

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

**CORRUPTION AND ECONOMIC CRIMES DIVISION**

**AT DAR ES SALAAM**

**ECONOMIC APPLICATION NO. 1 OF 2020**

(Originating from Miscellaneous Economic Cause No. 25 of 2017 in the High Court of The United Republic of Tanzania Corruption and Economic Crimes Division at Dar Es Salaam)

**ATHUMANI ABDALLAH..... APPLICANT**

**VERSUS**

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

**Date of last Order:** 17/02/2021

**Date of Ruling:** 19/02/2021

**L. L. Mashaka, J.**

**RULING**

This is an application for extension of time within which the applicant may file a notice of intention to appeal out of time in Consolidated Miscellaneous Economic Case No. 25 and 27 of 2017 the decision of Hon. F.W Matogolo, Judge dated 5<sup>th</sup> day of September 2017 and any other orders and relief that the Hon. Court deems fit for the interest of justice. It is supported by the affidavit of Athumani Abdallah, the applicant who argued the application in person. The application is opposed by Mr. Adolf Ulaya, the learned State Attorney for the Respondent who filed a counter affidavit.

On the hearing of application, the applicant stated that he filed the application for extension of time to file notice of intention to appeal out of time in Consolidated Miscellaneous Economic Case No. 25 and 27 of 2017 and prayed to the court to adopt the contents of his affidavit, rejoinder to counter affidavit and the attached documents to form part of his submission in this application.

On the part of the Respondent, Learned State Attorney submitted that, the application is res sub judice, that is the principle which prohibits the case or application to be instituted in two courts with same jurisdiction. That the applicant herein by way of chamber summons and affidavit instituted the Misc. Criminal Economic Application No. 61 of 2020 in the High Court (T) DSM District Registry with the same parties and same subject matter as it appears in this application. The Misc. Criminal Economic Application No. 61 of 2020, was heard and decided by Hon. Masabo, J on the 29/07/2020. Therefore, the applicant was required to implement the order by Hon. Masabo, J and not bring a fresh case to this court. Learned State Attorney prayed to the court to dismiss this application.

In rejoinder, the applicant submitted that, he prays to the court to direct on what he is supposed to do since he is not legal literate, has no legal aid and assistance to pursue this matter. Therefore, prayed to the court to assist on this and justice be seen to be done.

Having carefully going through the records, the documents which form part of this application and submissions for and against the application, the main issue for consideration and determination is whether or not the application before this court has been heard and determined.

In determination the issue before the court, the facts as submitted by the applicant that the he is the one of the applicants in the Miscellaneous Economic Cause No. 25 & 27 of 2017 filed in this court

whereby, they applied for bail and the same was granted by the court and the ruling was delivered on the 05<sup>th</sup> day of September, 2017 by Hon. J. Matogolo, Judge.

As gathered from the records of this application that after the said decision of the court the applicant herein was dissatisfied by the decision and wants to pursue his appeal to the Court of Appeal. However, he was time barred and as a result he filed Misc. Criminal Economic Application No. 61 of 2020 in the High Court, DSM District Registry for extension of time to file notice of appeal out of time before the High Court Dar es Salaam District registry at Dar es Salaam as submitted by the Respondent. The prayer made in Misc. Criminal Economic Application No. 61 of 2020, High Court at DSM District Registry was granted on 29<sup>th</sup> July 2020 and the applicant was supposed to file the said notice within ten days. Unfortunately. The applicant failed to comply with the order whereby he filed a notice of appeal in the Court of Appeal of Tanzania at DSM, a stamp shows it was received by the COURT OF APPEAL OF TANZANIA DSM SUB REGISTRY FILE NO. 11/8/2020 but it was not filed instead it was sent back to the applicant. Hence, it was deemed that he failed to comply with the order for filing said notice on the 11<sup>th</sup> August 2020 out of time granted of ten days by the court.

I am in agreement with the contention made by learned State Attorney that, this matter has been instituted, heard and decided before the High Court at DSM District Registry, with the same parties, same subject matter and origination on the same decision and instituted in the court of the same jurisdiction. In the case of **Esterignas Luambano**

**vs Adriano Gedam Kipalile**, Civil Appeal No. 91 of 2014, Court of Appeal at Zanzibar (unreported), the Court of Appeal underscored the principle stated in the in the case of **Kamunye and Others vs The Pioneer General Assurance Society Limited** (1971) EA 263 where it held that;

*"The test whether or not a suit is barred by res judicata seems to me to be - is the plaintiff in the second suit trying to bring before the court, in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time - **Greenhalgh Mallard**, (1947) 2 ALL ER 255. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply-**Jadva Karsan Harnam Singh Bhogal** (1953), 20 EACA 74."*

From the above principle of res judicata, it is clear the court shall not try the matter which directly or substantially in issue in a former application between the same parties under the same subject matter which heard and finally was decided by the court of competent jurisdiction. The application before this court is between **Athumani Abdallah vs Republic**, the subject matter is extension of time to file a notice of appeal to appeal to the Court of Appeal of Tanzania out of

time, originating from Misc. Economic Cause No. 25 & 27 of 2017 in the High Court of The United Republic of Tanzania Corruption and Economic Crimes Division at Dar Es Salaam, the matter was heard and decided by the court of competent jurisdiction filed as Misc. Criminal Economic Application No. 61 of 2020 in the High Court at DSM District Registry at DSM.

Therefore, the matter before this court is res judicata and not res sub judice as contended to by the learned State Attorney. This court has no jurisdiction to determine the matter which has previously determined by a competent court. The applicant was required to apply for a certificate of delay from Hon. Deputy Registrar or Registrar of the court to assist the applicant in his application. The applicant is to state the cause of delay which is late submission of the copy of order delivered on the 29/07/2020 to the applicant. The applicant received the order on the 27/08/2020 after the elapse of 10 day granted to file his notice of intention to appeal. Since the applicant has been going through the court corridors seeking for justice ever since, I direct the Hon. Deputy Registrar of this court to provide necessary assistance and contact the Tanganyika Law Society (TLS) for legal aid be provided to the applicant.

Consequently, the application before this court is hereby dismissed.



  
**L. L. Mashaka**

**JUDGE**

**19/02/2021**