

IN THE HIGH COURT OF ZANZIBAR
HOLDEN AT TUNGUU
MISC CIVIL APPLICATION NO. 100 OF 2023
(ARISING FROM HIGH COURT CIVIL CASE NO. 02 OF 2021)

BETWEEN

TRACY KAEN VATCHER **APPLICANT**

V.

GEORGE ATHANAS NGATUGA **RESPONDENT**

RULING

Dated: 27th March, 2024

S. HASSAN (J)

The Applicant herein has filed his Chamber Application supported by Affidavit seeking for extension of time to apply for Review of the proceedings, ruling and Drawn Order of the High Court in the execution of the Decree in the High Court Civil Case No. 02 of 2021 dated 27th October, 2022.

During the hearing of this Application, the applicant was represented by Learned Advocate, Mr Isshaq Shariff while the respondent was represented by Learned Advocate Ms Mwanaidi Abdallah.

On the 18th March, 2024 when this Matter was called for hearing, Ms Mwanaidi raised a legal concern that this court has no jurisdiction (the court is *functus officio*) to hear and determine this matter because the matter was already disposed off by the High court under the hands of ***Hon. Rabia Mohamed Hussein (J)*** and that the parties reached out of court settlement on the 17 August, 2021 which was registered as the Decree of the court on 31st August, 2021 in terms of **Order XXVII Rule 3 of the Civil Procedure Decree Cap 8** of the Laws of Zanzibar. Ms. Mwanaidi further stated that,

the matter was under execution of the Decree hence this court cannot determine this matter.

On the other side, Advocate Isshaq for the Applicant did not object the legal concern raised by Ms Mwanaidi and stated that it is true that the matter was determined by way of out of court settlement deed and the matter is under execution of the Court Decree. Mr Isshaq further submitted that, the Settlement out of Court is un appealable hence he left this matter in the hands of the court to determine the legal concern raised by the respondent.

Having heard the parties and after going through the proceedings of this matter, I have indeed discovered that, the parties reached out of court settlement on the 17th August, 2021 which was registered as the Decree of the court on 31st August, 2021 in terms of Order XXVII Rule 3 of the Civil Procedure Decree Cap 8 of the Laws of Zanzibar.

Furthermore, the records of the court also shows that, *the Decree Holder George Athanas Ngatunga (respondent herein)* filed application for the execution of decree which was determined by Hon Hussein M Hussein Deputy Registrar on the 27th October, 2022.

In determine the Legal concern raised, this court will first satisfy itself whether it is functus officio as submitted or not. The phrase **functus officio** means that, having discharged its duty and thus ceased to have any authority over the matter. The **Black Law's Dictionary 8th Edition at page 696** defines functus officio to mean a task performed.

In the case of **School Trustees of Washington City Administrative Unit v. Benner, 222 N.C 566, 24 S.E. 2d 269, 263** quoted in the Black Law's Dictionary 8th Edition at page 696 the phrase functus officio was defined as follows:

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

Given the above definition the issue to this court is whether the matter has reached the execution stage as raised by Ms Mwanaidi or not?

The records of the court as stated earlier shows that, after the Decree of the court on 31st August, 2021 in terms of **Order XXVII Rule 3 of the Civil Procedure Decree Cap 8** of the Laws of Zanzibar, the Decree Holder applied for the execution of the Decree before Hon Hussein, Deputy Registrar and the application for execution was granted on the 27th October, 2022 as per the Ruling of the court. Hence the matter has been fulfilled. If the applicant was aggrieved by such ruling he should have filed application of **stay of execution under Order XXIV Rule 22 of the Civil Procedure Decree Cap 8** of the Laws of Zanzibar and not this present application for Review of the proceedings, ruling and drawn order.

It is settle principle of law that, a court cannot be functus officio unless it has made a decision and communicated its decision to the parties. In the case of **Kumundu v. R [1973] EA 540**, the EA Court of Appeal held that:

“ a court becomes functus officio when it disposes of a case by a verdict of guilty or passing sentence or making some other orders which finally disposing of the case”

This matter as records of the court has shown it was disposed of and its decision was dully communicated to the parties, by *Hon Rabia (J)* and *Hon. Hussein (DR)*, therefore this court has met the threshold of being functus officio as stated in the above cited case authority.

In the up short, this court is of the view that the legal concern raised by Ms. Mwanaidi that, this court is functus officio is very much valid and ought to be allowed, subsequently the legal concern is allowed and this application is hereby dismissed for the reasons herein explained.



S. HASSAN (J)

It is so Ordered.

Dated: 27th March, 2023.