

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And JUMA, J.A.)

CRIMINAL APPLICATION NO. 3 OF 2013

EXAVERY MALATA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application for Review of the Judgment of the Court of Appeal
of Tanzania at MBEYA)

(Bwana, Mandia, Kaijage JJJ.A.,)

dated the 29th day of November, 2012

in

Criminal Appeal No. 149 of 2011

RULING OF THE COURT

13th & 18th June 2013

MJASIRI, J.A.:

This is an application for review of the judgment of the Court dated 29th November 2012. The application is made under Rule 66(1) of the Court of Appeal Rules, 2009 (the Rules) and supported by the applicant's affidavit.

The applicant was charged and convicted of the offence of rape contrary to sections 130 (2) (e) of the Penal Code, Cap 16 R.E. 2002. It

was alleged by the prosecution that he raped a three year old child at Manienga Village in Mbarali District. He was sentenced to the mandatory sentence of life imprisonment. His appeals to the High Court and the Court of Appeal were both unsuccessful, hence his application for review.

At the hearing of the application, the applicant appeared in person and was unrepresented. The respondent Republic had the services of Ms. Catherine Gwaltu, learned State Attorney.

The applicant did not have much to say in support of his application. Being without counsel, he simply challenged the findings of the trial Court.

Ms. Gwaltu on her part opposed the application. She submitted that the application does not meet the requirements under Rule 66 (1) of the Court Rules. She made reference to the case of **Karim Kiara v Republic**, Criminal Application No. 4 of 2007.

We on our part entirely agree with the submissions made by the learned State Attorney. Upon a careful review of the application before the Court we have noted the following anomalies.

The applicant did not disclose any grounds upon which his application is based as required under Rule 66 (3) of the Court Rules. He simply asked the Court to review its judgment and to give any order it deems fit and just to grant. He therefore relied on his affidavit which makes reference to evidential, legal and factual matters. This Court when considering his appeal, (Criminal Appeal No. 149 of 2011) agreed with the two courts below. The issues raised in the applicant's affidavit cannot therefore be raised again on the application for review.

The Rules are quite clear on the grounds for reviewing a judgment or order of the Court.

Rule 66 (1) of the Court Rules provides as under:-

" 66(1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds:-

- (a) The decision was based on a manifest error on the face of the record resulting in miscarriage of justice, or*
- (b) a party was wrongly deprived of an opportunity to be heard, or*
- (c) the Court's decision is a nullity, or*
- (d) the Court had no jurisdiction to entertain the case, or*
- (e) the judgment was procured illegally, or by fraud or perjury.*

In the instant application, the applicant has failed to disclose any of the above grounds for review in line with Rule 66(1) of the Court Rules. What has been stated in his affidavit are in fact grounds of appeal against the Court's decision dated November 29, 2012. This is not acceptable as it does not fall under Rule 66(1) of the Rules.

In **Lakhamshi Brothers Ltd v. Republic**, Civil Application No. 6 of 1966 the Court of Appeal of East Africa made the following observations:-

" In a review the Court should not sit on appeal against its own judgment in the same proceedings. In a review, the court has inherent jurisdiction to recall its judgment in order to give effect to its manifest intention on what clearly would have been the intention of the court had some matter not been inadvertently omitted."

In **Tanzania Transcontinental CO Ltd v Design Partnership Ltd**, Civil Application No. 62 of 1996 CAT (unreported) the Court stated thus;

"The court will not readily extend the list of circumstances for review, the idea being that the Court's power of review ought to be exercised sparingly and only in the most deserving cases, bearing in mind the demand of public policy for

finality of litigation and for certainty of the law as declared by the highest Court of the land."

See also **Karim Kiara** v Republic, Criminal Application No. 4 of 2007, CAT (unreported); **Thunga Bhadra Industries v Andhra Pradesh (1964) SC 1372**.

In **Marcky Mhango and 684 others v Tanzania Shoe Company Limited and Another**, Civil Application No. 90 of 1999 (unreported) it was emphasised by the Court that there should be a system of law which guarantees the certainty of its judgments and their enforceability.

It was stated thus:

" There can be no certainty where decisions can be varied at any time at the pressure of the losing party and the machinery of justice as an institution would be brought into question ..."

For the foregoing reasons we see no merit in the application.
Therefore the application is hereby dismissed accordingly.

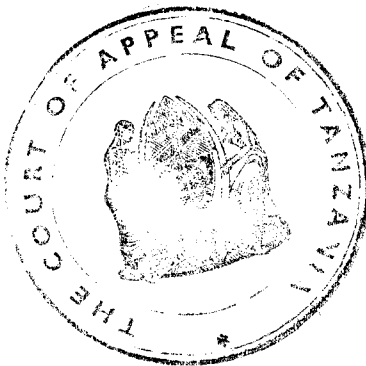
DATED at MBEYA this 14th day of JUNE 2013.


E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL