IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

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

CRIMINAL APPLICATION NO. 3 OF 2011

PETER KIDOLE .... APPLICANT

VERSUS

THE REPUBLIC .... RESPONDENT

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

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

dated the 1st day of July, 2011

in

Criminal Appeal No. 69 of 2011

RULING OF THE COURT

6th August, 2013

MJASIRI, J.A.:

By a Notice of Motion dated August 29, 2011, the applicant is seeking a review of the judgment of the Court dated July 1, 2011. The application is supported by the applicant's affidavit. The application is provided for under Rule 66 (1) of the Court of Appeal Rules, 2009 (the Court Rules). The reason for seeking a review is that the Court failed to take into consideration the circumstances which were favourable to the appellant.

The background leading to this application is as follows. The applicant was charged with the offence of rape contrary to section 130 and 131 (c) of the Penal Code Cap 16 [R.E.2002]. Upon conviction by the trial Court, the applicant was sentenced to the statutory minimum sentence of thirty (30) years imprisonment. Aggrieved by the decision of the trial Court, he appealed to the High Court. His appeal to the High Court was unsuccessful. Still aggrieved he filed a second appeal to the Court of Appeal which was also unsuccessful hence this application.

At the hearing of the application, the applicant did not have the benefit of being represented by an attorney. He therefore appeared in person and fended for himself. The respondent Republic had the services of Mr. Okoka Mgavilenzi, learned State Attorney.

The applicant being unrepresented did not have much to say. He simply asked the Court to adopt his affidavit as part of his submissions.

Mr. Okoka on his part strongly opposed the application. According to him the application has no basis as it does not meet the criteria provided under Rule 66 (1) of the Court Rules. Rule 66 (1) clearly sets out the circumstances where a review can be sought. He concluded that the application did not meet the said requirements.

The pivotal issue for consideration is whether or not the application before this Court for review of the Court's earlier judgment was properly brought before the Court.

We on our part, entirely agree with the submissions made by Mr. Okoka. Rule 66 (1) is restrictive and sets out specific requirements to be met. These requirements have not been met. Rule 66 (1) of the Court Rules provides as under:-

> *"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 the case of **Tanzania Transcontinental Co. Ltd v Design Partnership,** Civil Application No. 62 of 1996 CAT (unreported) it was 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 and for certainty of the law as declared by the highest Court of the land."*

See **Thugabhadra Industries Ltd v The Government of Andra Pradesh** 1964 AIR 1372.

This Court has on many occasions emphasised the necessity of finality of litigation. This is in line with public policy that decisions must be certain and must be final in order to provide a closure. See **Marcky**

Mhango and 684 others v Tanzania Shoe Company and Another, Civil Application No. 37 of 2003 CAT (unreported).

The same approach has been taken by other Commonwealth Countries, for example, the court in Australia.

In the case of **Autodesk Inc v Dyson (No. 2)** 1993 HCA 6; 1993 176 LR 300 the following principles were set forth:-

> *"(i) The public interest in the finality of litigation will not preclude the exceptional step of reviewing or rehearing an issue when a court has good reason to consider that, in its earlier judgment it has proceeded on a misapprehension as to the facts or the law.*
>
> *(ii) As this court is a final Court of Appeal there is no reason for it to confine the exercise of jurisdiction in a way that would inhibit its capacity to rectify what it perceives to be an apparent error arising from same miscarriage in its judgment.*
>
> *(iii) It must be emphasised, however that the jurisdiction is not to be exercised for the purpose of re-agitating arguments already considered by the Court; nor is it to be exercised simply because*

the party seeking a rehearing has failed to present the argument in all its aspects or as well as it might have been put. The purpose of the jurisdiction is not to provide a back door method by which unsuccessful litigants can seek to re-argue their cases."

A careful analysis of the application reveals that the applicant did not disclose the grounds for review as required under Rule 66 (3) of the Court Rules. The applicant is merely asking the Court to revisit evidential, legal and factual matters. This is synonymous with asking the Court to sit on appeal against its own decision. This is not acceptable as the circumstances for review are clearly set out in Rule 66 (1) of the Court Rules.

In **Lakhamshi Brothers Ltd v Raja Sons,** (1966) E.A 313 the Court of Appeal of East Africa made the following observations:-

*"In **a review the Court should not sit on appeal against its own judgment in the same proceedings.** In a review the Court has inherent jurisdiction to read 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."

[Emphasis provided.]

See also **Somani v Shirinkhanu** (No. 2) 1971 EA 79.

For the reasons stated hereinabove, we see no merit in the application. It is hereby accordingly dismissed.

DATED at **IRINGA** this day 6th August, 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