

TANZANIA / JUDGMENT

Leonce

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15 April 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI MISC. CRIMINAL APPLICATION NO. 40498 OF 2024 (Originating from
Criminal Case No. 54 of 2022 in Babati District Court at Babati) LEONCE
JACKSON.....APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

8th April & 15th April, 2024 D. C. KAMUZORA, J. The Applicant was convicted and sentenced to life imprisonment by the district court of Babati at Babati in criminal case No. 54 of 2022. He has filed the instant application under section 361 (1) (2) of the Criminal Procedure Act [CAP 20 R.E 2022] and section 10 of the Appellate Jurisdiction Act [CAP 141 R.E 2019] seeking for two substantive reliefs; extension of time to file notice of appeal as well as an appeal out of time against that decision. The application is supported by an affidavit sworn by the Applicant himself and the Respondent filed a counter affidavit to contest the application. Page 1 of 4 When the application was called for hearing, the Applicant appeared in person and the Respondent was represented by Ms. Anifa Ally, learned State Attorney. Before parties could address the court on merit of the application, the learned State Attorney moved this court to determine the competence of this application. She pointed out that the Applicant brought similar application that was admitted as Miscellaneous Criminal Application No. 19 of 2023 before this court (Hon. Barthy, J.). That, in the said application the Applicant was seeking for same relief of extension of time to appeal against the same decision of the district court. That, the application was conclusively determined by this court and dismissed for want of merits on 7th August, 2023. The learned State Attorney submitted to this court, a copy of ruling to that effect and argued that, since the matter has already been determined by this court, it lacks jurisdiction to entertain the instant application. She was of the view that, if the Applicant was aggrieved with the decision made in the first application, he was required to appeal against it to the Court of Appeal and not to bring a fresh application. She therefore urged this court to dismiss the instant application. In reply, the Applicant had no viable submission to make. He only insisted for his application to be granted so that he could lodge his appeal. He did not dispute having filed similar application before this court. Page 2 of 4 Having gone through parties' submission and records before this court, it is not in dispute that the Applicant filed Miscellaneous Application No. 19 of 2023 and the same was dismissed for want of merits on 7/8/2023. The application stemmed from the same

criminal case and looking at the reliefs sought by the Applicant in his previous application, they are similar to those sought in the instant application. Miscellaneous Application No. 19 of 2023 was determined by this court on merit thus, coming with the same application before this court is considered an abuse of court process. Basically, this court becomes functus officio in so far as the application for extension of time is concerned and it has no jurisdiction to hear and determine this application. In *Kamundi v. Republic*, [1973] EA 540 at 545, it was held that a court becomes functus officio once it has made an order finally disposing of the matter. In the same footing, this court after disposing Miscellaneous Application No. 19 of 2023 on merit, it is ousted with jurisdiction to deal with same application. As it was rightly pointed out by the learned State Attorney, the remedy available for the Applicant if aggrieved by the decision of this court was to appeal to the Court of Appeal and not to file a fresh application. Page 3 of 4 Having said so, this court concludes that the instant application is incompetent before this court for want of jurisdiction. I therefore dismiss the application. DATED at BABATI this 15th April, 2024. Page 4 of 4

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