

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF MBEYA

AT MBEYA

CRIMINAL APPLICATION NO. 152 OF 2020

(From District Court of Mbeya Resident Magistrate's Court, Criminal Case No.177/2018)

HURUMA S/O ALON @BABA FADHILI..... APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date of Ruling: 14.12.2020

A. MAMBI, J

This Ruling emanates from an application made by the applicant **(HURUMA S/O ALON @BABA FADHILI)** challenging the decision of Trial Court of Mbeya. In the Resident Magistrate's Court, the applicant was found guilty. He was convicted of offence (rape) as charged and sentenced to thirty years imprisonment. Aggrieved, the applicant filed an application for extension of time to file an appeal out of time to this court challenging the decision of the trial court.

During hearing, the respondent was represented by the learned State Attorney Mr. Kihaka while the applicant appeared unrepresented.

During hearing online through virtual court, the Republic through the learned State Attorney Mr. Kihaka raised an objection that this court has not been properly moved since the application has been filed under non- existed law. He submitted that before addressing to the grounds of application, he has observed some irregularities on the notice of application. He argued that the applicant filed his application under dead law. He argued that the applicant filed his application under law that is the revised edition of 2002 while that law has been repealed by new edition that is revised edition of 2019. The learned State Attorney further submitted that the application is incompetent since it was filled under the law that was repealed.

In response, the applicant briefly stated that he was not aware of the new law and he pray leave to refile his application.

I have keenly gone through and considered the observation and objection raised by the respondent and submissions from both parties. I have also gone through an application filed by the applicant in line with relevant laws and case studies. In my considered the main issue for determination is whether this application is incompetent for noncompliance of the provisions of the law.

After I had scanned the impugned application, it became clear to me that the applicant has filled his application under dead law. As correctly submitted by the learned State Attorney, it appears the applicant filed his application under the edition of the law that has been repealed. The proper citation of the law is the new revised edition that is the Criminal Procedure Act Cap 20 [R.E.2019]. It is on

edition that is the Criminal Procedure Act Cap 20 [R.E.2019]. It is on the records that the applicant filed his application under section 361 of Cap 20 [R.E.2002] instead of section 361 of the Criminal Act Cap 20 [R.E.2019]. In this regard it is clear that the applicant filed his application under the non-existed law.

In my considered view, since the applicant did not comply with the mandatory requirements of the law, it is as good as saying there is no application at this court. I wish to refer the decision of the court in **Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005** (unreported) where it was held that:

“in situation where the application proceeds to a hearing on merit and in such hearing the application is found to be not only incompetent but also lacking in merit, it must be dismissed. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

Reference can also be made to the decision of the court of Appeal of Tanzania in **the Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

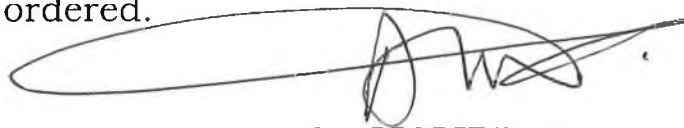
“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no

jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

I understand that the applicant and others who are in the prison might be aware of the new revised edition of the law but the ignorance of law is not a defence. Indeed to avoid more similar application and to avoid more delay I find it proper this court to give directives to others so that they can comply with the new revised edition of the law.

I am thus of the view that on account of the same defects there is no valid application before this court. From the foregoing brief discussion, I am of the settled mind that a defective and/or invalid application cannot proceed before this court.

In the circumstance, since the applicant's application was invalid, it could not have founded a proper application before this court. For reasons I have given above, I am of the settled view that since the application before me is incompetent, what then follows is to strike it and I hereby struck out this application for being incompetent. I feel it is requisite however, to advise the applicant that if he wishes to further pursue his right to appeal by filling an application for extension of time, he is at liberty to re-file his application within 21 days. It is so ordered.

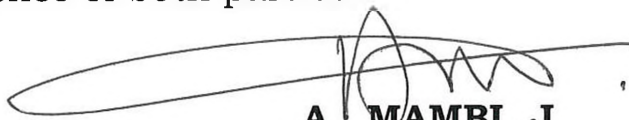
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A. MAMBI, J

JUDGE

14.12. 2020

Ruling delivered online through virtual court this 14th of December, 2020 in presence of both parties.

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A. MAMBI, J

JUDGE

14.12. 2020

Right of appeal explained.

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A. MAMBI, J

JUDGE

14.12. 2020