

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
MISC. CRIMINAL REVISION NO. 21 OF 2017

(Originating from the Criminal Case No. 814 of 2011 in the
District Court of Morogoro at Morogoro)

ENDREW ANDREA MTEGETA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last order: 07/10/2019

Date of Ruling 11/10/2019

NGWALA, J.

In this case, the applicant who is a convict was sentenced to thirty (30) years imprisonment on 5th day of April 2012, after being charged and tried of the offence of unnatural offence contrary to Section 130 of the Penal code [Cap. 16 Vol. I of the Laws, R.E., 2002].

In support of the Application for Revision, made under section 372 of the Criminal Procedure Act [Cap. 20. R. E. 2002) read together with section 43 (1) of the Magistrate's

Act [Cap. 11 R. E. 2002], the applicant deponed an affidavit that is unopposed by the Republic. The Applicant is saying that he has filed this Application because all his efforts to get the copies of Proceedings and Judgment of the trial court of Morogoro District Court, since the 5th April 2012; when he was convicted have been in vain. Despite the Notice of Intention to Appeal which was acknowledged to have been received by the District court of Morogoro in time, and another fresh Notice of Intention to Appeal, pursuant to the Order of the High court (T) by Hon. Mkasimongwa, J. dated 3rd May 2016 in Cr. Application No. 97 of 2015 that was lodged in this court and the said District Court in May 2016, have also not yielded any fruit.

The said ground for revision as deponed in the Applicant's Affidavit, seems to be true. This is so because, it was not until 23rd September 2019, when the original record of the trial court that contained the typed copies of the proceedings and Judgment were availed to this court for purposes of this Revision.

When this matter came up for hearing, the applicant informed the court that, he was no longer proceeding with this Application because he had lodged an Appeal in this

court after being supplied with the copies of judgment and proceedings of the trial court on 12th September 2019. That prayer to withdraw this Application was not contested by Miss Doroth Massawe the learned Senior State Attorney for the Republic.

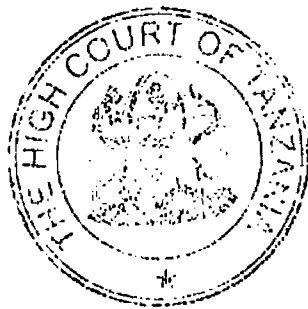
I am also in agreement with his prayer, because in my considered view, this court is precluded to exercise its revisional powers where there is an appeal. In the present case, as the appellant has appealed, (vide Criminal Appeal No 261 of 2019), this court is forbidden to entertain this Application to exercise its Revisional jurisdiction in terms of Section 372 of the Criminal Procedure Act (Cap. 20 R.E. 2002). The revisional Power to call for and examine the record of any Criminal Proceeding before any subordinate court to check the correctness, legality or propriety of any finding, sentence or order in the proceedings passed by the subordinate court is vested upon the High Court and not for a party or his advocate who has appealed or not appealed against the findings, sentence and or Order of the trial subordinate court.

I hold so, because, where there is a Right of Appeal against any finding sentence or order in the Criminal Cases, (as in

the present case), revisional proceedings should not be entertained unless provided for by the Code of Criminal Procedure, that is, the Criminal Procedure Act, [Cap. 20 R.E. 2002].

In other words, Revision becomes the only remedy where there is no room for an appeal. A party aggrieved, by a decision of a subordinate court cannot file a Revision in lieu of an appeal where the Constitutional Right of Appeal has been provided in the relevant statute.

It is for the said reason, this application for Revision is struck out.



A handwritten signature in black ink, appearing to read "A.F. Ngwala".

A.F. Ngwala

JUDGE

11/10/2019