

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

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

CRIMINAL APPLICATION NO. 1 OF 2010

RICHARD MGAYA @ SIKUBALI MGAYA.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

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

(Rutakangwa, Kimaro, Mandia, JJJ.A.)

Dated 25th day of August, 2010

in

Criminal Appeal No. 28 of 2008

RULING OF THE COURT

26th & 29th July, 2013

LUANDA, J.A.:

The applicant Richard s/o Mgaya @ Sikubali Mgaya has filed an application in this Court seeking for a review of our judgment which was delivered on 27/8/2010.

Briefly the background of the application is this:- the applicant along with two others, namely Thobias s/o Kinyala @ Nike and Rashid s/o Habibu @ Mwanjali were charged in the District Court of Mufindi at Mafinga with two counts. The first count of armed robbery was for all three;

convicted and sentenced to 15 years imprisonment. The applicant was aggrieved by the decision of the District Court, he unsuccessfully appealed to the High Court of Tanzania (Iringa Registry). The High Court enhanced the sentence to 30 years imprisonment. Dissatisfied, he appealed to this Court in Criminal Appeal No. 335 of 2008, where also he was not successful. He has now preferred this application.

The applicant has raised five grounds in his Notice of Motion whereby he attacked the manner and the contents of evidence on the prosecution side as to how it was received and analysed. He is of the considered view that the learned Justices seriously misdirected themselves, hence the application for review.

The applicant, who appeared in person filed his written submission and he insisted that the Court to re-assess the evidence afresh as he did not commit the offence.

Mr. Okoka Mgavilenzi learned State Attorney who appeared for the respondent, opposed the application saying the applicant did not meet any of the requirements enumerated under Rule 66 (1) of the Court of Appeal Rules, 2009 (the Rules). He prayed the application be dismissed.

Rule 66 (1) of the Rules provides grounds upon which one may make an application for a review. The grounds enumerated in that Rule are the only grounds for the Court to entertain. To re-assess the evidence is not one of the grounds enumerated therein.

In **Samson Matiga v. R.**, Criminal Application No. 6 of 2011 the Court said:-

*"So, it is not each and every ground qualifies to be a ground for a review. To put it differently those grounds which are not mentioned in the cited Rule are excluded as grounds for review, hence the Latin Maxim **Expressio unius exclusio alterius est.** (The expression of one thing excludes the other). The insistence of this aspect is not far to seek-if each and every ground*

litigation will come to an end. This is against the public policy which demand the need for litigation to come to an end (Interestei rei publicae ut sit finis litium)”

In our case the applicant invited us to re-assess the entire evidence which the Court had already done. That would amount to re-opening the appeal and hear it again. Indeed that is an appeal in disguise. We have no authority to do so. We agree with Mr. Okoka that the application does not meet the criteria set in Rule 66(1) of the Rules.

We dismiss the application for lack of merits.

DATED at **IRINGA** this 26th day of 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

