

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

LABOUR REVISION NO. 29 OF 2023

(Arising from the award of the Commission for Mediation and Arbitration Arusha
Hon. Mourice Sekabila- Arbitrator dated 15th October, 2021 in Labour Dispute No.
CMA/ARS/ARB/205/2015)

BETWEEN

NGORONGORO CONSERVATION AREA

AUTHORITY.....APPLICANT

VERSUS

JOSEPH MICHAEL MARISELY MALLY.....RESPONDENT

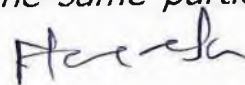
RULING

01/11/2023 & 17/01/2024

MWASEBA, J.

This is the ruling in respect of the preliminary objection raised by the
counsel for the respondent to wit:

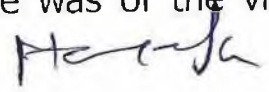
- a) *That in view of the Judgment of the Court (Hon.
Mwaseba, J) delivered on 26th day of July, 2023 in the
High Court Revision No. 115 of 2021 arising from
CMA/ARS/ARB/205/2015 between the same parties on*



the same subject matter, this current application number 29 of 2023 is grossly incompetent and the Court is functus officio hence should be dismissed forthwith.

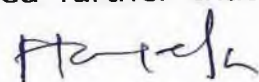
During the hearing of the application, Mr. Matuba Nyerembe, learned Counsel represented the respondent whereas Mr. Mkama Musalama, learned State Attorney appeared for the applicant. The hearing proceeded by way of written submission.

Submitting in support of the PO, Mr. Nyerembe stated that as per the principle of functus officio, once an authority or court has passed a valid sentence, order, or judgment after a lawful hearing then it becomes functus officio and it cannot re open the case to contradict its previous order or judgment. He clarified that the respondent herein filed Revision No. 115 of 2021 against the applicant herein challenging the CMA award and the same was determined by Hon. Mwaseba, J on 26/7/2023. This application challenging the same award was filed on 29/5/2023 while revision No. 115 of 2021 was still pending. However, the learned state attorney did not inform the court of the existence of another Revision application between the same parties. Mr. Nyerembe was of the view



that the learned state attorney ought to have prayed to consolidate them so that they can be ruled together. Thus, this court having already determined the revision No. 115 of 2021 between the same parties, it becomes functus officio to entertain any further application challenging the same award as it might contradict its own findings. He supported his arguments with number of cases including the case of **Bibi Kisoko Medard v. Minister for Lands Housing and Urban Developments and Another** (1983) TLR 250 and **Laemthong Rice Company v. principal Secretary, Ministry of Finance** (2002) TLR 389.

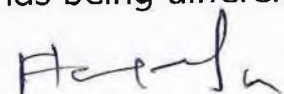
Opposing the raised Point of PO, Mr. Mkama learned state attorney submitted that this court is not functus officio as the grounds raised in revision No. 115 of 2021 differed with the grounds raised in this revision. This hon court determined the revision based on the three grounds while in the application No. 29 of 2023 there are 10 grounds of revision as appears in their chamber summons, notice of application and affidavit. He added that in this application they raised new grounds which were never determined in Revision No. 115 of 2021, thus the question of functus officio cannot arise. He distinguished the case of **Laemthong Rice Company** (supra) cited by the counsel for the respondent as inapplicable to this case. He argued further that when



Application No. 115 of 2021 was fixed for hearing this revision application was not yet filed therefore it was impossible to consolidate them as one.

It was his further submission that sustaining this PO will deny the applicant his right to be heard as provided under **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 and Section 91 of the Employment and Labour Relations Act, Cap 366 R.E 2019** which allows a party aggrieved by the decision of CMA to file a revision to this court. Further, he argued that an order for hearing Revision No. 115 of 2021 by way of written submission was issued in April, 2023 while this application was filed in May, 2023 thus, the issue of riding two horses at the same time is not applicable. He supported his argument with the case of **Ally Rashid and 534 Others v. Permanent Secretary, Ministry of Industry and Trade and Another**, Civil Appeal No. 71 of 2018.

In his brief rejoinder, Mr. Nyerembe reiterated what had already been submitted in his submission in chief and added that the facts that this application challenges the same award as in Revision No. 115 of 2021 the court becomes functus officio despite of grounds being different. He

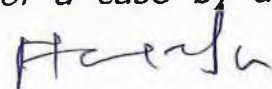


distinguishes the case of **Ally Rashid** (Supra) as it deals with time limitation and not the principle of functus officio. As the Revision No. 29 of 2023 was not made known to the court, this court becomes functus officio to determine it.

Having heard the submissions of both counsels in support and against the raised Po, the issue for determination is whether this court is functus officio to determine this application.

It is settled that, a court becomes functus officio over a matter if that court has already heard and made a final determination over the matter concerned. In the case of **Tanzania Telecommunications Co. Ltd & Others v. Tri Telecommunications Tanzania Ltd** (Civil Revision 62 of 2006) [2006] TZCA 83 (20 July 2006) (Tanzlil) at pages 7 - 8 the Court of Appeal expressed its views on when the court becomes functus officio and quoted with approval the principle laid down by the Court of Appeal for Eastern Africa in **Kamundi v. R** (1973) EA 540, where the Court of Appeal for Eastern Africa, among others, stated that: -

"...A further question arises, when does a magistrate's court become functus officio and we agree with the reasoning in the Manchester City Recorder case that this case only be when the court disposes of a case by a

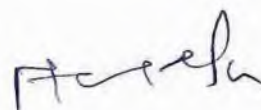


*verdict of not guilty or by-passing sentence or **making some orders finally disposing of the case.** (Emphasis is mine).*

In our application, the same parties had another Revision No. 115 of 2021 which was filed by the respondent in this court in 2021 and it was determined to its finality by the same Judge (Hon. Mwaseba, J) on 26/7/2023. This court upheld the decision of the CMA and left the award undisturbed. The argument raised by Mr. Mkama that the grounds for revision are different cannot eliminate the facts that this court already become functus officio as both applications challenge the same award No. CMA/ARS/ARB/205/2015 which was already upheld by this court. Thus, I agree with Mr. Nyerembe that this court cannot determine this application as it has become functus officio and it cannot contradict the decisions made in Application No. 115 of 2021. Any challenge to its decision must be taken to a higher court by way of appeal or revision as the case may be.

In view of the aforesaid, this court finds merit on the PO raised by the counsel for the respondent and the same is sustained. Consequently, the application is hereby struck out with no order as to costs.

Ordered accordingly.

A handwritten signature in blue ink, appearing to be 'Mwaseba', is written over the text 'Ordered accordingly.'

DATED at **ARUSHA** this 17th day of January, 2024.



N.R. Mwaseba
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JUDGE