to the Court of Appeal.
8. On the application of the principle of *functus officio*, the decision of the Court of Appeal in the case of *Telkom Kenya Limited –vs- John Ochanda (2014) eKLR*, is instructive on the same. The Court of Appeal stated as follows I respect to the application of the principle of *functus officio*:-

“*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 principle 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 or decree thereon issued.”
9. The Court of Appeal in the above case further listed the various exceptions to the principle of *functus officio*, notably;
 - i. Application for stay of execution.
 - ii. Application to correct the decree.
 - iii. Application for accounts.
 - iv. Application for execution including garnishee proceedings.
 - v. Application for review.
 - vi. Applications under Section 34 of the *Civil Procedure Act*.



10. The court therefore had the jurisdiction to issue the order of stay as it did in this case. Consequently there was no apparent error on the face of the ruling of the court sought to be reviewed by the Applicant herein. His application must fail.

11. Accordingly, I dismiss the Plaintiff's application dated September 22, 2023 with costs to the Defendants.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 26TH DAY OF MARCH 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Perez h/b for Ms. Khafafa for the Defendants/Respondents

N/A by the plaintiff/Applicant

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

