

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

LAND REVISION NO. 34 OF 2011

(Arising out of Application no. 110/2007 before the District Land and Housing Tribunal for Temeke)

HEMEDI ISSA MPARANGONDO.....APPLICANT

VERSUS

1. SANGO HUSSEIN MBARUKU

2. SALUM S MFAUME

.....RESPONDENTS

JUDGEMENT

The 1st Respondent, Sango Hussein Mbaruku herein is deceased. Ms Tatu Justine Simbani applied to be joined as the Legal Representative of the late Sango Hussein Mbaruku, on 18/09/2012; she was joined as the Legal Personal Representative of Sango Hussein Mbarauku, the 1st Respondent herein.

This is an application for revision of the Ruling of Kaare, the Chairman of the District Land and Housing Tribunal for Temeke, which ruled out that the matter before it is *res judicata* as the subject matter of the dispute was already determined by Sandali Ward Tribunal in Case no. 41/2007. Before the Sandali Ward Tribunal the matter was between the Applicant and the 2nd Respondent herein. The Applicant did not appeal against the decision of the Sandali Ward Tribunal instead he filed a fresh

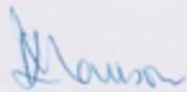
complaint before the District Land and Housing Tribunal for Temeke, Land Application No. 110/2007, the subject of this Revision. The Counsel for the Applicant Mr. Budodi had submitted that the District Land and Housing Tribunal was *functus officio* to determine the issue of *res judicata* as the same Tribunal had on 14/05/2008 ruled out that the matter before it was not *res judicata*. He said the same Court cannot set aside its own decision. For his case he cited the case of Scholastica Benedict vs. Martin Benedict (1993) TLR1.

Functus officio is a Latin word for “having performed his office”. This applies when a court has no legal authority to re-open the matter because his/its duties or functions have been completed. *Functus officio* is with regards to final decision of a court, that a final decision of a court cannot be re-opened. The rule applies only after a formal judgment had been drawn up, and the case had been finally heard and finalized. The court becomes *functus officio* to re-hear the matter. Where the law confers a power jurisdiction or right or imposes a duty on the holder of an office, like the Magistrate, , then once that power is exercised or performed, the rule of *functus officio* prohibits the same person from revisiting or revoking their existing decisions. The fact of this matter is that the same Tribunal presided by a different chairman, decided that the matter is not *res judicata*, and when the matter was taken over by a different chairman, and when the prosecution case was heard and closed, and when the defense case was about to start, the presiding chairman invoking his inherent powers, *suo moto*, after studying the file, dismissed the matter for being *res judicata*.

Issues of law must be determined by the Court before proceeding with the matter and these issues are usually determined at the beginning of the hearing. Issues of law or preliminary points

of objection are usually raised by the parties; however the courts, *suo moto* can dispose of the matter if it finds that there is point of law which needs to be determined before the proceedings ends. In my view, the Chairman of the Tribunal, upon taking over the file from the previous Chairman of the Tribunal, was right to raise and determine the point of law *suo moto* and dismissing the case for being *res judicata*, as this issue of *res judicata* is apparent from the records and can be raised at any time before the judgment is pronounced. The Tribunal was therefore not *functus officio* in determining this matter, as this was not a final decision of the Tribunal determining the merits of the case, but it was a matter on point of law.

This Application for revision is therefore dismissed with costs.



Latifa Mansoor J

03RD OCTOBER 2012