IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

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

CRIMINAL APPLICATION NO. 4 OF 2011

RIZALI RAJABU.....APPLICANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Application for Review from the judgment of the Court of Appeal of Tanzania at Dodoma)

(Munuo J.A., Kaji J.A., Kimaro,J.A.,)

dated 22nd day of June, 2007
in
Criminal Appeal No. 81 of 2004

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RULING OF THE COURT

20th & 25th March, 2013

LUANDA, J.A:

This is an application for a review lodged by RIZALI s/o RAJABU (the Applicant). The application was filed on 20/8/2002 under Rule 3(2)(a) of the old Court of Appeal Rules, 1979 and Article 13(3)(6)(a) of the Constitution of the United Republic of Tanzania. In the case of **Samson Matiga V R** Criminal Application No. 6 of 2011, we stated that that Article of the Constitution has no relevance to the application of this nature.

At first Ms Maria Mdulugu, learned State Attorney, opposed the application stating that the application did not meet any of the four grounds stated in case law namely:-

(i) There is a manifest error on the face of the record which resulted a miscarriage of justice, or

(ii) The decision was obtained by fraud, or

(iii) The applicant was deprived the opportunity to be heard, or

(iv) The Court acted without jurisdiction.

She accordingly prayed that the application should be dismissed. In his reply, the applicant insisted and prayed the Court to go through the record of the case of his colleagues namely Criminal Case No. 258 of 2001 and see for itself. We reserved our Ruling and undertook to go through the record and see whether what the applicant had said is borne out by the record. We also directed Ms Mdulugu to do the same.

Having gone through both the trial court and High Court records, we find under Rule 4(2)(b) of the Court of Appeal Rules, 2009 proper to revisit the application for better meeting of the ends of justice. Ms Mdulugu changed position and she supported the application. Ms Mdulugu informed the Court, inter alia, that she discovered two criminal cases namely

We are alive to a well known principle that a review is by no means an appeal in disguise. To put it differently, in a review the Court should not sit on appeal against its own judgment in the same proceedings. We are also mindful of the fact that as a matter of public policy litigation must come to an end hence the Latin Maxim – **Interestei reipublicae ut finis litium.** (See **Chandrakant Joshubai Patel VR** [2004] TLR. 218; **Karim Karia VR,** Criminal Appeal No. 4 of 2007 CAT (unreported).

We have also gone through the records. The observations made by Ms Mdulugu are correct. The evidence which implicate the applicant was that of identification of the applicant by three key witnesses mentioned supra by Ms Mdulugu. In Criminal Case No. 258 of 2001 all the three said they saw **three** assailants only. They did not mention the applicant to be amongst the group of the assailants. It is only in another subsequent Criminal Case No. 278 of 2002 where they said they saw **four** assailants. We ask ourselves if they saw four assailants why all witnesses failed to say so in the first case? Is it a human lapse? We don't think so. We say so because under normal circumstances a witness who saw his assailant would not withhold such a vital information when testifying. And if he did for whose benefit ? It should be borne in mind that the ability of a witness

DATED at **DODOMA** this 23rd day of March, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

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

Malewo M.A.
DEPUTY REGISTRAR
COURT OF APPEAL