

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

**CRIMINAL APPEAL NO. 234 OF 2019**

*(Originating from Criminal Case No. 134 of 2013, District Court of  
Ulanga at Mahenge dated 25<sup>th</sup> April, 2014 before Hon. E.Y WILSON-RM)*

**IGNAS S/O LYOMBO ..... APPELLANT**

*VERSUS*

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*18<sup>th</sup> May 2020.*

**E. E. KAKOLAKI J**

Before me is an appeal by the appellant from the decision of the District Court of Ulanga in Criminal Case No. 134 of 2013. Indicted before the court the appellant was facing a charge of Robbery with violence contrary to section 285 of the Penal Code, [Cap. 16 R.E 2002] and consequently convicted and sentenced to 15 years jail.

The appellant being discontented with the decision of the trial court filed an appeal before this court in Criminal Appeal No. 102 of 2014 which was heard and determined by Hon. Kitusi J (as he then was). This court found his appeal unmeritorious and proceeded to dismiss it on the

03/06/2016. In 2019 while knowing that his appeal was dismissed and instead of appealing to the Court of Appeal the appellant in a rogue style and craft mode without disclosing the fact on dismissal of his appeal returned to this court through Misc. Criminal Application No. 168 of 2019. This was an application for leave to file the Notice of Appeal out of time. Surprisingly before Hon. B. Mutungi J giving reasons for his delay to file the Notice of Appeal the appellant averred through his sworn affidavit in support of the application that he filed his appeal in this court before Hon. Kitusi J only to realize the same was incompetent for being premised on Notice which was out of time. That the appeal was consequently struck out. As the said application was not objected by the Respondent (Republic) this court granted it and gave the applicant 21 days to file the notice of appeal. It is from that notice this appeal has been preferred.

When the appeal came for hearing this 18/05/2020 the court wanted to hear the applicant's story as well as the respondent's side which was represented by Mr. Adolf Kisima learned State Attorney on what happened that he re-appealed. It is the appellant's story that he once appealed in this court against the decision of District Court of Ulanga in Criminal Case No. 134 of 2013 through Criminal Appeal No. 102 of 2014. That the said appeal was struck out by Hon. Kitusi J (as he then was) for want of notice as the notice of appeal was out of time. When asked as to whether he was present when the judgment was entered on 03/06/2016, the appellant conceded but quickly defended himself that he did not understand its contents properly. On his side Mr. Kisima for the respondent having heard the reasons advanced by the appellant noted that the appeal is incompetent and asked the court to strike it out.

Having heard from both parties and having perused the available records in Criminal Appeal No. 102 of 2014, there is no dispute that this appeal was heard by this court and determined on merit on the 3/06/2016 before Hon. Kitusi J (as he then was). It is only that the records on the disposed appeal could not easily be traced and referred by this court when determining Misc. Criminal Application No. 168 of 2019 where the application for extension of time to appeal was granted. I am therefore of the firm view that this court is *functus officio* in as far as this appeal is concerned as the matter was heard and judgment pronounced by this court before Hon. Kitusi J (as he then was). I cannot therefore entertain it. This position finds support in the case of **Mohamed Enterprises (T) Limited Versus Masoud Mohamed Nasser**, Civil Application No. 33 of 12 when had this to say:

*"Once judgment and decree are issued by a given court, judges (magistrates) of that court become "functus officio" in so far as the matter is concerned."*

This court being *fuctus officio* and being bound by the decision of the Court of Appeal cited above any attempt to entertain this appeal will be going against that rule of practice.

Having so found I wish also to comment on the appellant's conduct of telling blatant lies before the court through his affidavit duly presented in court and acted upon to grant him extension of time within which to file notice of appeal out of time against the decision in Criminal case No. 134 of 2013 in the District Court of Ulanga at Mahenge. While knowing that his appeal was heard on merit and dismissed by this court told lies in that the same was struck out for want of notice. I believe the

Republic will not let this uncalled for appellant's conduct pass undetected.

In the circumstances and for the foregoing reasons I would find that this appeal is incompetent and is hereby struck out.

It is so ordered.

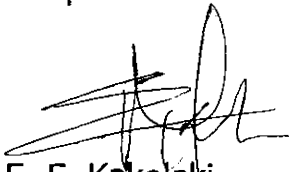
DATED at DAR ES SALAAM this 18<sup>th</sup> day of May, 2020.

  
E.E. KAKOLAKI

**JUDGE**

18/05/2020

Delivered at Dar es Salaam today on 18<sup>th</sup> day of May, 2020 in the presence of the Applicant from Ukonga Central Prison through video conference necessitated by Covid19 pandemic and **Mr. Adolf Kisima** learned State Attorney for the respondent.

  
E. E. Kakolaki

**JUDGE**

18/03/2020