

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 31 OF 2020

OMAHE GARANI APPELLANT

VERSUS

WAMBURA FRANCIS RESPONDENT

(Arising from Misc Land Application No. 168/2018 before District Land and Housing Tribunal of Tarime and originating from Land Case No. 13/2017 before Turwa Ward Tribunal at Tarime)

JUDGMENT

8TH & 23RD July, 2020

Kahyoza, J.

Omahe Garani filed an application requesting the District Land and Housing Tribunal (the **DLHT**) to extend time within which to appeal against the decision of the Ward Tribunal.

The background which precipitated the application is that; **Wambura Francis** sued **Omahe Garani** for vacant possession of the disputed land which belonged to former's late father. **Omahe Garani** lost and the ward tribunal ordered him to vacate the disputed land.

Omahe Garani failed to appeal on time against the decision of the ward tribunal. He filed an application seeking for extension of time to appeal against the judgment of the ward tribunal. Unfortunately, **Omahe Garani** lost the application.

Dissatisfied, **Omahe Garani** appealed to this Court. The appellant raised three grounds of appeal as follows-

1. That the appellate Tribunal erred both in law and in fact by dismissing application NO. 168 of 2018 and declaring the Respondent herein as the lawful owner of the suit land without considering the fact that the respondent did not serve the Applicant a summons showing that he applied for execution in the Appellate Tribunal.
2. That the Appellate Tribunal erred both in law and fact by delivering a ruling/ order in favour of the Respondent without considering the weight of evidence adduced by the Appellant's side that he was sick since 31st July, 2017 and that he had no any notice regarding the Respondent's Application No. 321 of 2017.
3. That the appellate Tribunal erred both in law and in fact by arriving at its ruling without considering the fact that the Appellant made an application to appeal out of time because he was sick as he admitted at Bugando Hospital for treatment from 31st July, 2017 up to 20th February, 2019.

I examined the record and found before the **DLHT** heard the application for extension of time. After it discovered that it had allowed the application for execution between the parties, it invited the parties to address the issue whether it could entertain the application to extension of time. It heard the submission and decided to dismiss the application for extension of time on the ground that it was *functus officio* because it had already executed the judgment which the appellant sought to appeal against. I will re-produce relevant parts of the tribunal's ruling as follows-

"This is an application for extension of time to file an appeal out of time. The matter was scheduled for hearing on 31/10/2019.

*In cause of hearing this application I have noted that application for execution of judgment in land application No. 13 of 2017 of Turwa ward tribunal which is the subject matter for this application was granted by this tribunal on 4th May, 2018. Parties were asked to address this tribunal as to whether this application is still valid as application for execution been already granted.....After hearing the submission from both sides and given the fact that the application for execution was already granted by this tribunal on 04th May, 2018 then the matter become **functus officio** before this tribunal.*

Above observation being my position I hereby dismiss this application with cost as the same been taken by events after application for execution been granted by this tribunal.

It is so ordered. Sgd: NGUKULIKE, N. O CHAIRMAN OF THE TRIBUNAL 17TH JANUARY, 2020"

Was the tribunal right to dismiss the application on the ground that it was *functus officio*?

The phrase *functus officio* means that having discharged his duty and thus ceased to have any authority over a matter. The **Black's Law Dictionary** defines *functus officio* to mean a task performed. In the case of **School Trustees of Washington City Administrative Unit v.**

Benner, 222 N.C. 566, 24 S.E.2d 259, 263, quoted in the dictionary defined the phrase *functus officio* as follows-

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect. Blanton Banking Co. v. Taliaferro, Tex.Civ.App., 262 S.W. 196."
(emphasis is added)

Given the above definition, the issue to this Court is whether the **DLHT** had accomplished a task in relation an application for extension of time. It is not disputed that the application before the **DLHT** was seeking an extension of time to appeal while the matter which was accomplished was execution of the decision of the ward tribunal.

It is a settled principle of law that a court cannot be *functus officio* unless it has made a decision and communicated its decision to the parties. In **Kamundu v. R R** (1973) EA 540 the E.A, the Court of Appeal held that "a court becomes *functus officio* when it disposes of a case by a verdict of guilty or passing sentence or making some orders finally disposing of the case.". This Court followed the above position in case of **Bibi Kisoko Medard vs. Minister for Lands Housing and Urban Developments and Another** [1983] TLR 250 in which the late Mwakibete J, held that "in a matter of judicial proceedings once a decision has been reached and


*made known to the parties, the adjudicating tribunal thereby becomes **functus officio**."*

In the instant case the **DLHT** had not heard and determined an application for extension of time. The only application it determined was an application for execution.

In the upshot, I find that it was wrong for the **DLHT** to conclude that it was **functus officio**, when no decision was reached on an application for extension of time and made known to the parties. Consequently, I set aside the decision of the **DLHT** and order the Chairman who dismissed the application to determine it on merit.

Each party shall bear his own costs.

I order accordingly.



J. R. Kahyoza, J.

16/7/2020

Court: Judgment delivered in the presence of the parties. B/C Charles present.



J. R. Kahyoza, J.

16/7/2020