

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

**MISC. CRIMINAL APPLICATION NO 202 OF 2019
(ORIGINAL CRIMINAL CASE NO. 167 OF 2015 IN THE DISTRICT
COURT OF ILALA AT SAMORA)**

**ISSA FEISAL..... APPLICANT
VERSUS
THE REPUBLIC RESPONDENT**

RULING

11th December, 2019 & 19th December, 2019

KISANYA, J

The applicant one Issa Feisal seeks leave to file notice of intention to appeal out of time. This application is traced from Criminal Case No. 167 of 2015 filed in District Court of Ilala at Samora where the applicant was convicted with offence of armed robbery. Upon conviction, he was sentenced to serve 30 years imprisonment.

Facts leading to this application are extracted from the affidavit in support of the application. It is averred that the applicant filed before this Court (Miscl. Criminal Application No. 41 of 2019) which was refused on

15th March 2019. He stated further that this application has been filed because his efforts of tracing the notice of appeal to prison authorities and the District Court of Ilala have failed.

When this application was called for hearing on 11th December, 2019, the applicant appeared in person and unrepresented. Respondent/Republic was represented by Mr. Adolph Kisima, learned State Attorney. The Applicant submitted that he filed the notice of appeal in time only that he did not receive any update thereafter. He urged me to call for record of original criminal case for him to know whether his notice of appeal was filed in time.

Mr. Adolph Kisima, learned State Attorney resisted the application. He argued that similar application filed by the applicant^{nt} in this Court was ~~determined~~ and refused by this Court (Hon. Galeba J). He therefore submitted that the present application be dismissed.

In his rejoinder, the Applicant was of the view that the application is lawful. He conceded to file similar application which was refused by this Court. However, he argued that he has filed this application upon failing to procure the filed notice of appeal as advised by this Court.

From the foregoing, the issue for determination before considering the application on merits is whether this application was determined by this Court. If the answer is in affirmative, whether this Court has jurisdiction to entertain it.

Starting with the first issue, the fact that application for extension of time to file notice of appeal was determined by this court is not disputed by the Applicant. Indeed, it was pleaded in paragraphs 4, 5, and 6 of the Affidavit in support of the application which read:

“4. That ever since I filed a Notice of appeal I have never got back a certified copy to acknowledge its receivership.

5. That after I lost hope of being transmitted with the said copy, I filed an application title Misc, criminal Application No. 41 of 2019 seeking the High Court to grant me leave to refile a notice of appeal out of time.

6. The Application was presided over by Hon Z.N. GALEBA Judge an (sic) 15th March, 2019, Where the prayer was refused and Court advised that I should engage the prison authorities and the District Court of Ilala administratively to facilitate procurement of the Notice of Appeal.....”


I have also read the typed proceedings of Misc, criminal Application No. 41 of 2019 which was attached to the affidavit in support of the application. Just as in the present application, the applicant confirmed to the court that “he actually filed the application in time only that he has not

received his copy". He also prayed for the Court to order the District of Ilala to bring records of case for the Hon. Judge "to see whether his notice appeal filed in 2016 is there or not." After hearing the parties, the Court ordered as follows:

"(i) The Application for extension of time within which to file a notice of appeal is refused.

(ii) the applicant is advised to engage the prison where he is held and District Court of Ilala to assist in procurement of the documents or records he needs from the trial court. This need to be done administratively for now.

Order accordingly."

In the present application, the applicant states in paragraphs 3 and 4 and his submissions before this Court that he filed notice appeal in time and  that he never received a certified copy to acknowledge receipt. Also, in his oral submissions he requested this Court to call for records of the trial court and find out whether his notice of appeal is in the file.

In the light of the above, I am convinced that these facts and submissions were also stated in Misc. Criminal Application No. 41 of 2019 and refused by this Court on 13th March, 2019. The applicant was advised

to make follow up of the whereabouts of his notice of appeal administratively. Therefore, the first issue is answered in affirmative. The application in the matter at hand and that of call for record of the trial court have been determined by this Court.


This brings me to the second issue whether this Court has jurisdiction to determine the present application. It is a trite law as held in the case of **Bernhardard Mbaruku Titi and Kanji Muhando Mwinyijuma vs Republic**, Misc Economic Cause No. 8 of 2018, Corruption and Economic Crimes Division (Unreported), a court becomes *functus officio* when it makes order which finally dispose the case. In the case of **Angumbike Kamwambe vs Republic, Criminal Appeal No. 10 of 2015**, Criminal Application No. 10 of 2015, CAT at Mbeya (unreported), the applicant's application to file notice of appeal out of time was dismissed by the High Court on the ground that the matter was determined by the same Court in a similar application. The Court of Appeal held that the High Court was *functus officio* and barred from entertaining and determining the second application on the same subject matter and between the same parties.

Therefore, in the circumstance where the application for extension of time within which to file notice of appeal out time in the matter at hand is similar to the application determined by this Court (Hon. Galeba J.) in Misc.

Criminal Application No. 41 of 2019, I find that this Court is *factus officio* to deal with the present application. For that reason, I accordingly struck out this application for being incompetent before this Court.

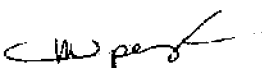
Order accordingly.

Dated at Dar es Salaam this 19th day of December, 2019.


E. S. Kisanya
JUDGE

Ruling delivered this 19th December, 2019 in the presence of the applicant in person and Adolph Kisima, learned State Attorney for the Republic Respondent.




E. S. Kisanya
JUDGE
19/12/2019