

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

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 207 OF 2016

SEBIUS HAULE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

I. ARUFANI, J.

The applicant Sebius Haule filed in this court an application under Section 25 (1) (b) of the Magistrate's Court Act, Cap 11 RE 2002 and Section 361 (2) of the Criminal Procedure Act Cap 20 RE 2002. The application is supported by an affidavit sworn by the applicant himself.

When the application come for hearing the applicant appear in court in person and told the court is praying the court to grant him leave to appeal to this court out of time against the decision of the District Court of Kilombero at Ifakara made in Criminal Appeal No. 33 of 2007.

In response to the prayer of the applicant Miss. Recho Magombo learned State Attorney who represented the Republic who was made respondent in this matter told the court that, after going through the application of the applicant they have discovered the affidavit of the applicant filed in this court to support the application is defective

because the Commissioner for Oaths who administered the oath of the applicant did not state in the Jurat of attestation if he knew the applicant personally or the applicant was introduced to him by any other person who is known to him personally.

The learned State Attorney told the court that, if that defect does not render the affidavit defective and the application incompetent they have no dispute or objection for the application to be granted. In his rejoinder the applicant had nothing more to add than praying the application to be granted.

After considering the prayer of the applicant and the argument raised by the learned State Attorney in relation to the defect appearing in the jurat of attestation of the applicant, the court has gone through the affidavit of the applicant and find as rightly argued by the learned State Attorney the jurat of the affidavit of the applicant filed in this court to support the application is not showing if the Commissioner for Oaths who administered the oath of the applicant knew the applicant personally or he was introduced to him by another person who is known to him personally.

Apart from that defect the court has also found the application is made under wrong provision of the law because is made under section 25 (1) (b) of the Magistrate Act Cap 11 RE 2002 and section 361 (2) of the Criminal Procedure Act Cap 20 RE 2002 while the appeal intended to be filed in this court if the

application for extension of time will be granted is originating from criminal cases determined by the Primary Court of Mlimba at Kilombero.

The court has arrived to the above finding after seeing section 361 (2) of the Criminal Procedure Act and the whole Criminal Procedure Act is not applicable in the criminal matters originating from Primary Court. Again though the magistrates Court Act is the relevant law governing appeals originating from Primary Courts but section 25 (1) (b) is not the correct provision of the law for seeking extension of time to appeal in criminal matter as the relevant provision for seeking extension of time in criminal matters originating from the Primary Courts is section 25 (1) (a) of the Magistrate Court Act.

The said provision of the law states as follows;-

“25 (1) Save as here in after provided;

(a) In proceedings of a Criminal nature, any person convicted of an offence or, in any case where a District Court confirms the acquittal of any person by a Primary Court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecution or

(b) In any other proceedings any party,

If aggrieved by the decision or order of a District Court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court, and the High Court may extended the time for filing an appeal either before or after such period of thirty days has expired”

The wordings of the above provision of the law shows clearly that, Section 25 (1) (a) of the above law is the one governing appeals or revision in the criminal matters which originates from Primary Courts and section 25 (1) (b) of the same law is governing other matters which are not criminal matters.

The consequences of making an application under wrong provision of the law has been stated by this court and our Court of Appeal that it renders the application incompetent. One of the said case is the case of **Lugano S. Kalomba & 22 others V. Permanent Secretary, Ministry of Education and vocational Training & Another**, Civil Appeal No. 78 of 2008 where the Court of Appeal stated that:-

“We think that the law is now settled that where a wrong provision of the law is cited or where one exists and is not cited in support of an application, a court before which the application is placed cannot be said to have

been properly moved, and so such a matter is said to be incompetent and so liable to be struck out.”

In the light of the position of the law stated in the above referred case and basin on the defects pointed hereinabove that are featuring in the application of the applicant the court has found it cannot hold otherwise than holding the application is incompetent for being preferred under the wrong provision of the law. In the upshot the application is hereby struck out for being incompetent. It is so ordered.



I. ARUFANI
JUDGE
23/4/2018

23/4/2018

Coram: Hon. Arufani, J

For the Applicant: Present in person

For the Respondent: Miss. Sabrina Joshi, SA

CC. Tuvana

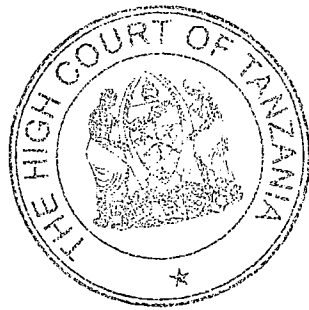
Miss. Sabrina Joshi SA:

My Lord we are ready for ruling if it is ready.

Appellant

I am also ready.

Court: Ruling delivered today 23rd day of April, 2018 in the presence of the applicant in person and in the presence of Miss Sabrina Joshi SA. Right of appeal is fully explained.



I. Arufani
I. ARUFANI
JUDGE
23/4/2018

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO 216 OF 2017

EMMANUEL WILSON.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

PROCEEDINGS

16/04/2018

Coram: Hon. Arufani J.

For the Applicant: Present in person

For the Respondent: Miss. Jenifar Masue SA

CC. Tuvana

Miss. Jenifar Masue SA

The matter is coming for hearing. We are ready for hearing

Applicant:

I am also ready for hearing.

Miss. Jenifar Masue SA

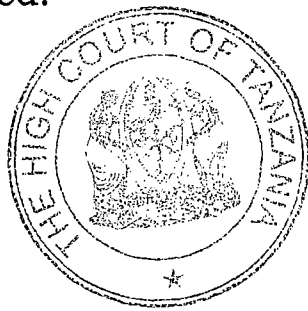
My Lord before going to the merit of the application we have noted the court has not been moved properly because the application has been made under wrong provision of the law. The application has been preferred under section 14 (1) of the law of limitation. Act Cap 89 RE 2002 instead of section 361 (2) of the Criminal Procedure Act Cap 20 RE 2002. In the premises I pray the application to be struck

out and the applicant be directed to bring his application under the correct provision of the law. That is all.

Applicant.

I concede to what has been stated by the Learned State Attorney and I pray to be allowed to refile my application under the correct provision of the law. That is all.

Court: As the applicant has conceded the application is made under wrong provision of the law, the application is hereby struck out for being incompetent as is preferred under wrong provision of the law. It is so ordered.



I. Arufani
I. ARUFANI
JUDGE
16/04/2018

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

AT DAR ES SALAAM

CRIMINAL APPEAL CASE NO 116 OF 2015

CHAMBUSO S/O JUMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

PROCEEDINGS

16/04/2018

Coram: Hon. Arufani J.

For the Appellant: Present in person

For the Respondent: Miss. Jenifar Masue SA

CC. Tuvana

Miss. Jenifar Masue SA

We have been served with only copy of judgment. I pray to be served with the copy of proceedings and another date while awaiting to be served.

Appellant:

I have been waiting for the lower court's record for long time I pray the court to assist me.

Court: The appellant notified the court has already received the lower court's record and discovered he had filed another appeal in

this court which was Criminal Appeal NO 157 of 2006 and determined by Hon Nyerere, J on 7/8/2008. After being notified what he was supposed to do is to appeal to the Court of Appeal if he was not satisfied by the said decision he has stated as follows:-

Appellant:

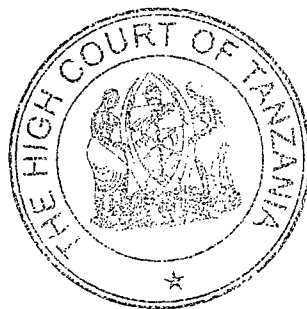
I pray to be given the copy of the said Judgment so that I can file my notice of appeal to the Court Appeal and start the process of appealing to the Court of Appeal.

Miss. Jenifar Masue SA

As the appellant's appeal has already been heard by this court I pray the instant appeal be struck out so that the appellant can take his appeal to the court with competent jurisdiction to entertain the same. That is all.

Court: After finding the appellant had filed another appeal in this court which was Criminal Appeal No 157 of 2006 and the same was heard and dismissed by Hon. Nyerere, J on 7/8/2008 the court has found the act of the appellant to file another appeal in this court which is the instant appeal is an abuse of court process.

In the premises this appeal of the appellant which is Criminal Appeal No. 116 of 2015 is hereby struck out for being incompetently before the court. It is so ordered.



I. Arufani
I. ARUFANI
JUDGE
16/04/2018