

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**CRIMINAL APPLICATION NO. 17 OF 2023**

**MANDE KIRUMA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Date: 6/7/2023

**BARTHY, J.**

The applicant in this case moved this court by way of chamber summons moved this court with the following orders;

- 1. That this honourable court be pleased to extend time of filing my petition of appeal (out of time) in the high court of the united republic of Tanzania.*
- 2. That, this honourable court be pleased to many other relief(s) as it deems fit and just to grant.*

The application was supported by the affidavit of the applicant advancing reasons for consideration of this court in granting his application.

On the date fixed for hearing, this court learned that the applicant had also filed the notice of motion to the Court of Appeal to challenge the decision of this court on Criminal Appeal No. 10 of 2022 which was struck out by this court for being filed out of time.

Together with the notice of motion being filed, the applicant also filed to this court an application seeking for extension of time to file his appeal out of time.

This court therefore invited the parties to address this court on the propriety of the applicant pursuing two remedies in different courts.

At the hearing before the court, the applicant appeared in person and the respondent was represented by Ms. Leah Viosena the learned state attorney.

When the applicant was invited to address this court on the issue raised by this court, he informed this court that it is true that he had filed his notice motion to the Court of Appeal. However, he pleaded this court to also determine this application.

On the respondent's side, Ms. Viosena argued that, the applicant cannot pursue two remedies which will be co-existing before different

court. She was firm that the applicant needs to choose which remedy to pursue.

She went on stating that the applicant should withdraw the present application to allow proceed with the other matter before the Court of Appeal.

Having heard the arguments of both sides, with respect to this matter, it is clear that the applicant has intended to challenge the decision of this court to the Court of Appeal after his appeal being struck out for being filed out of time. At the same time, he preferred the application for extension of time to file his appeal out of time.

The fact that the applicant had sought to challenge the decision of this court to the Court of Appeal, then this court ceases to have jurisdiction.

This has been decided in a number of times that, the high court ceases to have jurisdiction once a notice of appeal has been filed. This was held in the case of **Tanzania Electric Supplied Limited v. Dowans Holdings SA (Costa Rica) and another**, Civil Application No. 142 of 2014, Court of Appeal of Tanzania at Dar es salaam (unreported). The same issue was resolved by this court in the case of **D.P.P v. Jerry Muro and 2 others**, Criminal Appeal No. 112 of 2012.

At this juncture, since the notice of appeal constitute the criminal appeal being properly filed before the court of appeal, then this court ceases to have the jurisdiction to entertain the matter; the only remedy therefore is to struck out the application for being incompetent before this court.

It is so ordered.

**Dated at Babati** this 6<sup>th</sup> date of July, 2023



A handwritten signature in blue ink, which appears to read "G. N. Barthy", is written over a horizontal line.

**G. N. BARTHY,**

**JUDGE**

Delivered virtually by the trial judge in the presence of the applicant in person and Mr. Esther Viosena learned state attorney for the respondent present before the court.