IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

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

IR. CRIMINAL APPLICATION No. 8 of 2011

PATRICK SANGA.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

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

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

Dated 26th day of August, 2010
in
Criminal Appeal No. 213 of 2008

RULING OF THE COURT

2nd & 5th August, 2013

RUTAKANGWA, J.A.:

This is an application for review of the Court's judgment in Criminal Appeal No. 213 of 2008 dated 26th August, 2010, in which the applicant's appeal against a conviction for rape and sentence of thirty years imprisonment was dismissed.

In his appeal before this Court the appellant had premised his attack on the judgment of the High Court on four grounds only. These were that the High Court judge had erred in:-

a) acting on the evidence of PW1 Valentino Kalinga and PW4 Josbert Mtisi which contradicted that of PW2 Chesalina;

b) failing to hold that failure to subject him to medical examination greatly prejudiced him;

c) acting on an oral confession; and

d) relying on unreliable visual identification evidence to sustain his conviction.

In our judgment, we discussed separately each ground of appeal. After evaluating the entire evidence on record and reading the judgments of the two courts below, we conclusively determined that the appeal was without any merit. In reaching this conclusion we were satisfied that on studying the evidence, we found nothing in the evidence of both PW1 Kalinga and PW4 Josbert which went to contradict the evidence of PW2 Chesalina on the crucial issue of having been raped. On the second ground of appeal, we agreed with Mr. Tangoh's (Senior State Attorney) submission that there was no legal requirement which would have necessitated subjecting the appellant to any medical examination in order to ascertain if he was the one who had raped PW2 Chesalina. Thirdly, we held that an oral confession is admissible in evidence under the provisions of the

Evidence Act, Cap. 6 R.E. 2002, and if found to be true and to have been voluntarily made, as was the case here, would ground a conviction. The fourth ground of appeal revolved on the credibility of PW2 Chesalina. The Court, like the two courts below, found PW2 Chesalina to have truthfully testified that she was raped on the evening of 8th February, 2005 and that she had unmistakably recognized the appellant as her assailant. Her evidence had been supported by the evidence of PW1 Kalinga, PW4 Josbert and PW5 Gaitan (the "Kitongoji" chairman) to whom the appellant confessed raping PW2 Chesalina. We then proceeded to dismiss the appeal.

In his notice of motion which instituted this application, the applicant is seeking a review of the judgment on the ground:-

> *"that full court overlooked in their decision which the delivered on the ...at sitting of C.A.T. which conducted at Iringa."*

What was overlooked by the Court is not indicated in the body of the notice of motion. This lacuna is not filled in by the applicant's averments in his supporting four-paragraph affidavit either. The only closely relevant paragraph of the affidavit is para. 4 which read thus:-

"That, I decided to apply this application because I am believing that Hon. Rutakangwa, J.A., Kimaro, J.A., and Hon. Mandia, J.A., in their decision which they delivered on the 26/08/2010 at Iringa, they overlooked in law all aspects which benefited applicant to win the appeal. If full bench court shall review my appeal I believe that they will all aspects which overlooked in law by the justice of full Court. And I wish to be present during the hearing date of this application."

Indeed the applicant was present and appeared before us fending for himself. He had nothing useful to him and us to tell us other than to adopt the contents of his entire notice of motion, incomprehensively drafted as it was, and urging us to consider that after the alleged rape PW2 Chesalina slept at her home and he was arrested the following day. For this reason, Mr. Okoka Mgavilenzi, learned State Attorney for the respondent Republic, urged us to dismiss the application as it lacks merit. None of the grounds for review of the Court's judgment or order as stipulated clearly in Rule 66

(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), he pressed, have been established by the applicant.

There is no gainsaying that this application stands or falls on the basis of Rule 66 (1) of the Rules. The said Rule 66 (1) 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 the 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.*

As correctly observed by Mr. Mgavilenzi, the provisions of Rule 66 (1) are clear. No order of review can be granted by the Court outside the five

be used as an appeal in disguise. There must be an end to litigation, be it in civil or criminal proceedings. A call to re-assess the evidence, in our respectful opinion, is an appeal through the back door. The applicant and those of his like who want to test the Court's legal ingenuity to the limit should understand that we have no jurisdiction to sit on appeal over our own judgments. In any properly functioning justice system, like ours, litigation must have finality and a judgment of the final court in the land is final and its review should be an exception. That is what sound public policy demands. This is the cherished stance of not only this Court but also Courts of other foreign jurisdictions. See, for instance,:-

(a) **Tanzania Transcontinental Co. Ltd. v. Design Partnership Ltd.** [CAT] Civil Application No. 62 of 1996;

(b) **Lakhamshi Brothers Ltd. v. R. Raja,** [EACA] Civil Application No. 6 of 1966;

(c) **Karim Kiara v. R.,** [CAT] Criminal Application No. 4 of 2007;

(d) **Devender Pal Singh v. State, N.C.T. of Delhi and Another,** [India Supreme Court], Review Petitions No. 497, 626 and 629 of 2002;

(e) **Richard Mgaya @ Sikubali Mgaya v. R.,** [CAT] Civil Application No. 1 of 2010;

(f) **Japhet Msigwa v. R.,** [CAT] Criminal Application No. 7 of 2011;

(g) **Eusebia Nyenzi v. R.,** [CAT] Criminal Application No. 6 of 2013 (all unreported), etc.

In view of the above elaboration and the above cited few, among many, authorities, we find this hopeless application seriously wanting in merit. It is accordingly dismissed.

DATED at **IRINGA** this 2nd day of August, 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