THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(Coram: Mugenyi, Ssekaana, Alibateese, JJA)

CIVIL APPEAL NO. 227 OF 2013
(Arising From High Court Civil Appeal NO. 34 OF 2009)
(Arising from Luweero Chief Magistrates Civil Suit NO. 32 OF 2005)

SULAIMAN KAMULEGEYA:: APPELLANT

VERSUS

1. NANSAMBA ROBINAH
2. MATOVU SAMUEL::RESPONDENT

(Appeal from the Judgment and decree of the High Court of Uganda at Kampala, Land Division delivered by Chibita. J on 30th August 2013)

JUDGMENT OF STELLA ALIBATEESE, JA

Introduction

This is a 2nd appeal from the decision of Hon. Justice Mike. J. Chibita sitting as the 1st appellate court at High Court of Uganda at Kampala, Land Division that set aside the decision of the learned trial magistrate G1 of Luweero Chief Magistrate Court, His Worship G.A. Okongo Japyem delivered on 18th August 2009. The learned appellate Judge held that the appellant will compensate the respondents in the sum contained in the valuation report to be produced by a professional valuer, awarded the respondents general damages of UGX 10,000,000 each, and costs of the appeal and the court below. The compensation and general damages were to attract an interest of 24% p.a. from the date of the valuation report being presented to the appellant in case of compensation, and from the date of judgment with respect to general damages.

Background

The background of this appeal as discerned from the pleadings and the record of appeal is that the respondents filed a suit in the Luweero Chief Magistrate Court against the appellant vide Civil Suit No. 32 of 2005 seeking a declaration that the appellant was a trespasser on the respondents' kibanja situated in Kigulu Village in Wobulenzi town council and made developments thereon to the detriment of the respondents. The respondents in addition, sought an eviction order, permanent injunction, general damages and costs of the suit.

The appellant in his defence denied the claims and contended that he was the lawful owner of the suit kibanja having acquired it by way of purchase from Yowana Lwanga Kitungulu in 2000 and had since then made several developments thereon.

The matter was heard by HW G.A Okongo Japyem, Magistrate G1 who in his judgment delivered on the 18th August 2009 found that the appellant had encroached on $2^{1}/_{2}$ acres of kibanja of the respondents and ordered the appellant to compensate the respondents the sum of Ushs 10,000,000 for the said land. The learned trial magistrate further ordered that the appellant continues with the development of school business on the suit land and never ordered for eviction of the appellant. He did not award general damages and costs of the suit.

Dissatisfied with the said judgment of the learned trial magistrate, the respondents appealed to the High Court of Uganda, Land Division on grounds that;

(1) The learned trial magistrate erred in law and fact when after declaring the respondent a trespasser failed to order for his eviction.

(2) The learned trial magistrate erred in law and fact when he determined compensation for the appellant's property.

(3) The learned trial magistrate erred in law and fact when he failed to award costs of the suit to the appellant.

(4) The learned trial magistrate erred in law and fact when he failed to award general damages for trespass.

At the hearing of the appeal, before Hon. Justice Mike J. Chibita on the 11th April 2013, both parties and their counsel were absent. The court fixed a schedule for them to file their written submissions by 10th June 2013. The schedule was served on their advocates per affidavit of service deposed by Faith Atyang dated 10th May 2013.

Since there were no submissions filed by 21st of June 2013, the appeal was dismissed by the Court. However, later, the court learnt that learned counsel for the appellants *(now respondents)* had written to court a letter dated 21st May 2013 that was received on 22nd May 2013 seeking for an extension for filing their written submissions. Counsel for the appellants *(now respondents)* thereafter filed the written submissions but there was no correspondence from the respondent *(now appellant)* in this appeal and neither were written submissions for the respondent *(now appellant)* filed.

On the basis of the submissions of the appellants, the court proceeded to hear the appeal it had earlier dismissed and gave its judgment on the 26th July 2013 and the decree was signed on 30th August 2013 with orders that the respondent *(now appellant)* will compensate the respondents, *(then appellants)*, the sum contained in the valuation report to be produced by a professional valuer with interest at 24% p.a. from the date of the valuation report being presented to the respondent *(now appellant)*, that the appellants *(now respondents)* are awarded general damages of Ush 10,000,000 each with interest at 24% p.a. from date of judgment and costs of the appeal and in the court below.

Being aggrieved and dissatisfied with the decision of the High Court, the appellant appealed to this Court on one major ground and four alternative grounds of appeal.

Grounds of Appeal

1. The learned appellate Judge erred in law and fact in hearing a non-existent appeal which had already been dismissed and not reinstated.

   In the alternative and without prejudice to the foregoing;

2. The learned appellate Judge erred in law and fact by proceeding with final hearing and disposal of the appeal without due and effective service on the appellant thereby depriving the appellant of the right to be heard.
3. The learned appellate Judge did not properly evaluate the evidence on record and by so doing wrongly set aside the judgement and orders of the lower court.
4. The learned appellate Judge erred in law and fact in putting the respondent at liberty to engage any valuer for a valuation report binding on the appellant.
5. The learned appellate Judge erred in law in awarding exorbitant general damages to the respondent which had no basis.

Representation

At the hearing of the appeal, Counsel Vicent Mugerwa of Ambrose Tebyasa & Co Advocates appeared for the appellant while Counsel Geoffrey Kikonyogo of Mugerwa & Partners Advocates and Solicitors appeared for the respondents. When the matter came up for hearing, both parties prayed to court to allow them time to explore mediation which prayer was granted. However, the said mediation was unsuccessful. Both counsel filed their conferencing notes and /or written submissions that this Court has considered in determining this appeal.

Appellant's Submissions

Counsel for the appellant addressed this Court on the cardinal principle of the law of evidence under **Section 101 of the Evidence Act Cap 6** that the burden of proof rests upon whoever desires any court to give judgment as to any legal right or liability and that it is the duty of this Hon Court under **Rule 30 of the Judicature (Court of Appeal Rules) Directions** to reappraise the evidence and draw its own inferences of fact. Counsel cited the case of **Pearl Motors Ltd Vs Bank of Baroda (U) Ltd, SCCA No 15 of 2022** that emphasized that the first appellate court is enjoined to re- evaluate the evidence on court record and come up with its own findings.

Counsel submitted that while this is a 2nd appeal, in **Nangobi Jane & 2 others Vs Sophatia Beihi & others, Civil Appeal No. 097 of 2011**, the court held that where the first appellate court has failed in its legal duty to properly re-evaluate evidence on a first appeal that becomes an error justifying the 2nd appellate court to re-evaluate the evidence. Counsel for the appellant submitted that the first appellate court failed to properly evaluate the evidence on record and as such this Honourable Court is called upon to re-appraise all the evidence on record and draw its own conclusions and inferences.

On the first ground of appeal, counsel for the appellant contended that the learned appellate Judge erred in law and fact in hearing a non-existent appeal which had already been dismissed and not reinstated. Counsel submitted that according to the judgment of the High Court at pages 83 of the Record of Appeal, lines 15-25 and pages 84, lines 1-4, the appeal came up for hearing before the learned appellate Judge on 11th April 2013. That however, the parties and their respective counsel were not in court and court made a schedule for written submissions as evident in the proceedings at page 77 of the record of appeal. It was submitted that the learned appellate Judge having not found written submissions by the advocates for both parties on the court file by 21st June

2013, dismissed the appeal. That however, according to the learned appellate Judge's judgment, counsel for the appellants *(now respondents)* wrote a letter to the court on the 21st May 2013 seeking extension of time within which to file submissions. Counsel for the appellant submitted that the learned appellate Judge having dismissed the appeal for the parties' failure to attend court and file submissions as per the court schedule became *functus officio* on the file as soon as he dismissed the appeal. And that the letter alluded to by the learned appellate Judge which was meant to seek further time for filing written submissions was not an application to reinstate the appeal and could not subsequently be used to re-instate the appeal which court had already dismissed.

Counsel cited the case of **Standard Chartered Bank Uganda Vs Mwesigwa Geoffrey Philip HCMA 477/2012** on the definition of *functus officio* and where court relied on Stroud's Judicial Dictionary 5th edition volume 2 at page 1064 to define the doctrine of *functus officio* by reference that where a judge has made an order for a stay of execution which has been passed and entered, he is *functus officio* and neither he nor any other judge of equal jurisdiction has jurisdiction to vary the terms of such stay. That an arbitrator or mediator who has made his award is *functus officio* and could not by common law alter it in any way whatsoever; he could not even correct an obvious clerical mistake. That according to **Osborn's Concise Law Dictionary 5th Edition, London Sweet and Maxwell 1964 at page 144,** once a magistrate has convicted a person charged with an offense before him, he is *functus officio* and cannot review the sentence and rehear the case. That the doctrine is to the effect that once a judicial officer such as in this case has made a decision, he or she is deemed to have exhausted his or her powers and he or she cannot act again on the same matter.

Counsel submitted that after dismissing the appeal, the learned appellate Judge could not validly proceed to determine a matter which had gone into limbo and his subsequent actions on the file after he had dismissed the appeal could not yield into any lawful orders unless the appeal had first been reinstated.

On the 2nd alternative ground of appeal, counsel for the appellant contended that the learned appellate Judge erred in law and fact by proceeding with final hearing and disposal of the appeal without due and effective service on the appellant thereby depriving the appellant of the right to be heard. Counsel submitted that according to the record of appeal at page 77, the appellants' counsel were to file and serve submissions onto the respondent by 13th May 2013. That in his judgment, the learned appellate Judge confirms that the appellants' counsel never filed submissions on the court record in time which prompted him to dismiss the appeal. It was further submitted that however, when the learned appellate Judge chose to subsequently determine the appeal though erroneously since it had been dismissed, court did not notify the appellant of the same. It was submitted that indeed there is no evidence on court record that either the submissions of counsel for the appellant were ever served on the respondent or that the respondent got to know of the new adjusted schedule by Court.

Counsel further submitted that the right to a fair trial in civil matters is guaranteed by **Article 28(1) of the Constitution of the Republic of Uganda, 1995**. That in the determination of civil rights and obligations, a person is entitled to a fair and speedy and public hearing before an independent and impartial court or tribunal established by law. Further, that Article 44 (c) of the Constitution also provides that the right to a fair hearing cannot be derogated from. It was submitted thus, that the appellate court denied the respondent *(now appellant)* a right to a fair hearing as required by Articles 28 and 44 of the Constitution and provisions of the Civil Procedure Act Cap 71 thereunder whose overriding objective is to ensure fairness in court process.

Counsel argued ground three and four of the appeal jointly and these are that the learned appellate judge did not properly evaluate evidence on record and by so doing wrongly set aside the judgment and orders of the lower court. That the learned appellate Judge erred in law and fact in putting the respondents at liberty to engage any valuer for a valuation report binding on the appellant.

Counsel submitted that the learned appellate Judge erred in law and fact when he directed the respondents to unilaterally engage a valuer whose findings would not be subjected to either court's scrutiny or challenge from the appellant and that this denied the appellant the right to a fair hearing.

On ground 5, counsel for the appellant argued that the learned appellate Judge erred in law in awarding exorbitant general damages to the respondents which had no basis. Counsel submitted that the award of general damages is in the discretion of court and always as the law presumes to be the natural and probable consequence of the defendant's act or omission.

Counsel submitted that the appellate court awarded general damages of Ushs 10,000,000 against the appellant to each of the respondents without any supporting evidence for the same having been adduced. That the appellate court ignored the fact that the trial magistrate who visited the locus actually observed at page 66 paragraph 1 that the respondents had not used the land for fear of threats. That on pages 23 of the record of appeal paragraph 3 and 4, the 1st respondent clearly states how a one Moses Sali threatened to kill her in a dispute concerning the land and she fled from the land and that she never made any development on the land. Counsel relied on **Takiya Kashwahiri & Anor Vs Kajungu Denis, CACA No. 85 of 2011,** where the Court of Appeal held that general damages should be compensatory in nature in that they should restore some satisfaction as far as money can do it to the injured plaintiff.

It was submitted that the appellate court was not justified in awarding general damages as it did and setting aside the trial court's orders considering the value of the land which was estimated at Ushs 4.8 million. Counsel submitted that the appellate court unnecessarily interfered with the trial court's orders on general damages yet the same were discretionary and simply because the learned appellate judge had a different opinion, he was not justified to interfere with a matter that was discretionary and judiciously determined by the trial court.

It was submitted that there was no evidence furnished to justify what injury the party had suffered and as such, there was no basis for awarding the same and that court's discretion cannot be exercised in a vacuum. Counsel for the appellant prayed that this Court allows the appeal with orders that the High Court was *functus officio* and had no jurisdiction to hear the appeal that had been dismissed, that the judgment and decree of the High Court be set aside with costs in this appeal and in the court below.

Submissions of the Respondents

In reply to ground one of the appeal, counsel for the respondents submitted that in his Judgment from line 14, the learned trial justice states that

> *"At the hearing of the appeal on 11th April 2013, both parties and their counsel were absent, court fixed a schedule for them to file written submissions.... the schedule was served on their advocates according to an affidavit of service dated 10th May 2013 by Faith Atyang. Since no submissions had been filed by 21st June 2013, the appeal was dismissed."*

Counsel submitted that **O.43 r 14 of the Civil Procedure Rules S.1 71-1** gives the High Court powers to dismiss the appeal due to the appellant's default. It was submitted that on 11th April 2013, the learned appellate Judge in his wisdom went ahead to make schedules which were effectively served onto the appellants advocates *(now respondents)* and that as due diligence, counsel for the appellants then wrote a letter dated 21st May 2013 to court seeking for an extension for filing their written submissions and that the said letter was received on the 22nd May 2013, when the deadline for the court's schedule for written submissions was not due.

It was further submitted that the court at its own volition in the interest of justice under **O.43 Rule 16 of the Civil Procedure Rules** has powers of readmission of an appeal where it is found that the appellant was prevented by any sufficient

cause from appearing when the appeal was called on for hearing and the court can admit the appeal on such terms as to costs or otherwise as it thinks fit. Counsel submitted that the High Court is a court of equity and endowed with inherent powers to administer justice in this country as per **Section 98 of the Civil Procedure Act Cap 71** and that the appellants *(now respondents)* were never notified of the said dismissal of the appeal. Further, that the learned appellate judge exercised his discretion judiciously and readmitted the appeal when he discovered that it was in the interest of justice that the appeal be determined there having been a request by counsel for the appellants *(now respondents)* to file written submissions out of time which action was taken by counsel before the due date for the timelines set out in the schedules of court.

On whether the learned appellate Judge became *functus officio* when he dismissed the appeal which had not been heard on merits, counsel for the respondents relied on the case of **Standard Chartered Bank Uganda Vs Mwesigwa Geoffrey Phillip HCMA 477/2012** where his Lordship Hon. Mr. Justice Christopher Madrama in considering inter alia whether the striking out of a written statement of defence by court rendered it *functus officio* and thus an application for leave to file the same out of time could not be entertained in ruling that the court was not *functus officio* held interlia that;

> *"In the case of a written statement of defence, if it leads to the striking out of the defence, such a decision is not on the merits of the defence and the defendant is entitled to apply afresh to court to exercise its inherent jurisdiction to allow it/ him/ her to file and serve a defence out of time. That I agree with learned counsel for the applicant that the court retains its inherent jurisdiction under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Article 126 of the Constitution of the Republic of Uganda to ensure that justice is done without protracting the process. Article 126 of the Constitution provides that Justice shall not be delayed.....in conclusion, the High Court is not functus officio."*

Counsel for the respondents submitted that the High Court is a court of equity and endowed with inherent powers to administer justice. That it was not the

fault of the respondents, that the learned appellate judge did not properly read his file before dismissing the appeal and neither were the respondents informed of the said dismissal. It was submitted that the learned appellate judge exercised his discretion judiciously in readmitting the appeal which had to be heard on merit.

On ground 2 of the appeal, counsel for the respondents submitted that it is not true that the appellant was not served with submissions. It was submitted that the submissions were served onto the appellant's law firm on the 22nd May 2013 as per the endorsement on the return copy. That per the endorsement by the clerk who effected service, the submissions were received by the secretary of the appellant firm who refused to sign on the return copy saying that counsel was out of the country and that she had no instruction to receive any documents. That a copy of the said submissions was left at the appellant's law firm which in effect amounts to effective service despite the failure to endorse proof of service on the return copy. It was submitted that even in the first appeal, the appellant never bothered to make any input and they have not followed court's schedules in the instant appeal.

On grounds three and four, counsel for the respondents submitted that ground three is general and does not explicitly mention which particular evidence was not evaluated thereby offending the rules of this Court.

It was submitted that under **Rule 86 of the Judicature (Court of Appeal Rules) Directions S.1 13-10,** the grounds of appeal shall specify the points which are alleged to have been wrongfully decided and the nature of the order which is proposed to ask the court to make. It was further submitted that in his judgment, the learned appellate Judge did make points of his concern, the basis of which he made his judgment. That he for instance agreed with the trial magistrate that the appellant had made remarkable developments on the suit land and thus an order of eviction would immensely affect the community at large and that indeed

this ruling didn't favour the respondents and yet the learned trial magistrate had ordered for compensation whose basis was not in law. That it is upon this background that the learned appellate judge ordered the respondents to get a valuation report from a professional valuer which would form the basis of compensation. Counsel submitted that by so doing the learned appellate judge judiciously evaluated all the evidence on record thereby coming to his conclusion that a basis for compensation vide a valuation report should be availed.

In respect to ground five of the appeal, counsel submitted that the award of general damages is discretionary in nature. Counsel relied on **Kasekya Kasaija Sylvan Vs Attorney General, HCCS 1147 of 1998** where it was held that general damages are damages which the law implies or presumes naturally to accrue from the wrongful act and may be recovered without any proof of any amount. Counsel submitted that the appellant trespassed onto the respondents' land, cut down the banana plantations, coffee trees thereon which caused damage to the respondents. Counsel further cited **George Kasedde Mukasa Vs Emmanuel Wambedde & others, HCCS No 459 of 1998** where Moses Mukiibi, J. basing on the holding in **Armstrong Vs Shepherd and Short, (1959) 2 QB 384** held that in an action of trespass, the plaintiff if he proves the trespass is entitled to recover damages even though he had not suffered any actual loss and that if the trespass has caused the plaintiff actual damage, the plaintiff is entitled to receive such an amount as will compensate him for his loss. It was submitted that in the instant case, since 2000 until now, the trespass on the respondents' land by the appellant has continued which is unlawful and to the detriment of the respondents who can no longer use their land yet per their testimony, the respondents informed court that they are subsistence farmers and the said land constituted their livelihood and family income. It was submitted that the amount of Ushs 10,000,000 awarded to the respondents each was adequate in the discretion of the learned appellate judge.

Counsel for the respondents also raised the 6th ground of appeal and that is whether the appellant's appeal is tenable in law. I however note that this was not a ground of appeal raised by the appellant in this Court and as such court will not delve into resolving a ground not raised in the memorandum of appeal or any cross appeal or one brought as a preliminary objection.

Submissions in rejoinder

In rejoinder, counsel for the appellant reiterated his earlier submissions and re-joined on ground one that it cannot be over emphasized that after the learned appellate judge declared the appeal dismissed, he became *functus officio* and had nothing more to do with the appeal save for the exception either by entertaining a formal application to review or an application to reinstate the same. It was submitted that the jurisdiction to handle disputes relating to the court matters shifts from the trial Court to an appellate court then to a higher appellate court and so forth and that the learned appellate judge having dismissed the appeal exhausted his mandate required on the appeal.

It was further submitted that when the learned appellate judge made the decision dismissing the appeal, that decision became final and only challengeable through a formal application to reinstate the appeal, review the judgment or an appeal through duly prescribed procedure and hence the learned appellate judge became *functus officio* and any alteration of the court's ruling had to be by a subsequent order of either the same court or the court of appeal and by prescribed procedure.

It was further submitted for the appellant that the learned appellate judge had no inherent power or discretion on his own motion to withdraw the court's ruling once made and to proceed with hearing the appeal as he did and that an application for review, reinstatement of the appeal or an appeal would have been the most appropriate avenue for the respondents to alter the court's decision

since they claim that the judge never addressed his mind to their letter seeking for extension of time to file written submissions and as a right, the appellant herein would have been entitled to an opportunity to challenge or reply to such an application.

On ground 2, Counsel relied on **Fairland University Limited Vs National Council for Higher Education, HCMA No 39 of 2005** where it was held that a decision arrived at without affording a hearing to the party affected contravenes the essence of natural justice and is therefore no decision at all.

Determination of the appeal

This being a second appeal, it is prudent that we highlight our duty as the second appellate court. **Rule 32(2) of the (Judicature Court of Appeal Rules) Directions SI 13-10** provides the general power of this court on second appeals and states that

> *"On any 2nd appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court but shall not have discretion to hear additional evidence."*

2nd appeals to the Court of Appeal are on points of law and not on matters of fact or mixed law and fact. See **Beatrice Kobusingye Vs Phiona Nyakaana, SCCA No. 31 of 2013.**

Section 72(1) of the Civil Procedure Act Cap.71 provides for 2nd appeals and states that;

> *"Except where otherwise expressly provided in this Act or by any other law for the time in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court on any of the following grounds, namely that -*

a) *the decision is contrary to law or to some usage having the force of law;*
b) *the decision has failed to determine some material issue of law or usage having the force of law;*
c) *a substantial error or defect in the procedure provided by the Act or by any other law for the time being in force, has occurred which may possibly have produced errors or defect in the decision of the case upon the merits."*

In addition, **Section 74 of the Civil Procedure Act Cap. 71** provides that,

"Subject to section 73, no appeal to the Court of Appeal shall lie except on the grounds mentioned in section 72."

The duty of a second appellate court was well laid out in **Kifamunte Henry Vs Uganda, SCCA No. 10 of 1997** where it was held that;

> *"On second appeal, the Court of Appeal is precluded from questioning the findings of fact of the trial Court, provided that there was evidence to support those findings, though it may think it possible, or even probably, that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law."*

I have carefully considered the submissions and thoroughly perused the record which will guide the determination of this appeal.

Determination of Ground one of the appeal

It has been submitted by the appellant that the learned appellate Judge erred in law and fact in hearing a non-existent appeal which had already been dismissed and not reinstated. This ground raises the *functus officio* rule which on the face of it is a point of law and also has the effect of disposing off the entire appeal. It has been submitted for the appellant that the learned appellate Judge made schedules for written submissions by the appellant and respondents in the High

Court. That on 21st June 2013, the learned appellate judge dismissed the appeal having found no written submissions by the advocates for both the appellant and the respondents on the court file as scheduled. Specifically, the learned appellate Judge in his judgment line 20-25 on page 83 and page 84 of the record of appeal, noted that;

> *"Since no submission had been filed by 21st June 2013, the appeal was dismissed. However, learned Counsel for the appellants had written to court a letter dated 21st May 2023 that was received on 22nd May 2013 seeking for an extension for filing their written submissions. Thereafter, learned Counsel for the appellant filed written submissions. There is no correspondence from the Respondent or his lawyers, neither were written submissions for the respondents filed. Judgement will therefore be written based only on the submissions on record."*

The appellant asserts that the learned appellate judge having dismissed the appeal became *functus officio* on the file as soon as he dismissed the appeal and that the letter alluded to by the learned appellate judge that sought further time for filing written submissions was not an application to reinstate the appeal and could thus not be used to reinstate the appeal that had already been dismissed.

The respondents' counsel submitted that it was not the fault of the respondents that the learned appellate judge did not read his file before dismissing the appeal, neither were the respondents informed of the said dismissal.

The respondents relied on **0. 43 Rule 16 of the Civil Procedure Rules S.1. 71-1** that the learned appellate judge has powers of readmission of an appeal where it is proved that the appellant was prevented by any sufficient cause from appearing when the appeal was called for hearing. **O.43. R 16 of the CPR** provides that;

> *"Where an appeal is dismissed under rule 14 or 15 of this Order, <u>the appellant may apply to the High Court for the readmission of the appeal;</u>*

and, where it is proved that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit."

It is clear to me that it is not in dispute that indeed the learned appellate judge dismissed the appeal and again reinstated and determined it on his own volition. The crux of the appeal therefore is whether the learned appellate judge had the powers to reinstate an appeal he had dismissed on his own volition and proceed to deliver judgment in the matter.

According to ***https://en.wikipedia.org/wiki/Functus_officio***, *functus officio* when used to describe a court, it can refer to one whose duty or authority has come to an end.

In **Canada Vs Greenwood (Fed CA, 2023)** the Federal Court of Appeal briefly considered 'functus officio' thus:

"Simply put, the functus officio doctrine provides that once a matter is finally ruled upon, the judge has discharged its office and cannot re-open the matter. Indeed, to do so would impede on "orderly appellate procedure".

The general principle of law is that as soon as a judgment or order is pronounced by a court of law, that court becomes *functus officio* and immediately ceases to have any further control over the case. In essence, the court will not have the powers to override, alter or interfere with that judgment that has been pronounced save in stipulated circumstances provided for under the law such as for applications of review, revision or in cases of slip rule. See **Daniel Malan Pretorius, *The origins of the functus officio doctrine, with specific reference to its application in administrative law,* South African Law Journal, vol. 122, No. 4(2005) at** https://journals.co.za/doi/abs/10.10520/EJC53666

Section 98 of the Civil Procedure Act Cap. 71 provides for the saving of the inherent powers of the court and states that,

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

To this end, **Section 99 of the Civil Procedure Act** provides for amendment of judgments, decrees and orders of the Court and states that;

"Clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties."

The above provisions are applicable where the error is accidental and is meant to correct errors in the drafting of the judgment or order or correct errors to manifest the intention of the court. In **Orient Bank Vs Frederick Zaabwe & Anor, Supreme Court Civil Application No 17 of 2007**, it was held that;

> *"A court will, of course, only apply the slip rule where it is satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.' These are the circumstances in which this court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter."*

In **Major (Rtd) Kakooza Mutale Vs Balisigara Stephen, Consolidated Court of Appeal Civil Application 121 & 277 of 2020** *Musoke, JA* held that

"It is my view, that this Court is functus officio and cannot reopen a matter which it has concluded so as to consider the new matters that the applicant has raised in his affidavit."

In the instant appeal, it is not anywhere on record that the learned appellate judge was invoking his inherent powers to amend a judgment, order or decree passed. The record does not also indicate anywhere that the learned appellate judge in fact set aside the dismissal order neither is there any application to reinstate the appeal. What I can discern from the record is that the learned appellate judge left the dismissal order on record, and proceeded to deliver judgment in the same matter he had initially dismissed and gave orders in it.

While counsel for the respondents has alluded to **0.43 Rule 16 of the Civil Procedure Rules** that the learned appellate judge has powers of readmission of an appeal once the appellant shows they were prevented by sufficient cause to appear, this provision in my view does not apply to the instant facts. This is because there was no application made to the learned appellate judge seeking readmission of the appeal on grounds of sufficient cause or any other grounds. In fact, the respondents who were the then appellants indicated in their pleadings in this Court that they were not aware their appeal in the High Court had been dismissed.

In **Major (Rtd) Kakooza Mutale Vs Balisigara Stephen, Consolidated Court of Appeal Civil Application 121 & 277 of 2020** Musoke, JA cited the decision of the Supreme Court of India in **Sunita Jain Vs. Pawar Kumar Jain & Ors, Case No. 174 of 2008**, where it was held:

"...as a general rule, as soon as judgment is pronounced or order is made by a Court, it becomes functus officio (ceases to have control over the case) and has no power to review, override, alter or interfere with it."

It thus follows that without an appeal or an application for review, revision or setting aside its decision as prescribed by law, a court is bound by the *functus officio* doctrine.

In the case before us, it is evident that the dismissal order of the appeal was never set aside. Since the appellate judge heard an appeal he had dismissed, it means that the same court matter has two conflicting orders which is problematic. The dismissal order made by the learned appellate judge was an order in finality to the extent that there was in fact no other pending litigation before him between the same parties and court had no powers to reopen and look back into a matter already concluded.

The proper procedure in the instant case was that the aggrieved party *(now the respondents)* who had appealed the magistrate's decision should have moved court by way of an application seeking orders that the court sets aside its dismissal order, reinstates the appeal and determines it on its merits. In **R Vs Essex Justices Ex parte Final; Same Vs Same, [1962] 3 All ER 924**, Counsel for the defendant had contended for a principle to the effect that if, before dispersing, a matter was drawn to the attention of the Bench which would make them change their minds, they were at liberty to do so and substitute an acquittal. In deciding the matter, Lord Parker CJ. held thus:

> *'There is, I think, clearly no statutory power to enable them to do so, nor do I for my part think that there is any inherent power. They are, in my judgment, functus officio the moment they have announced their decision, however inconvenient the result may be.'(emphasis mine)*

Further Gorman J agreed, as did Salmon J., who said:

> *"It is quite plain on authority that once a decision by magistrates is announced in open court, that decision so announced amounts either to an acquittal or to a conviction, as the case may be. Once the magistrates have convicted or acquitted, they are functus officio and cannot alter their decision."*

It was erroneous for the learned appellate judge to change his mind to reinstate a dismissed appeal basing on a letter from learned counsel seeking extension of time to file submissions, which he saw after dismissal absent an application for reinstatement. There was no error the appellate court was correcting in his dismissal order. The learned appellate judge does not indicate anywhere that having seen the letter written by learned counsel for the appellants *(now respondents)* seeking extension of time within which to file submissions, there was a communication of the same to the respondent *(now appellant)* in this appeal or that he granted that prayer. Even then, since the learned appellate judge had already dismissed the appeal, there was no appeal between the same parties on the same facts before him for determination. The learned appellate judge was not vested with jurisdiction to intervene as there was no appeal before him.

The court held in **Makula International Ltd Vs His Eminence Cardinal Nsubuga & Anor SCCA No. 4 of 1981** that a court cannot sanction what is illegal and an illegality once brought to the attention of court overrides all questions of pleadings including admissions.

I find the procedure adopted by the learned appellate judge of hearing an appeal he had dismissed without any application for reinstatement or setting aside the dismissal order, erroneous and untenable. If a judge is at liberty to alter or change their decision after pronouncing it, it would not only open a Pandora's box where by Judges and magistrates will freely alter their initial pronounced decisions, but would also lead to intolerable uncertainty and disarray. Given the potential consequences, the error by the learned appellate Judge cannot be seen as a mere technicality as it would have severe consequences and therefore cannot be overlooked.

I thus find that the learned appellate judge was *functus officio* having dismissed the appeal and thus erred in law in proceeding to write and deliver judgment in

a non-existent appeal. Having determined this first ground of appeal in the affirmative, there is no need to determine the other grounds of appeal.

I would in the sum allow this appeal with the following orders;

1. I set aside the judgment and orders made by the learned appellate Judge in High Court Civil Appeal No. 34 of 2009.
2. Given that this appeal has succeeded due to an error on the record that was not attributed to either of the parties in this appeal, in the circumstances, I make no order as to costs.

Dated at Kampala this 29th **day of** August **2025**

Alibateese

Stella Alibateese

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO:227 OF 2013

SULAIMAN KAMULEGEYA::APPELLANT

VERSUS

1. **NANSAMBA ROBINAH**
2. **MATOVU SAMUEL::RESPONDENTS**

JUDGMENT OF JUSTICE MUSA SSEKAANA, JA

I have heard the benefit of reading the leading Judgment of Her Lordship Hon. Lady Justice Stella Alibateese and I concur with the same.

Dated at Kampala this ..... day of 2025

.....

MUSA SSEKAANA

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Mugenyi, Ssekaana, Alibateese, JJA)

CIVIL APPEAL NO. 227 OF 2013

(Arising from High Court Civil Appeal No. 34 of 2009)

(Arising from Luweero Chief Magistrates Civil Suit No. 32 of 2005)

SULAIMAN KAMULEGEYA :: APPELLANT

VERSUS

1. NANSAMBA ROBINAH

2. MATOVU SAMUEL :: RESPONDENT

(Appeal from the judgment and decree of the High Court of Uganda at Kampala, Land Division delivered by Chibita. J on 30th August 2013)

JUDGMENT OF DR. ASA MUGENYI, JA

I have had the advantage of reading the judgement prepared by my learned sister, Stella Alibateese, JA. I agree with the reasoning and orders proposed.

Dated at Kampala this 29th day August 2025

Dr. Asa Mugenyi

JUSTICE OF APPEAL