

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

**(CORAM: KIMARO, J.A., MANDIA, J.A. And KAIJAGE, J.A.**

**TBR CRIMINAL APPLICATION NO. 4 OF 2010**

**NJAMBA S/O KULAMIWA.....APPLICANT  
VERSUS  
THE REPUBLIC.....RESPONDENT**

**(From the Judgment of the Court of Appeal  
of Tanzania at Tabora)**

**(Rutakangwa, J.A., Mbarouk, J.A. And Massati, J.A.)**

**Dated 14<sup>th</sup> day of June, 2010  
in  
Criminal Appeal No. 460 of 2007  
-----**

**RULING OF THE COURT**

**23<sup>rd</sup> & 30<sup>th</sup> April, 2013**

**KAIJAGE, J.A.:**

Before the District Court of Nzega, at Nzega the applicant herein was charged and convicted of offences preferred under two counts. He stood charged with burglary and armed robbery contrary to sections 294 (1) and 285 and 286 of the Penal Code respectively. He was sentenced to serve a term of five (5) years imprisonment on the first count and thirty (30) years imprisonment and twelve (12) strokes of the cane on the second count. His appeal to the High Court was dismissed. Similarly, his second appeal to

this Court was dismissed. The judgment of this Court dismissing applicant's second appeal was handed down on 14<sup>th</sup> day of June, 2010.

Consequent upon the dismissal of the second appeal, the applicant filed a notice of motion on 16/11/2011 under Rule 48 of the Court of Appeal Rules, 2009 (the Rules). His application which is supported by an affidavit sworn by himself, seeks for orders that the judgment passed by this Court on 14/6/2010 be revised and for any order that the Court may deem fit to grant.

Before us, the applicant appeared in person, unrepresented. M/s Maria Mdulungu, learned State Attorney, represented the respondent Republic.

When the application was called on for hearing, the learned State Attorney rose to argue two points of preliminary objection, notice of which was filed on 19/4/2013. The two points of law upon which she premised her arguments are as follows:

1. That the application is hopelessly time barred.

2. That the application is bad in law for citing a wrong provision of law.

On the first point of objection, the learned State Attorney submitted that applicants application has been filed in violation of rule 65 (4) of the Rules which provides:

*"Where the revision is initiated by a party, the party seeking the revision **shall lodge the application within sixty (60) days** from the date of the decision sought to be revised"*  
*(emphasis supplied).*

Amplifying on this point, she contended that counting from 14/6/2010 when the decision sought to be revised was handed down to 16/11/2010 when the present application was filed, a period of sixty days (60) prescribed under Rule 65 (4) of the Rules had already expired. For this reason, she urged us to strike out applicant's application for being time-barred.

As regards the second point of objection, the learned State Attorney emphatically submitted that applicant's application is bad in law for contravening the provisions of rules 48 (1) as read with Rule 65 (1) of the Rules. Rule 48 (1) provides:

*"Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, every application to the Court shall be by notice of motion supported by affidavit. **It shall cite the specific rule under which it is brought and state the ground for the relief sought.**"*  
*(emphasis supplied).*

Rule 65 (1) of the Rules provides:

*"Save where a revision is initiated by the Court on its own accord, an application for revision **shall be by notice of motion which shall state the grounds of the application.**"* *(emphasis supplied).*

In elaboration, the learned State Attorney pointed out that it was imperative for the applicant's notice of motion to cite a specific rule under which his application is brought and to state the grounds of the application. She concluded that the combination of the foregoing shortcomings have rendered the application incompetent, fit to be struck out.

Applicant made no meaningful response to these legal points, apart from stating that his application was filed in time.

We are, with respect, in agreement with the learned State Attorney. As rightly submitted, the present application was filed beyond the mandatory period of sixty days prescribed under rule 65 (4) of the Rules. Failure to file the application within a mandatory prescribed period is a fundamental irregularity. This anomaly, by itself, has rendered the present application incompetent.

Indeed, the notice of motion does not reflect a specific rule under which the application is brought. As correctly submitted, section 4 (2) of the Appellate Jurisdiction Act Cap. 141 R.E. 2002 (the Act) is a specific provision from which this Court derives power to hear and determine the present application for revision. On the basis of the established case law, non citation and/or wrong citation of the relevant provision of law is not a

curable procedural irregularity but one going to the root of the matter (see; **Rutagatina C.L. vs. The Advocates Committee And Another**, Civil application No. 124 of 2006, **Citibank Tanzania Ltd. Vs T.T.C.L And Five Others**, Civil Application No. 64 of 2003 (all CAT unreported).

Times without number this Court has also said that wrong citation of an enabling provision of law or non citation renders an application incompetent (see for instance; **N.B.C vs Sadrudin Meghji**, Civil Application No. 20 of 1997, **China Henan International Co-operation Group vs Salvand K.A. Rwegasira**, Civil Reference No. 22 of 2005 and **Almas Iddie Mwinyi vs N.B.C And Mrs. Ngeme Mbita**, Civil Application No. 88 of 1988 (all CAT unreported).

In the present matter, the applicant ought to have cited section 4 (2) of the Act which clothes this Court with jurisdiction to entertain applications for revision, instead of merely citing rules 48 and 65 (1) of the Rules which provides for a general format and procedure for filing any application destined for this Court.

On the strength of the foregoing brief observations, we are constrained to sustain respondent's points of objection. Consequently, we strike out applicant's application for being incompetent. We so order.

**DATED** at **TABORA** this 24<sup>th</sup> day of April, 2013.

N. P. KIMARO  
**JUSTICE OF APPEAL**

W. S. MANDIA  
**JUSTICE OF APPEAL**

S. S. KAIJAGE  
**JUSTICE OF APPEAL**

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



  
M.A. MALEWO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**