IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

MISC. CRIMINAL REVISION NO. 97 OF 2014

(ORIGINAL CRIMINAL CASE NO. 3 OF 2003 ON THE DISTRICT COURT OF MEATU DISTRICT AT MEATU)

FALA S/O MBOJE.....APPELLANT

(Original Accused)

VERSUS

KIJA D/O MANGE.....RESPONDENT

(Original Prosecutor)

RULING

RUMANYIKA, J.

Fala Mboje (the Applicant) applies under S. 372 of the Criminal Procedure Act Cap. 20 R.E. 2002 (the Act) for this court to revise decision of Meatu District Court of even date. Original Criminal Case No. 133 of 2002.

The contents of material affidavit wholily adopted by the Applicant at the hearing will witness that the moment he was

convicted and sentenced on 12.12.2013, the Applicant expressed intention of appeal and as usual, he asked for copy of the impugned judgment. Nothing came out. Irrespective of several and repeated requests. Like disappointed, that he decided to apply for revision instead.

I never had the Respondent in court. His reaction or at all. Because under the law, non appearances of the parties in court notwithstanding revisional proceedings were possible (S.374 of the Criminal Procedure Act Cap.20 R.E. 2002). But what is more, the Respondents' inpute was immaterial. Given nature of the Applicants' complaint.

The central issue is whether failure by court to supply copy of judgment and or records for appeal purposes is a good cause for pursuing revisional proceedings as alternative to appeal process. I will answer it in the negative.

It is trite law that revision is no appeal in disguise. None of the two is substitute of each other. It is only where one is blocked, like it seems to have happened here (if at all) –Denial of copy of

the judgment to be appealed against. But there is nothing before me at the now time that I can revise. I understand that at times, courts may only rely on complainants of any person. Equally so I understand that parties in criminal cases are not obliged to prepare and even keep court records. Only the courts are. Nevertheless it is incumbent upon whoever seeks court's intervention to show that despite demands for, the material records persistently miss. And such serious allegations need be deponed also in the affidavit of the respective registry supporting the application. Provided that whenever records are not proven as having been destroyed or otherwise not retrievable it will be not prudent for the court to order a trial, but as last resort. Short of which it tantamounting to short circuiting justice.

May I say a word in passing. J just do not think that the Applicant intends that the judgment in issue be quashed and him be set at liberty for want of the lower court's records. Unless the circumstances otherwise but exceptionally dictates, which is not the case here, I will decline to risk suffocation of justice. As allowing it to prevail, not only it will open Pandora's box but also, the

possibility of few ill intent court users subbortaging court registries and record tracking systems would not be ruled out. Parties should before coming to court do so not only properly, but also ask for proper reliefs at right time.

All said, and as the order calling for records is still inforce, the purported application suffers the consequences. By this ruling, the Registrar of this court is compelled to follow up the records very closely and more seriously. As it is not clear to me if "calling for records" ever issued (if at all) several times and repeatedly was ever executed. Leave alone the said letters and reminders by the Applicant to the DRMi/c. Upon the lower courts now being traced, the same be brought to me together with this file immediately. The purported application is on that basis dismissed.

Right of Appeal explained.

S.M. RUMANYIKA

JUDGE

12/02/2015

Delivered under my hand and seal of the court in chambers. This 16/02/2015 in the presence of..

S. M. RUMANYIKA

JUDGE

16/02/2015