

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 24 OF 2020

*(Arising from the Economic Crimes Case No. 70 of 2019, Resident
Magistrate Court of Dar es Salaam at Kisutu)*

SALUM MOHAMED KALUONA 1st APPLICANT

JUMA SALUM KIGOMBALIMA 2nd APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

12th March & 27th March, 2020.

E. E. KAKOLAKI J

Before this court, the applicants have filed a Chamber Summons supported by joint affidavit of **Salum Mohamed Kaluona** and **Juma Salum Kigombalima**. The application has been preferred under section 29(4)(d) and 36(1) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2002], praying for the following reliefs:

1. That, this Honourable Court be pleased to grant the bail conditions to the accused persons in Economic Crime Case No. 70 of 2019.

2. That, having granted the prayer in one (1) above this court proceeds to impose reasonable bail conditions as pointed out by the applicants affidavit as per the law.
3. Any other relief this Honourable court deems fit to grant.

What is discerned from the applicants' joint affidavit is that prior to this application they filed in this court Misc. Criminal Application No. 200 of 2009 seeking for grant of bail in Economic Crimes Case No. 70 of 2019 pending in the Resident Magistrate Court of Dar es Salaam at Kisutu. The said application was heard on merit on 18/10/2019 before Hon. Ebrahim J, and ruling delivered on 21/10/2019 by granting them bail and setting bail conditions to that effect one of which require each of them to deposit a sum of Tshs. 7,000,000/= in cash or in the alternative shall deposit to the custody of the court a title deed of immovable property to the equivalent amount. It appears the conditions set by the court could not be met by the applicants as a result they have come back with this application as a second bite trying to appeal to this court to vary the conditions including that of depositing cash amount or title deed.

Opposing the application the respondent filed a Notice of Preliminary objection with two points of law as follows:

1. That, the Honourable Court is functus officio.
2. The affidavit in support of the application is fatally defective.

When the application was called for hearing before me on 13/3/2020 both applicants appeared unrepresented while the respondent appeared through Mr. Genes Tesha learned Senior State Attorney. Parties agreed and craved leave of the Court to dispose of the preliminary objection

first. Before submitting Mr. Tesha sought leave of the court to abandon the second point and argue the first one.

Submitting on the point of objection Mr. Tesha stated that this court is functus officio in as far as this application is concerned. He contended this court heard and determined the application for bail filed by the applicants in Misc. Criminal Application No. 200 of 2019, granted and set some bail conditions. It cannot therefore hear the applicants on the same subject matter which it has already determined. It is therefore functus officio he submitted. For that matter he asked this court to dismiss the appeal for want of merits.

Responding to the objection raised both applicants had nothing material to tell the court apart from pleading the court to have mercy on them as they were lay person and did not know how to go about to have the bail conditions set by this court varied. They therefore prayed the court to grant their prayer. The respondent had nothing to rejoin apart from reiterating what was submitted in chief.

The issue for determination before me is whether this court is functus officio and cannot entertain this application. According to Black's Law Dictionary, 8th Edition, functus officio is defined as follows:

"Having performed his or her office (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."

In the case of **Bibi Kisoko Medard Versus Minister for Lands, Housing and Urban Development and Another**, (1983) TLR 250 (HC) the court held:

"In matters of judicial proceedings once a decision has been reached and made known to the parties, the adjudicating tribunal thereby becomes functus officio."

Also stressing on the point on what amounts functus officio the Court of Appeal in the case **Mohamed Enterprises (T) Limited Versus Masoud Mohamed Nasser**, Civil Application No. 33 of 2012 (CAT – Unreported) stated that:

"Once a judgment and decree are issued by a given court, judges (or magistrates) of that court become "functus officio" in so far as that matter is concerned."

In order to ascertain Mr. Tesha's contention that the bail conditions sought to vary were issued by this court in Misc. Criminal Application No. 200 of 2019, I had to call the said case file for my perusal. The perusal revealed and confirmed Mr. Tesha's submission that this court heard the applicants' bail application and granted it before my sister Hon. Ebrahim, J on 21/10/2019. Bail conditions were also set on that date. Since the decision was reached and made known to the parties on 21/10/2020, I am in agreement with Mr. Tesha and of the firm view this court ceases to have jurisdiction over the same matter for being functus officio. My view finds its base in the cases of **Bibi Kisoko Medard** (supra) and **Mohamed Enterprises (T) Limited** (supra). The only remedy for the application after they were either aggrieved by the bail conditions set by this court was to appeal to the Court of Appeal which they still have if at all they are still interested. The issue is therefore answered in negative.

In the circumstances and for the foregoing reasons I am inclined to hold that this application is incompetent and is hereby dismissed.

It is so ordered.

DATED at DAR ES SALAAM this 27th day of March, 2020.




E. E. KAKOLAKI

JUDGE

27/03/2020

Delivered Dar es Salaam today on 27/03/2020 in the presence of both Applicants and **Miss Elizabeth Mkunde** learned State Attorney for the respondent.


E. E. Kakolaki

JUDGE

27/03/2020