

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

HC. CRIMINAL REVISION No. 03 OF 2021

(Originating from Criminal Case No. 229 of 2019 and Criminal Case No 261 of 2021 of the District Court of Ngudu at Kwimba)

**JOSEPH S/O THOMAS @ BENJAMIN -----APPLICANT
VERSUS
THE REPUBLIC----- RESPONDENT**

RULING

Last Order: 11.07.2022

Ruling Date: 18.07.2022

M. MNYUKWA, J

The applicant in this application, one Joseph s/o Thomas @ Benjamin, was charged and convicted with the offence of cattle theft contrary to section 268 of the Penal Code, Cap 16 R.E 2019 in Criminal Case No. 229 of 2019 and Criminal Case No. 261 of 2019 whereby he was sentenced to five years imprisonment for each case.



The applicant brought the present application by filing chamber summons supported by an affidavit deposed by him. His application is made under section 43(1) of the Magistrates' Courts Act Cap 11 R.E 2019. In his affidavit, the applicant briefly tries to explain his dissatisfaction with the decision of the trial court in both cases. In his affidavit, the applicant advanced the grounds of his dissatisfaction in both decisions.

When the application was served to the respondent, she filed the Notice of Preliminary Objection that the application is incompetent. She also filed counter-affidavit and disputed what has been averred in paragraphs 5, 6, 7, 8, 9, 10 and 11 of the applicant's affidavit on the reason that, the proper action supposed to be taken by the applicant after being aggrieved by the decision of the trial court in both cases was to lodge an appeal and not to file an application for Revision. The applicant filed a reply to the counter affidavit but mainly reiterate what he had advanced in his affidavit.

Since there was a preliminary objection raised by the learned state attorney on behalf of the Republic, and for the practice of the court, once there is a preliminary objection, the same need to be disposed first before hearing of the main case or an application.



Going by that practice, the matter was scheduled for hearing of the preliminary objection. During the hearing of the preliminary objection, the applicant appeared in person, unrepresented, while the respondent was represented by the learned state attorney, Ms. Sabina Choghogwe.

Submitting first, the learned state attorney on behalf of the Republic briefly stated that, the application before this court is incompetent because in his affidavit the applicant advanced the grounds of appeal while in this court, he filed an application for Revision. She went on that, it is a settled position of the law that when there is room for appeal, an aggrieved person is required to file an Appeal and not a Revision.

She went on to support her averment by referring to the case of **Felix Lendita v Michael Long'idu**, Civil Application No 312 of 2017, where the Court of Appeal held that, where there is a right of appeal, the revisional power of the Court cannot be invoked. She also refers to section 359(1) of the Criminal Procedure Act, Cap 20 R.E 2019 which states that, any person aggrieved by the decision of the subordinate court, the proper action is to appeal to the High Court.



In responding to the respondent's submission, the applicant had nothing useful to submit as he did not object to the respondent's submission and left the court to decide.

After the respondent's submission, this court is faced with one issue as to whether this application is competent before it. In answering this issue, I would like to remind myself of the provision of section 359 (1) of the Criminal Procedure Act, Cap 20 R.E 2019 as cited by the learned state attorney, The section provides that:-

" Save as hereinafter provided, any person aggrieved by any finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended power by virtue of an order made under section 173 of this Act, may appeal to the High Court and the subordinate court at the time when such finding, sentence or order is made or passed, inform that person of the period of time within which if he wishes to appeal, is required to give a notice of his intention to appeal and to lodge his petition of appeal."

To my understanding, the above section is very clear that the remedy for any person aggrieved by the findings, sentence or order of the



subordinate court, is to appeal to the High Court. Upon going through the applicant's affidavit, I agree with the learned state attorney that what is contained in the applicant's affidavit are the grounds of appeal, yet, the applicant filed the Revision application.

As it was rightly submitted by the learned state attorney, the application for Revision cannot be used as an alternative to appeal. It is a trite position of the law that when there is a right of appeal the revisional power cannot be invoked unless there are exceptional circumstances of filing revision instead of the appeal. In other words, the application for Revision can be properly filed before this court when a person does not have a right to file an appeal. In the case of **Dickson Rubingwa v Paulo Lazaro**, Civil Application No 1 of 2018, the Court of Appeal stated that:

"If there is a right of appeal, then that has to be pursued and except for sufficient reason amounting to exceptional circumstances, there cannot be a resort to the revisional jurisdiction of this Court."

Guided by the above section of the law and the cited case in the decision of the Court of Appeal, I find no justifiable reason for the failure of



the applicant to follow the requirement of the above section of filing of an Appeal instead of the Revision.

In the final result, I agree with the learned state attorney that the application is incompetent before this court as section 359(1) of the Criminal Procedure Act, Cap. 20 R.E 2019 provides clearly what should be done if the person is aggrieved by the decision of the subordinate court.


In the upshot, the application is hereby struck out.

It is so ordered.




M. MNYUKWA
JUDGE
18/07/2022

Court: Ruling delivered in the presence of the applicant in person and in the presence of the respondent's counsel.


M. MNYUKWA
JUDGE
18/07/2022