

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

**MISC. CRIMINAL APPLICATION NO. 168 OF 2021**

*(Arising from Misc. Criminal Application No. 138 of 2021 originating from Economic  
Crime Case No. 51 of 2021 at the Resident Magistrate's Court of Dar es Salaam at  
Kisutu before Hon. Isaya, SRM)*

**DIDACUS WILSON CHACHA ----- APPLICANT**

VERSUS

**REPUBLIC ----- RESPONDENT**

*Date of Last Order: 27/08/2021*

*Date of Ruling: 08/09/2021*

**R U L I N G**

**MGONYA, J.**

This is an application made under the **provisions of Article 108 (2) of the Constitution of the United Republic of Tanzania (1977), Section 2(1), (2) & (5) of the Judicature and Application of Laws Act, [Cap. 358 R.E. 2019], Section 264 and 392A of the Criminal Procedure Act, Cap. 20 [R.E. 2019] and Section 11 of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2019]**. In due process of proceedings, the Respondent raised one (1) point of Preliminary Objection to the effect that:

***1. The Applicant's application is untenable in law since the Court is functus officio.***

The Applicant in this application is enjoying the services of **Mr. Sinare Zaharan**, legal Counsel from **REX ADVOCATES** whereby the Respondent is represented by **Ms. Jacqueline Nyantori**, Senior State Attorney.

In the cause of the determining the point of Preliminary Objection advanced by the Respondent herein the issue is whether the application pending before the Honourable Court is *functus officio*.

Challenging the Application, Ms. Nyantori is of the view that the instant Application was already before this Court through **Miscellaneous Application No. 138 of 2021** where the Applicant sought bail pending the **Economic Case No. 51** before Kisumu RM's Court and the same was granted to him as per the ruling of this Court delivered on **28/07/2021**, hence making this Court *functus officio* on the same matter of bail.

The Applicant is now praying for variation of the bail conditions which were set in the Court's previous ruling. The reason advanced is that this Court needs to harmonise its decision in **Misc. Criminal Application No. 138 of 2021, Mgonya, J.** and **Misc. Criminal Application No. 140 of 2021, Mruma, J.** which delivered with different bail conditions

whereas the Applicants in both Applications are charged in **Economic Crime Case No. 51 of 2021.**

It is from that prayer, the learned State Attorney is of the view that, the current Application for variation of bail condition under the umbrella of harmonization of the afore mentioned decisions of this very Court is not tenable as this Court is *functus officio*.

The Respondent cementing on the submission above, cited the cases of **CHIEF ABDALLAH SAID FUNDIKIRA VS HILLA L. HILLAL, Civil Application No. 72 of 2002** (unreported) and **YUSUF ALI YUSUF @ SHEHE MPEMBA AND 5 OTHERS VS REPUBLIC in Criminal Application No. 81 of 2019.** All the above cases were to the extent of expounding on the principle of *functus officio*. Whereas the Courts stated that:

***"a court becomes functus officio over a matter if that court has already heard and made a final determination over a matter concerned."***

In the event therefore, the Respondent contended that, since this Court passed its orders regarding the Applicant's bail, it has determined the application to its finality, and the orders given in respect of bail conditions were final. The variation of bail conditions as prayed by the Applicant can be done by a higher

Court and not by the same Court. Hence, this Court has no powers to alter or reopen what it has already been determined on merit in consideration of the decision of this Court in **Misc. Criminal Application No. 140 of 2021, Mruma, J.** as they have concurrent jurisdiction. From the above submission, the Respondent prayed that the objection be sustained.

Responding to the objection, the Applicant's Counsel is of the view that in case the Court refused to grant bail to an accused person, the Court becomes *functus officio* to entertain a fresh application by the accused person seeking orders of the Honourable Court to consider bail. This position of the law is vividly captured in the decision of the Court of Appeal in the case of ***DIRECTOR OF PUBLIC PROSECUTION VS ALLY NUR DIRIE AND ANOTHER [1998] TLR 252.***

It is also the Applicant's submission that on the other hand the Court does not become *functus officio* in cases whereby it has granted bail to an accused person in the sense that the Honourable Court can either vary the conditions thereto or cancel the bail granted.

The Applicant in his submission cited **section 154 of the Criminal Procedure Act, Cap. 20 [R.E 2019]** and referred this Court to the case of ***MAKONGOLO BUDODI MAKONGOLO VS REPUBLIC, Misc. Economic Cause No. 5 of 2018*** (unreported) to support their contention.

Having gone through the objection raised and the submissions of the parties upon the same, it is from this stance am at the position of determining the objection before me.

The objection before me is to the effect that the Court is *functus officio* upon an application for bail that was heard before me and determined. In the said prior application (**Misc. Criminal Application No. 138 of 2021**), the Applicant sought for bail and an order for bail was granted to the Applicant together with the conditions set thereof.

It is from the records of the instant application it came to my knowledge that co-accused of the Applicant in this application applied before this Court for bail of which the same was assigned to them by another Honourable Judge. The matter was heard and a ruling was delivered where bail was granted to the Applicant in that **Misc. Application No. 140 of 2021** whereby bail conditions differ from the application that was before me.

The instant application then arises out of the decision that was delivered in this same Court under **Misc. Criminal Application No. 140 of 2021** before another Hon. Judge. It is from such circumstances that the Applicant is seeking for variation of the bail conditions in what the Applicant's Counsel calls harmonization of the decisions originating from this same Honourable Court.

From the above, I find myself obliged to explore in the Black's Law Dictionary for the meaning of *functus officio*. In the **Black's Law Dictionary 2<sup>nd</sup> Edition** *functus officio* is stated to be;

***"Having fulfilled the function, discharge the office, or accomplished the purpose and, therefore, of no further force or authority."***

In addition to the above, I further take chance into finding the legal definition of the same term that is *functus officio* which is a Latin maxim and the same is defined in the **Merriam - Webster Legal Dictionary online**, of which the same is defined as;

***"... of no further official authority or legal effect."***

Having ventured now on the meaning of *functus officio* from the above dictionaries and as to the circumstance of this application, I find the meanings to reflect that once a matter has been finalised the said is believed to be of no other effect. **Misc. Criminal Application No. 138 of 2021** was assigned before me and was scheduled for hearing. Both parties appeared in the hearing of the matter of which after the submissions by the parties the Court was duty bound to deliver its decision as per the application and the submissions of the

parties. On the **28/07/2021** a ruling was delivered and an order for bail was granted in respect to the application for bail.

I am of the firm view that the ruling was a final decision of the application before the Court as the Applicant was granted bail under the requirements of **section 36 (5) of the Economic Organised Crimes Control Act, Cap. 200 [R.E 2019]**. Hence the Court had retired itself from the duties upon it with respect to **Misc. Criminal Application No. 138 of 2021**. In the case of **ANGUMBWIKE KAMWAMBE VS REPUBLIC, Criminal Appeal No. 10 of 2015 (CAT at Mbeya)** (unreported) (Othman, CJ, Kimaro & Mugasha, JJA), held:

***(2) The Learned Judge was perfectly right in categorically observing that the High Court could no longer be invited to reverse its own decision. The entertainment and determination of the second application by the High Court was highly irregular.***

It was also the principle of the High Court, in the case of **BERNHARDARD MBARUKUN TITO & KANJI MUHANDO MWINYIJUMA VS REPUBLIC, Misc. Economic Cause No. 8 of 2018, HCT (Corruption and Economic Crime Division)** (unreported), W. B. Korosso, J. held;

***(6) where the ground for rejecting the first bail application is still valid, it is wrong for the same Court to grant the second application.***

The call by the Applicant in this application is for harmonization of the two distinct decisions of this Court as pronounced by two different Hon. Judges as per **Misc. Criminal Application No. 138 of 2021** and **Misc. Criminal Application No.140 of 2021**. It should be remembered that **Misc. Criminal Application No. 138 of 2021** which was before me was heard and fully determined.

The case of ***MOHAMED ENTERPRISES (T) LTD VS MASOUD MOHAMED NASSER, CAT at Dar es Salaam, Civil Application No. 33 of 2012***, the Court held that;

***"Once a judgement and decree are issued by a Court, judges (or magistrates) of that Court become "functus officio" in so far as that matter is concerned. Should a new fact arise, which should have been brought to the attention of the Court during trial, the Cap. 33 provides for procedures for review and where appropriate a revision before a higher Court."***

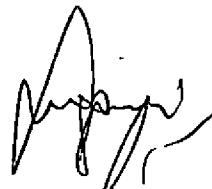
It is from the jurisprudence and the principle from the above cases that with the circumstance of this instant matter



that, **Misc. Criminal Application No. 138 of 2021** clearly establishes that the same had been finally determined as of **28/07/2021** as a Ruling was delivered in favour of the Applicant herein. Therefore, it is vividly seen that the Court is *functus officio* in as far as this matter is concerned.

Having said all of the above, I am of the firm view that my hands are tied as to reopening **Misc. Criminal Application No. 138 of 2021** for variation of the same. In the event therefore, **the objection is SUSTAINED**. This application is hereby **DISMISSED**.

It is so ordered.

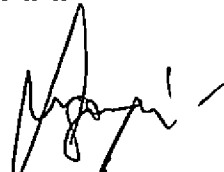


**L. E. MGONYA**

**JUDGE**

**08/09/2021**

**Court:** Ruling delivered in my chambers in the presence of Ms. Neema David Mbagu, Advocate for the Applicant, Ms. Edith Mauya, State Attorney for the Respondent and Ms. Veronica, RMA.



**L. E. MGONYA**

**JUDGE**

**08/09/2021**