Okoyo v Katete & 3 others (Tribunal Case E010 of 2025)
[2025] KEBPRT 366 (KLR) (8 August 2025) (Ruling)

Neutral citation: [2025] KEBPRT 366 (KLR)

REPUBLIC OF KENYA

IN THE BUSINESS PREMISES RENT TRIBUNAL

TRIBUNAL CASE E010 OF 2025

GAKUHI CHEGE, CHAIR & J OSODO, MEMBER

AUGUST 8, 2025

BETWEEN

EVANCE OMONDI OKOYO ..... APPLICANT

AND

BENSON OTIENO KATETE & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS ..... RESPONDENT

RULING

I. Introduction

1. The Applicant/Tenant, Evance Omondi Okoyo, filed a Notice of Motion dated 13th March 2025 seeking, among others for the reinstatement of the application previously struck out by this Tribunal on 12th March 2025; Setting aside and/or quashing of the said orders and stay of execution of the Tribunal's orders issued on the said date.

2. The application is premised on the grounds inter alia that the Applicant was unaware of the hearing date of 12th March 2025 and was unwell at the material time, and that the Respondents have not complied with earlier orders of the Tribunal issued on 30th January 2025.

3. The Respondents filed Grounds of Opposition dated 26th March 2025 opposing the application and also filed written submissions. They argued that the Tribunal is functus officio and therefore lacks jurisdiction to entertain the present application.

II. Analysis of the Pleadings

4. The Applicant argues that he was not afforded a fair hearing before the Tribunal made its ruling dated 12th March 2025 striking out the reference for lack of jurisdiction. He further depones that he continues to occupy the premises and risks suffering irreparable harm.

5. The Respondents oppose the application on the basis that the Tribunal had already determined that it had no jurisdiction and consequently struck out the reference and closed the file. They contend that the Tribunal cannot now re-open or vary its own final orders.

6. The Respondents submit that allowing the application would amount to the Tribunal sitting as an appellate body over its own decision, contrary to law and judicial practice.

III. Issues for Determination

4. The Tribunal has identified the following issues for determination:

   a. Whether the Tribunal is functus officio in light of its orders dated 12th March 2025.

   b. Whether the Tribunal can reinstate or set aside the orders made on 12th March 2025.

   c. Whether the Applicant has made a case for grant of the orders sought.

   d. Who is liable to pay costs?

IV. Legal Analysis and Application

a. Doctrine of Functus Officio

8. The principle of functus officio is well-established in Kenyan jurisprudence. A court or tribunal becomes functus officio when it has performed all its duties in respect of a particular matter and rendered a final decision.

9. In *Telkom Kenya Limited V John Ochanda (suing on his Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Ltd)* [2014] eKLR, the Court of Appeal stated:

> " The doctrine of functus officio is meant to prohibit a court from revisiting a matter upon which it has already rendered a final decision."

12. Similarly, in *Swastic Holdings Limited V Ann Nyaguthii Kimani* (ELC No. E369 of 2021) (2023) KEELC 20115 (KLR), the Court held that once a court has made a conclusive pronouncement on jurisdiction and struck out the suit, it becomes functus officio and cannot re-open the matter.

13. In this case, the Tribunal, on 12th March 2025, found that it lacked jurisdiction and expressly struck out the Applicant's reference. It went further to close the file. These were final orders.

14. The Applicant's current application is essentially inviting the Tribunal to sit in review or appeal of its own orders, a jurisdiction that the Tribunal does not possess once functus officio.

b. Jurisdiction Once Declined

15. It is trite law that once a court or tribunal declines jurisdiction, it cannot issue or entertain any further proceedings in that matter. Any attempt to do so would amount to acting without jurisdiction, which renders any such proceedings null and void ab initio.

16. The Tribunal having found on 12th March 2025 that it lacked jurisdiction to entertain the matter cannot now reopen the same proceedings. The door to revisiting the issue lies with the superior courts, not with this Tribunal.

c. Procedural Concerns Raised by the Applicant

17. While the Applicant has raised concerns about not being heard and his medical condition, such issues are not sufficient to override the doctrine of functus officio where the Tribunal has already made a final determination on jurisdiction.

18. Moreover, procedural fairness cannot cure a fundamental defect of jurisdiction. The Applicant's remedy, if any, lies in appealing the decision of 12th March 2025, not in filing a fresh application before the same forum.

d. Costs

17. Costs of every action before this Tribunal are in our discretion under section 12(1)(k) of Cap. 301 but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the Respondent being the successful party.

V. Conclusion & Final Orders

19. Having carefully considered the application, the response, the submissions, and the law applicable, the Tribunal finds as follows:

    a. That the Tribunal, having rendered a final ruling on 12th March 2025 dismissing the reference for want of jurisdiction and having closed the file, is now functus officio.

    b. That the Tribunal has no jurisdiction to reinstate or review its said decision.

    c. That the application dated 13th March 2025 is therefore wholly misconceived, incompetent, and devoid of merit.

    d. Accordingly, the Application dated 13th March 2025 is hereby dismissed with costs to the Respondents.

    It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED this 8TH DAY OF AUGUST 2025.

HON. GAKUHI CHEGE - PANEL CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO - PANEL MEMBER

In the presence of: -

Magolo for respondents

N/A for Tenant/applicant