IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

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

CRIMINAL APPLICATION NO. 6 OF 2013

EUSEBIO NYENZI ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

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

(Munuo, Luanda, Mjasiri, JJJ.A.)

dated the 17th day of June, 2011

in

(DC) Criminal Appeal No. 336 of 2008

RULING OF THE COURT

30th July & 1st August, 2013

MJASIRI, J.A.:

In the District Court of Mufindi District, the applicant was charged and convicted of the offence of attempted rape contrary to section 132 (1) of the Penal Code, Cap 16 [R.E.2002] and was sentenced to thirty (30) years imprisonment. Being dissatisfied with the decision he unsuccessfully appealed to the High Court and the Court of Appeal. In his tireless quest for justice the applicant has now filed an application for review of the judgment of this Court. His application is supported by his affidavit dated August 6, 2011.

The major ground of complainant raised in paragraph three (3) of his affidavit is that the Court did not take into account factors which were in favour of the applicant.

At the hearing of the application, the applicant fended for himself and was unrepresented. The respondent Republic was represented by Mr. Okoka Mgavilenzi learned State Attorney.

The applicant did not have much to say and left the Court to make a decision on the strength of his affidavit filed in Court.

Mr. Okoka opposed the application. He contended that the application did not meet the requirements laid down under Rule 66 (1) of the Court of Appeal Rules, 2009 (the Court Rules).

Upon a careful review of the application before the Court we are inclined to agree with the learned State Attorney.

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

> *"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 his application for review the applicant did not disclose any grounds for review as required under Rule 66 (3) of the Court Rules. He is merely relying on paragraph three (3) of his affidavit which in essence invited us to re-assess the evidence. The applicant has therefore completely failed to comply with the requirements under Rule 66 (1) of the Court Rules.

The law on reviews is settled. It reflects the public policy principle that there must be an end to litigation.

In **Marcky Mhango and 684 others v Tanzania Shoe Company,** Civil Application No. 90 of 1999 CAT (unreported), the Court emphasised on a system of law which guarantees the certainty of its judgments and their enforceability. The Court stated thus:-

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

The applicant in his affidavit is asking the Court to review the evidence in order to see what the Court overlooked in reaching its decision. The applicant is making reference to evidential, legal and factual matters. The issues raised in the applicant's affidavit have already been considered by the Court during the appeal and cannot therefore be raised again in his application for review.

In **Lakhamshi Brothers Ltd v R. Raja & Sons,** Civil Application No. 6 of 1966 the Court of Appeal for East Africa observed as under:-

"In a review the Court should not sit in 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 **Somani V Shirinkanu** (No.2) (1971), E.A. 79 (CAM) the applicant asked the court to review its judgment in a civil appeal on the ground that the judgment was given per incuriam, the attention of the court not having been drawn to, and the court being in ignorance of, a statutory amendment to the law. The court stated thus:-

"To allow this application would be to open the doors to all and sundry to challenge the correctness of the decisions of this court on the basis of arguments thought of long after the judgment was delivered. There would be no finality to litigation. .....The only exception I can envisage is where the applicant has been wrongly deprived of the opportunity of presenting his argument on any particular point

which might lead to the proceedings being held null and void."

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 **Thunga Bhadra Industries v Andhra Pradesh** (1964) SC 1372.

In our circumstances, the only exceptions for review fall under the requirements laid down in Rule 66 (1) of the Court Rules a consideration which is absent from this application. We would therefore dismiss this application.

DATED at **IRINGA** this day 30th July, 2013

E. M. K. RUTAKANGWA
JIUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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

M.A. Malewo
DEPUTY REGISTRAR
COURT OF APPEAL