

**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 2011**

**ISMAIL MNYAWAMI.....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 20<sup>th</sup> day of June, 2011**

**in**

**(D.C.) Criminal Appeal No. 337 of 2008)**

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**RULING OF THE COURT**

**30<sup>th</sup> & 1<sup>st</sup> August, 2013**

**LUANDA, J.A.:**

This is an application for review. The applicant Ismail Mnyawami has filed the application so that the Court to review its decision dated 21/6/2011.

The historical background to the application is to this effect. In the District Court of Iringa sitting at Iringa the applicant was charged, convicted and sentenced to life imprisonment for raping a baby girl of 3 years of age. Dissatisfied with the finding of the District Court, he appealed

Undaunted, he appealed to this Court where his appeal was also dismissed for lack of merits. The applicant has thus filed this application.

Having gone through the Notice of Motion and the accompanying affidavit, basically the applicant is inviting the Court to re-assess the evidence afresh. Mr. Okoka Mgavilenzi, learned State Attorney who appeared for the respondent/Republic opposed the application and rightly so saying that is not one of the grounds enlisted under Rule 66 (1) of the Court of Appeal Rules, 2009. He accordingly urged us to dismiss the application.

In reply the applicant prayed for reduction of sentence as he has stayed in prison for a long period.

Rule 66 (1) of the Court Rules, 2009 (the Rules) enumerates grounds upon which review may be entertained. Re-assessment of evidence is not one of the grounds enumerated therein. We wish to point out that not each and every ground qualifies to be a ground of review. Indeed if each and every ground qualifies to be a ground of review then no litigation will come to an end. This goes contrary to the public policy which demand that

litigation must come to an end. (See **Samson Matiga v. R.**, Criminal Application No. 6 of 2011 (unreported)).

In our case the applicant invited the Court to re-assess the evidence. That would amount to re-opening the appeal and hear it again. It is an appeal in disguise. The Court is not required to sit on appeal against its own judgment in the same proceedings. See (**Lakhamshi Brothers Ltd v. R. Raja**, Civil Application No. 6 of 1966 Court of Appeal of East Africa (unreported)).

As regards reduction of his imprisonment term, we have no authority to do so.

In fine, we dismiss the application for lack of merits.

It is so ordered.

**DATED** at **IRINGA** this 30<sup>th</sup> day of July, 2013.

E. M. K. RUTAKANGWA  
**JUSTICE OF APPEAL**

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**