

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 279 OF 2021**

(Originating from Kinondoni District Land and Housing Tribunal in Land Application No.217 of 2021)

**AWADHI IBRAHIM MSUYA** (Administrator of Estate of the  
Late Ibrahim Swalehe @ Ibrahim Swalehe Msuya) .....**APPELLANT**

**VERSUS**

**JAMILA SALEHE KILUWASHA** (Administratrix of the  
Estate of the Late Mwanaidi Msuya @ Mwanaidi Msuya) .....**1<sup>ST</sup> RESPONDENT**  
**EUDIA SAMWEL BANGU**.....**2<sup>ND</sup> RESPONDENT**

Date of Last Order: 18.07.2022  
Date of Judgment: 25.07.2022

**JUDGMENT**

**V.L. MAKANI, J**

This is an appeal by AWADHI IBRAHIM MSUYA. He is appealing against the decision of Kinondoni District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 217 of 2021 (Hon. M.L. Rugarabamu, Chairman).

The appellant filed Land Application No.217 of 2021 praying for, among others, an order to nullify the sale by the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent house No.KAW/ML/404 (the **suit house**) allegedly claiming that it is part of the estate of the late Ibrahim Swalehe. The

application was dismissed for being *functus officio*. Being dissatisfied with the decision, the appellant has preferred this appeal under the following ground of appeal:

*"That, the learned Magistrate (sic!) misdirected himself on the ambit and application of functus officio doctrine vis a vis the tribunals power on Land Application No.217 of 2021 and hence reached at unjust decision."*

The appellant prayed for the appeal to be allowed and the decision of the Tribunal be quashed and set aside.

The matter proceeded orally. The appellant and the 1<sup>st</sup> respondent appeared in person while the 2<sup>nd</sup> respondent enjoyed the services of Ms. Juliana Swai.

The appellant said he is objecting to the decision of the Tribunal because he was not involved while he was the administrator of the estate of the late Ibrahim Salehe Msuya. He said he has the documents in relation to the suit house but was not informed about the case at the Tribunal. That he knew that he was still under the power as an administrator and the ownership of the suit house. He prayed for the appeal to be allowed.

The 1<sup>st</sup> respondent prayed to adopt the Reply to the Memorandum of Appeal. She said she was just appointed as administratrix of the estate of the late Mwanaidi Msuya, but she insisted for the justice to be done. She prayed for the court to look into the matter.

Ms. Swai for the 2<sup>nd</sup> respondent said that the decision of the Tribunal was correct because Land Application No.217 of 2021 had already been decided. That there was land application No.443 of 2018 at the Tribunal between EUDIA S. BANGU vs. SAUD MSUYA, KASSIMU MSUYA, SUBIRA MSUYA & MKOMBOZI KASIMU MSUYA. That the dispute in this matter was the ownership of House No.KAW/ML/404 which is at Mlalakuwa area Dar es Salaam. That the Tribunal's decision of 18/03/2010 was in favour of the 2<sup>nd</sup> respondent herein and all the respondents were ordered to vacate the suit house immediately. She said there was no appeal as a result an Application for Execution followed (Application No.76/2018). Since the respondent refused to vacate, Yono Auction Mart were appointed to evict respondents. She said the appellant in Misc. Land Application No. 279 of 2019 arising from Land Application No. 443 of 2008 and Misc. Land Application No. 776 of 2018 filed an application objecting to vacate the suit house and prayed further for the court to investigate

the execution as he was interested in the suit house. The said application was by the appellant as an objector and the 2<sup>nd</sup> respondent SAUDA MSUYA, KASSIMU MSUYA, SUBIRA MSUYA MKOMBOZI IBRAHIMU MSUAYA and YONO AUCTION MART. She said the application was struck out on 23/01/2020.

According to Ms. Swai the appellant decided to file Misc. Application No.217 of 2021 which was concluded on preliminary objection that the court is *functus officio*. That in the sequence, the appellant has already exercised his rights by bringing objections (Misc. Land Application No. 279 of 2019). She said the appellant had another remedy of revision as he was not party to the former suit but since he is out of time it is improper to proceed without seeking extension of time. Ms. Swai relied on the case of **Malik Hassan Suleiman vs SMZ, Criminal Appeal No.77 of 2004 (2005) TLR 236** in which she said the court becomes *functus officio* when making orders finally disposing off the case. She said the decision by the Tribunal has not been appealed against and that the decision in Land Application No.443 of 2008 is still valid and it was known to everyone including the appellant. She prayed for the appeal to be dismissed with costs.

In rejoinder, the appellant reiterated his main submission.

Having heard the parties the main issue for consideration is whether this appeal has merit.

The records are clear that initially the 2<sup>nd</sup> respondent herein instituted Land Application No.443 of 2008. The application was against SAUDA MSUYA, KASSIM MSUYA SUBIRA MSUYA and MKOMBOZI IBRAHIM MSUYA. The 2<sup>nd</sup> respondent prayed for eviction order against the respondents and the Tribunal granted the said order. The 2<sup>nd</sup> respondent then successfully applied for execution vide Application No.776 of 2018. From that juncture, the appellant herein came in as an objector though unsuccessful vide Misc. Civil Application No.279 of 2019. He then applied for nullification of the sale on the ground of having interest in the said suit house, this was through Application No.217 of 2021. In the said Application No.217 of 2021, the Tribunal dismissed the application based on a preliminary objection that the matter was *functus officio*, and that is the basis of the appeal at hand.

Now, was the matter at the Tribunal *functus officio*? To determine whether or not the matter was *functus officio*, we first have to get the meaning of the term *functus officio*. In the case of **Cipex**

**Company Limited vs Tanzania Investment Bank (TIB), Civil Appeal No.137 of 2018 (HC-DSM District Registry)**

(unreported) the court was faced with a similar situation. My sister, Hon. Masabo, J quoted the case of **Malik Hassan Suleiman vs. SMZ [2005] TLR 236** wherein it was stated that:

*"A court becomes functus officio when it disposes a case by a verdict of guilty or by passing a sentence or making orders finally disposing of the case"*

The court further cited the case of **Kamundi vs. R (1973) EA 540** in which the court stated that:

*"A further question arises, when does the magistrate's court become functus officio and we agree with the reasoning in the Manchester City Recorder case that this case only be when the court disposes of a case by verdict of not guilty or of by-passing sentence or making some orders finally disposing of the case"*

It is apparent from the records that the 2<sup>nd</sup> respondent herein in Land Application No.443 of 2008 was praying for among others, the eviction order and the appellant herein was not among the respondents. In the judgment of the Tribunal in the last paragraph the 2<sup>nd</sup> respondent herein was declared the lawful owner of the suit house namely House No. KAW/ML/404 Mlalakuwa which has six rooms. So, in this case as said by Ms. Swai the issue of ownership

was determined, and the respondents were ordered to vacate the said house. The respondents were also condemned to costs.

In application No.217 of 2021, the appellant herein was praying for:

- (a) Nullification of the sale between the 1<sup>st</sup> and the 2<sup>nd</sup> respondents herein.*
- (b) The Tribunal to declare that the 2<sup>nd</sup> respondent continued occupation of the land in dispute is unlawful.*
- (c) The 2<sup>nd</sup> respondent be ordered to demolish all buildings and structures developed thereon on her own costs.*
- (d) The 2<sup>nd</sup> respondent be ordered to vacate from the suit premises and leave vacant possession to the appellant herein.*
- (e) The respondents be ordered to pay specific and general damages.*
- (f) Costs of the suit and any other reliefs.*

The reliefs above, clearly depict that the appellant herein was claiming for ownership of the suit house. The two first prayers clearly shows that the complaint by the appellant herein was that the ownership of the suit house by the 2<sup>nd</sup> respondent which was facilitated by the sale agreement was unlawful. That is why he prayed for nullification of the sale. Now, since there was already a decision on the ownership

of the suit house by the Tribunal in Land Application No. 443 of 2008, it was therefore correct for the Tribunal in Land Application 217 of 2021 to declare itself *functus officio* as the issue of ownership was conclusively determined by the same Tribunal in Land Application No. 443 of 2008 (see the case of **Cipex Company Limited** (supra)). In other words, if the Tribunal had decided on the ownership of the suit house in Land Application No. 217 of 2021, then there would have been two co-existing decisions on ownership of the said suit house.

In the result, I find no fault in the decision of the Tribunal. Subsequently the appeal is hereby dismissed with costs for want of merit. It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**25/07/2022**