

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 110 OF 2022

PETER THOMAS NYANCHIWA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Arising from Economic Case No. 19 of 2022 pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu)

RULING

29th and 29th August, 2022

KISANYA J.:

This application for bail pending trial is made under sections 29(1) (d) and 36 (1) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2022 (the EOCCA). In terms of the supporting affidavit sworn by the applicant, Peter Thomas Nyanchiwa, the case subject to this application is pending at the Resident Magistrate Court of Dar es Salaam at Kisutu, where the applicant and other 11 accused persons stand charged with offences of leading organized crime, unlawful possession of Government Trophies and unlawful dealing in trophies contrary to relevant laws.

When this matter was placed before me for hearing today, the applicant appeared in person, whilst the respondent was represented by Ms. Elizabeth Mkunde, learned Senior State Attorney.

At the very outset, the applicant prayed to withdraw the application on the account the matter had been determined by this Court. He went on contending that he intended to file an application for varying the bail conditions. Ms. Elizabeth did not contest the applicant's prayer.

Having heard the parties, the point for my determination is whether this matter can be marked withdrawn. This issue can be resolved by considering whether the application is competent before this Court.

It is deduced from the applicant's submission this Court has already determined his application for bail pending trial. Indeed, the record bears it out that, the applicant was the sixth applicant in Misc. Criminal Application No. 70 of 2022 in which he was admitted to bail pending trial in respect of the case subject to this application. Pursuant to the ruling delivered on the 16th day of June, 2022, one of

the conditions required the applicant to deposit to the custody of the court, cash money or a title deed or evidence satisfactorily to prove existence of immovable property/properties valued at Tshs. 1,208,578,812.

Now, the law is settled, the court becomes *functus officio* upon giving a decision which is known to the parties. Save for clerical errors or accidental slips or omissions which do not go to the root of the matter, the court is barred from entertaining a matter that was determined by it. I am fortified by the decision of the Court of Appeal in the case of **Malik Hassan Suleiman vs. S.M.Z.** [2005] T.L.R. 236, where it was held that:-

"A court becomes functus officio when it disposes off a case by a verdict of guilt or by passing a sentence or making orders finally disposing of the case, the learned judge became functus officio when he passed the judgment on 19th February 1998 and he was not clothed with the necessary jurisdiction to review his own decision subsequently.

Considering further that this Court has already disposed of the

application for bail, I hold the view that I am *functus officio* to determine the same. It follows that the application is incompetent before the Court.

Having decided that the application is incompetent, I am of the view that the prayer to withdraw the same cannot be granted. It is trite law that an incompetent matter cannot be withdrawn and that the proper recourse is to strike out the same. See for instance, the case of **Ghati Methusela vs Matiko Marwa Mariba**, MZA Civil Application No. 6 of 2016 (unreported).

In view thereof, this application is hereby stuck out for being incompetent.

DATED at DAR ES SALAAM this 29th day of August, 2022.



S.E. Kisanya
JUDGE

