

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

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

CRIMINAL APPLICATION NO. 4 OF 2010

**1. HENIBO SAMWELI
2. BAHATI MWASHANILA }APPLICANTS
VERSUS
THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of the Court of Appeal of
Tanzania at Mbeya)**

(Munuo, Luanda, Mjasiri, JJJ.A)

**Dated the 23rd day of July, 2010
in
Criminal Appeal No. 132 of 2008**

.....

RULING OF THE COURT

24th & 26th JUNE 2013

LUANDA, J.A:

Following the decision of this Court vide Criminal Appeal No. 132 of 2008 dated 23/7/2010 which dismissed the appeal of the above applicants, the said applicants have filed this application for a review by way of Notice of Motion supported by affidavits. The application was filed on 27/9/2010

and it has been made under Rule 3(2)(a) of the Court of Appeal Rules, Cap. 141 RE. 2002.

When the application was called on for hearing, Ms. Catherine Gwalta, learned State Attorney who appeared for the respondent/Republic sought leave of the Court so that she raised and argued a preliminary objection on points of law, which application was granted.

Arguing the preliminary objection, she first said the application has been brought under the wrong provisions of the law. She said Rule 3(2)(a) which appears to be of 1979 Court of Appeal Rules is not proper because at the time when the application was filed, the Court of Appeal Rules, 2009 were already in force. However, she did not remember the relevant Government Notice. She submitted that the proper Rule ought to have been cited was Rule 66 (1) of the Court of Appeal Rules, 2009 (the Rules).

Second, she said the application offended Rule 48 (2) of the Rules because the Notice of Motion filed does not substantially conform with Form A in the First Schedule to the Rules. Third, the Notice of Motion does

not set out the grounds for a review. That goes contrary to Rule 66 (3) of the Rules. Fourth, the Notice of Motion was not signed as per the requirement of Rule 48 (2) of the Rules. Fifth, the affidants of the applicants do not indicate the place where they were sworn. She did not cite any provision of the law. Be that as it may, the last point is that the application was filed outside the prescribed time of sixty days as provided under Rule 66(3) of the Rules.

In view of the above points raised, she said that the application is incompetent. The same to be struck out, she submitted.

The 1st appellant conceded the first point only and he prayed that he be given time to amend. On the other hand, the 2nd applicant conceded all points raised. He also prayed that he be given time to affect amendment.

We wish to state from the outset that all the points raised and argued by Ms. Gwaltu have merits. Indeed any one amongst the six would carry the day. We however, feel obliged and it is our duty to discuss them all so that the applicants to know where they went wrong.

We start with the first point. The application was filed on 28/9/2010 by citing Rule 3(2)(a). No doubt at all that the applicants cited the then Court of Appeal Rules 1979 which are no longer applicable. The 1979 Court Rules, have ceased to operate from 1/2/2010 vide Government Notice 36 of 2010 when the new Rules, 2009 came operational. Since the Notice of Motion cited a dead law, in terms of Rule 48(1), which requires every application to cite specifically under which rule it is brought, the Court was not properly moved.

Points number two and four are interconnected, we found it proper to discuss them together. The Notice of Motion does not substantially confirm with Form A in the First Schedule to the Rules and not signed. That goes contrary to Rule 48 (2) of the Rules.

The third and sixth points are also interrelated, so we shall discuss them together. The Notice of Motion neither does it contain the grounds for review nor was it filed within the prescribed time of sixty days as provided under Rule 66 (3) of the Rules. Earlier on we have shown the

Court's decision to have been handed down on 23/7/2010; whereas this application was lodged on 27/9/2010, six days late and no application for seeking an extension of time was made. The application is time barred.

Finally is about the place where the affidavits were sworn. The affidavits of the applicants do not indicate the place where they were made. The omission to indicate the place where the affidavit was sworn in is fatal. The affidavit which does not show in the jurat the place the oath was taken is incurably defective.

Section 8 of the Notaries Public and Commissioners for Oaths Act, Cap. 12 RE. 2002 provides.

*8. Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act **shall state truly in the jurat** of attestation **at what place** and on what date the oath affidavit is take or made.*

[Emphasis supplied]

From the foregoing therefore, the application is incurably defective in a number of aspects as shown and discussed above. The application before us is incompetent. The same is hereby struck out.

Order accordingly.

DATED at **MBEYA** this 25th day of June, 2013.


E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

B.M. LUANDA
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