



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUSIA

ELC CASE NO. 17 OF 2013

ALBERT FRED EKIRAPA.....PLAINTIFF/APPLICANT

VERSUS

NYONGESA SIRARI.....1ST RESPONDENT

PATRICK OCHI.....2ND RESPONDENT

JOSEPH OCHI.....3RD RESPONDENT

JOEL ONGIRO.....4TH RESPONDENT

DENNIS SIRARI.....5TH RESPONDENT

RULING

1. The Applicant brought the present application dated 29th July, 2021 under sections 1A, 1B, and 3A of the Civil Procedure Act and Order 51 of the Civil Procedure Rules filed on the 6th of Aug. 2021 for orders THAT:

- a. That the Court be pleased to nullify the transfer of Land Parcel Number NORTH TESO/ANGURAI/213 to Nyongesa Sirari;**
- b. That the Court be pleased to cancel the title for Land Parcel Number NORTH TESO/ANGURAI/213 and revert the same back to the original owner Rosela Akisa Odama;**
- c. That upon the Court granting Order 1 above, the Court be pleased to nullify the transfer of Land Parcel Number NORTH TESO/ANGURAI/213;**
- d. That the costs of this Application be provided for.**

2. The Application was supported by the affidavit of **ALBERT FRED EKIRAPA**, undated but filed on the 6th of August, 2021 and on the following grounds;

- a. That the Applicant is the owner of land parcel known as NORTH TESO/ANGURAI/213, bought the same from Rosela Akisa Odama who was the administrator of her late brother Cornel Omusee who was the original owner;*
- b. That the late Cornel Omusee sold 1 acre of the parcel to the Respondent who later grabbed the whole parcel of land but were evicted from the land;*
- c. That at the time the Applicant bought the land the Respondents has been evicted from the suit parcel;*
- d. That the Respondents later moved into the suit parcel prompting the Applicant herein to move to Court to evict them but they were erroneously awarded the suit parcel prompting the Applicant to move to the Court of Appeal;*
- e. That the Honourable Court of Appeal upheld the decision of the High Court;*

f. That the Application is prompt and within reasonable time;

g. That it is in the interest of justice that the Application be allowed.

3. During the hearing of the application on the 29th September, 2021 the Respondents applied for and were given time to file their Repeating Affidavit(s) together with their submissions but they had not filed them at the time of delivering this Ruling.

4. The Applicant filed his submissions on the 30th of September, 2021. He submitted on the following issues for determination: whether there was a valid sale agreement between the Plaintiff and the original owner of suit property; and whether the Court should cancel the title Land Parcel Number NORTH TESO/ANGURAI/213 and revert the same back to its original owner. On the first issue, while quoting section 3(2) of the Law of Contract Act, the Applicant submitted that he entered into a written agreement for the purchase of the suit land from Rosela Akisa Odama for a consideration of K.Shs. 930,000/=. That the agreement meets all the threshold of valid contract.

5. On the second issue, the Applicant submitted that although the Respondents are the registered owners of the suit, they never produced any documents to support the manner in which he was registered as the owner of the land. That the registry produced by the Registrar had been tampered with and the persons who made the false entries into the register without considering that the suit property had already been purchased by the Plaintiff. The Applicant submitted that there was fraud on the part of the Defendant on making entries to the land register. He relied on the case of **Munyu Maina vs. Hiram Gathiha Maina (2013) eKLR.**

DETERMINATION

6. The Applicant brought this application for orders that he sought in his Complaint dated 13th March, 2013. The matter was heard to completion and judgement delivered on the 28th May, 2015. The Plaintiff appealed this judgement to the Court of Appeal and a judgement by that Court was delivered on the 28th of September, 2017 whereby the Court of Appeal upheld the orders of the trial court and dismissed the appeal.

7. The present application is an attempt by the Plaintiff to reopen the case and get orders that have already been decided upon by this Court. This Court is therefore functus officio. The doctrine of functus officio was considered by the Court of Appeal in **Telkom Kenya limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited) [2014] eKLR,** where the court held that -

“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. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions....”

8. The Supreme Court of Kenya in the case of **Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR,** cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 which read thus:

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle 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.”

9. In light of the foregoing authorities, this Court’s hands are tied unless the Applicant’s application falls within the ambit of the exceptions to the *functus officio* doctrine as provided under section 99 of the Civil Procedure Act. Consequently, the application dated 29th July, 2021 is hereby dismissed with no order on costs.

Dated, signed & delivered at BUSIA this 16th day of February, 2022.

A. OMOLLO

JUDGE