

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 571 OF 2023**

(Originating from orders in Miscellaneous Civil Application No.53 of 2016 in the District Court of Ilala at Kinyerezi dated 09<sup>th</sup> October, 2023 before Hon. Kihawa, PRM)

**TANZANIA INTERNATIONAL CONTAINER**

**TERMINAL SERVICES LIMITED ..... APPLICANT**

**VERSUS**

**JOHN LEMOMO.....1<sup>ST</sup> RESPONDENT**

**GODWIN STEVEN.....2<sup>ND</sup>RESPONDENT**

**CHARLES CYPRIAN.....3<sup>RD</sup> RESPONDENT**

**SALUM KUNU.....4<sup>TH</sup> RESPONDENT**

**ROGERS KESSY.....5<sup>TH</sup> RESPONDENT**

**CHARLES MASAGA.....6<sup>TH</sup> RESPONDENT**

**CLETI MARO.....7<sup>TH</sup> RESPONDENT**

**DENIS SIMBA.....8<sup>TH</sup> RESPONDENT**

**JANET MFURUKI.....9<sup>TH</sup> RESPONDENT**

**RULING**

*Date of Last Order: 13/10/2023.*

*Date of Ruling: 19/10/2023.*

**E.E. KAKOLAKI, J.**

This ruling seeks to determine seven preliminary objections raised by the respondents against the applicant's application to the effect that, *firstly*, the application has been presented under wrong provision of the laws. *Secondly*, the application has been overtaken by event. *Thirdly*, that, the application is Res-subjudice. *Fourthly*, that, this Court is functus officio to act on this application. *Fifthly*, the Court lacks jurisdiction to entertain the current application. *Sixthly*, the application is bad in law for having combined different prayers in the same chamber summons. And *seventh* and lastly, that, the application is total abused of due process of law.

The factual background giving rise to this application as discerned from the applicant's affidavit though long is easy to tell. The applicant was the respondents' employer before she prematurely terminated their contracts of services 4 months and 13 days before. Aggrieved, the respondents successfully referred the matter to Temeke Conciliation Board when reinstatement order was issued in their favour. Unhappy, the applicant referred the matter to the Minister for Labour, who upheld the Board's decision and additionally ordered the respondents to be paid wages. Disgruntled the applicant applied for judicial review of the Minister's decision to this Court vide Misc. Civil Cause No. 106 of 2004, in which the Minister's

decision for payment of wages was reversed while upholding the reinstatement order. Executing this Court's decision in the above cited case, the applicant allegedly opted to pay the respondents their terminal benefits. Despite of such payment it is deposed, the respondents successfully applied for execution of Minister's decision in the District Court of Ilala through Misc. Civil Application No. 53 of 2016, and issued with garnishee order nisi for attachment of applicant's bank accounts in satisfaction of Tshs. 1,388,400,000/- plus commission of Tshs. 20,000/ as payment of unpaid salaries in contravention of this Court's decision that reversed the order for payment of wages. It appears the applicant unsuccessfully though late attempted to challenge that District court's decision vide Misc. Civil Application No. 430 of 2019 before this Court when applied for extension of time to file Revision application to same Court, as the application was struck out for being incompetent, the decision which was appealed against in the Court of Appeal vide Civil Appeal No. 331 of 2022.

In pendency of the above referred appeal, the respondents reverted back to the District Court of Ilala at Kinyerezi this time proceeding with execution proceedings of garnishee order nisi pending to the District Court of Ilala, praying for issue of garnishee order absolute as there was no stay of

execution. It is in that course the applicant who was summoned to show cause as to why the garnishee order nisi should not be satisfied, got irritated and unsuccessfully filed to this Court Misc. Application No. 375 of 2022 seeking to revise the said order as the same was struck out for want of competence.

When the respondents once again applied for issue of garnishee order absolute in Misc. Civil Application No. 53 of 2016 before the District Court of Ilala, the applicant tirelessly raised preliminary objections on points of law challenging jurisdiction of the District Court to entertain the matter the subject which was already decided by the same court. It is out of the said preliminary objections the trial magistrate in her ruling of 14/07/2023, framed questions on the challenged jurisdiction and powers of the executing court to issue garnishee absolute subsequent to garnishee order nisi issued on 18<sup>th</sup> May 2017 and referred the same to this Court for determination vide Civil Reference No. 26 of 2023. In its decision handed down on 4<sup>th</sup> September, 2023, this Court found that the District Court of Ilala was crowned with the requisite jurisdiction and further directed it to proceed with finalization of whatever was before it, meaning execution of the decree. On receiving those directives, the executing court acted on them as on

09/10/2023 it issued garnishee order absolute in favour of the respondents, the decision which aggrieved and moved the applicant to promptly file the present application, the application which is stemmed on the application for revision in Misc. Civil Application No. 570 of 2023.

The application which is vehemently opposed by the respondents is brought under sections 68(e) and 95 of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC) supported by the affidavit of one Ladislaus Prosper, applicant's principal officer.

Bearing in mind the practice of Court that, when a preliminary objection is raised the same has to be disposed of first, parties were heard *inter vivos* on the raised points of objection as all were represented. The applicant proceeded represented by Mr. Jeremiah Tarimo while the respondents enjoyed the services of Mr. Anindumi Semu, both learned counsel.

In his address to the Court in support of the preliminary points of objection raised by the respondents, Mr. Semu sought leave of the Court to abandon the 3<sup>rd</sup> and 6<sup>th</sup> grounds of objections, argue the 4<sup>th</sup> and 5<sup>th</sup> conjunctively and submit separately on the 1<sup>st</sup> 2<sup>nd</sup> and 7<sup>th</sup> grounds, the leave which was cordially granted.

In this ruling I am proposing to start with the 4<sup>th</sup> and 5<sup>th</sup> grounds as the same are raising a question of jurisdiction of this Court to entertain the application at hand which as per the chamber summons is for issue of *temporary interlocutory stay orders to stay the implementation of an illegal garnishee absolute issued against the applicant* to the tune of Tshs. 1,388,400,000/- plus commission of Tshs. 20,000/- held at applicant's two bank accounts operated by Standard Chartered Bank Limited pending determination of the revision proceedings filed in this Court against the orders of Ilala District Court dated 9<sup>th</sup> October, 2023 in Misc. Application No. 53 of 2016.

Arguing in support of the 4<sup>th</sup> and 5<sup>th</sup> grounds of objection conjunctively Mr. Semu told the Court that, the orders of the District Court of Ilala of 09/10/2023 which its implementation is sought to be stayed were made in compliance with this Court's order of 04/10/2023 in Civil Reference No. 26 of 2023 between the same parties. He noted with force of argument that, much as in its decision of 04/10/2023 in Civil Reference No. 26 of 2023, this Court ordered the District Court of Ilala to proceed with execution of the decree hence issue of garnishee order absolute, the order which its implementation is sought to be stayed by the applicant, then its hands are

tied up for being functus officio as it cannot stay what it had ordered to be executed or performed. He thus prayed the Court to find merit in these two grounds of objection and proceed to dismiss the application.

In rebuttal Mr. Tarimo pointed out to the Court that, the decree in which this Court directed the District Court of Ilala to implement is the decision of the Minister of Labour which ordered for reinstatement of the respondents and payment of their dues with no mention of the amount appearing in the garnishee order absolute, the decision which was slightly changed by this Court in Misc. Civil Cause No. 106 of 2004, when found that the Minister had no powers to order for payment of wages. According to him, since the only remaining relief in the Minister's decision was reinstatement of respondents, the District Court of Ilala wrongly issued the garnishee order which is now subject of revision application in which this application intends to stay its implementation pending its determination. He invited the Court to consider and be persuaded with the case of **Nkwabi Shing'oma Lume Vs. Secretary General Chama Cha Mapinduzi**, Civil Appeal No. 234 of 2017 (CAT-unreported), where the Court of Appeal exercised its revisional jurisdiction after noting irregularities in RM's and High Court decisions, so

that it proceeds to overrule the 4<sup>th</sup> and 5<sup>th</sup> grounds of objection by the respondents.

In brief rejoinder Mr. Semu was insistent that, this Court in its unreversed decision in Misc. Civil Cause No. 106 of 2004 ordered for reinstatement of respondents and payment of their dues, the order which was executed vide garnishee order absolute issued by the District Court of Ilala, the order which is sought to be stayed in this application despite of being issued in compliance with this Court's order in Civil Reference No. 26 of 2023. In his view therefore, the case relied on by the applicant is inapplicable in the circumstances of this case.

Having closely followed and accorded both parties fighting submissions with deserving weight, it is now opportune for me to determine whether this Court lacks jurisdiction to entertain the application for being *functus officio*.

***Functus officio*** in judicial context, simply connotes that once a judge or magistrate has performed his official duty, he is precluded from re-opening the decision. See also the decision of this Court in **Cipex Tanzania Limited Vs. Tanzania Investment Bank**, Civil Appeal No. 127 of 2018 (HC-unreported). Once a decision is made by the Court on specific claim or right and pronounced in open Court, then the said Court is precluded or ceases



from having jurisdiction to further reconsider its decision on similar claim or right, save for matters such as setting aside of ex-parte decisions and review of its decisions induced by fraud or misinformation. See the cases of **Scholastics Benedict Vs. Martin Benedict** [1993] TLR 1 (CAT) and **The Attorney General Vs. Mirage Lite Ltd and Another**, Misc. Civil Application 476 of 2023 (HC-unreported).

From the record of this matter there is no dispute that, the District Court of Ilala on 18/05/2017 in Misc. Civil Application No. 53 of 2016, issued garnishee order nisi in favour of the respondents for attachment of applicant's accounts in satisfaction of Tshs. 1,388,400,000/- plus commission of Tshs. 20,000/=, the decision which the applicant unsuccessfully challenged in her attempt to seek extension of time to file revision vide Misc. Civil Application No. 430 of 2019, when this Court held on 21/07/2020 to have lacked jurisdiction to entertain the matter already determined to its finality. It is the said decision of 21/07/2020 which is subject of Civil Appeal No. 331 of 2022 pending before the Court of Appeal as intimated above. Again it is uncontroverted fact that, when the respondents sought to obtain garnishee order absolute, the applicant raised an issue of jurisdiction already determined by the same District Court of Ilala, the result of which questions

were framed on the same and referred to this Court vide Civil Reference No. 26 of 2023, before the order to proceed with implementation of the execution of decree pending before it, meaning on application for issue of garnishee order absolute was issued by this Court on 04/10/2023. Further to that, parties are not at dispute on the fact that this court's order of 04/10/2023 has never been challenged by the applicant, the result of which empowered the District Court to proceed with its implementation by issuing the garnishee order absolute in which the applicant is seeking its temporary stay pending determination of the filed application for revision.

In view of the above undisputed facts, it is evident to this Court that, when this Court ordered for implementation of the decree pending before the District Court of Ilala in its decision of 04/10/2023, which in essence was nothing but the garnishee order nisi issued on 18/05/2023, the applicant was full aware that it is the same garnishee order nisi which was to be executed but did not take any action to challenge the decision instead escorted the respondent to smoothly implement it. To require this Court's interference at this juncture by issuing temporary interlocutory stay of implementation of the garnishee order absolute issued by the District Court in compliance with its unchallenged order as rightly submitted by Semu, I find is uncalled for

invitation for denounce of its decision or orders issued on 04/10/2023 to the executing court. In other words as the garnishee order absolute by the District Court of Ilala issued on 09/10/2023 was in compliance with this Court's order of 04/10/2023, which its implementation is sought to be temporarily stayed in this application, I have no difficulties in holding that, this Court is functus officio to issue the sought reliefs by the applicant as to do so is tantamount to displace or denounce its own decision. With due respect such powers are in the realm of the Court of Appeal where Civil Appeal No. 331 of 2022 lies. The argument by Mr. Tarimo that, the garnishee order absolute and the amount mentioned therein emanates from the Minister's decision that was varied in Misc. Civil Cause No. 106 of 2004 allegedly wrongly implemented by the executing court hence subject of the pending revision before this Court, in my humble view is misplaced as the issue here is whether this Court has jurisdiction to temporarily stay the order or decision emanating from its own decision or order of 04/10/2023. In view of that I also find the case of **Nkwabi Shing'oma Lume** (supra) is distinguishable from the facts of this matter since in that case the issue was whether the RM's court had powers to correct the Reconciliation Board's decision while in the present matter the issue is whether this Court is functus

officio to temporarily stay implementation of garnishee order absolute issued after execution of its own orders. I therefore agree with Mr. Semu's proposition that, this Court lacks jurisdiction to entertain the application at hand for being functus officio. As these two points of objection disposes of the application, I see no pressing need to consider the rest of the grounds of objections.

In the premises this 4<sup>th</sup> and 5<sup>th</sup> preliminary objections are meritorious and do hereby sustain them. The end result of which is to strike out this application for want of jurisdiction which I hereby do with costs.

It is so ordered.

Dated at Dar es Salaam this 19<sup>th</sup> October, 2023.



E. E. KAKOLAKI

**JUDGE**

19/10/2022.

The Ruling has been delivered at Dar es Salaam today on 19<sup>th</sup> day of October, 2023 in the presence Mr. Jeremiah Tarimo, advocate for the Applicant, Mr. Anindumi Semu, advocate for the Respondents and Mr. Oscar Msaki, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI  
**JUDGE**  
19/10/2023.

