

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

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

CRIMINAL APPLICATION NO. 5 OF 2009

EPSON S/O MICHAELAPPLICANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Kimaro, Luanda, Oriyo, JJJ.A.)

dated the 16th day of September, 2007

in

Criminal Appeal No. 335 of 2007

RULING OF THE COURT

31st July & 1st August, 2013

MJASIRI, J.A.:

By a Notice of Motion dated 29th October, 2009 the applicant Epson Michael is moving the Court to review its judgment dated September 16, 2009. The background to this application is that in the District Court of Iringa District, the applicant and three (3) others were charged of the offence of armed robbery contrary to sections 285 and 287A of the Penal Code [R. E. 2002]. The appellant was convicted as charged and was sentenced to 30 years imprisonment. The other three

persons were acquitted. His appeals both to the High Court and the Court of Appeal were unsuccessful, hence this application.

At the hearing of the application, the applicant did not have the assistance of a legal counsel and appeared in person, while the Republic respondent had the services of Mr. Okoka Mgavilenzi, learned State Attorney.

Mr. Okoka strongly opposed the application. He contended that the grounds for review did not meet the criteria laid down under Rule 66 (1) of the Court of Appeal Rules 2009 (the Court Rules). He submitted that the applicant has presented in Court grounds of appeal and not review.

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."*

The law is settled. The Court will not readily extend the list of circumstances for review. See **Tanzania Transcontinental Co. Ltd v Design Partnership Ltd**, Civil Application No. 62 of 1996 CAT (unreported).

In **Lakhamshi Brothers Ltd v R. Raja and Sons (1966)** EA 313 it was held that the Court would not sit on appeal in its own judgment. See **Samson Matiga v Republic**, Criminal Appeal No. 6 of 2011 CAT (unreported) and **Karim Kiara v Republic**, Criminal Application No. 4 of 2007 CAT (unreported). See also **Exavery Malata v Republic**, Criminal Application No. 3 of 2013 (CAT) (unreported) and **Thungabhadra Industries V Andhra Pradesh (1964)** SC 1372.

A careful analysis of the application shows that the grounds set out in the notice of motion are grounds of appeal rather than grounds for review. Therefore the requirements under Rule 66 (1) of the Court Rules have not been met.

It is a matter of public policy that litigation must have a finality, in order to guarantee that decisions given by the Courts especially the highest Court of the Land are certain and conclusive. See **Marcky Mhango and 684 Others v Tanzania Shoe Company Limited and Another**, Civil Application No. 90 of 1999 CAT (unreported).

Given the circumstances the applicant cannot be allowed to file another appeal through the backdoor. We are of the considered view that there is no merit in the application and it is accordingly dismissed.

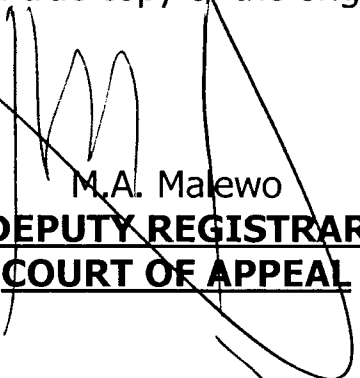
DATED at **IRINGA** this day 31st July, 2013

E. M. K. RUTAKANGWA
JUSTICE 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