IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KILEO, J. A., MUSSA, J. A., And MMILLA, J. A.)

CRIMINAL APPLICATION NO. 7 OF 2013

ALLY HAJI..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for review from the Decision of the Court of Appeal of Tanzania, At Dar es Salaam.)

(Mjasiri, Mussa, Mmilla, JJJ.A.)

Dated the 21st day of May, 2013
in
Criminal Appeal No. 45 of 2013

.....

RULING OF THE COURT

9th & 20th July, 2015

MMILLA, J.A.:

This is an application by notice of motion made under Rules 48 (1) 66 (1), (a), (b) and 3 of the Court of Appeal Rules, 2009 (The Rules). It is supported by the affidavit of the applicant, Ally Haji. The applicant is seeking the Court's indulgence to review its own decision in Criminal Appeal No. 45 of 2011 dated 24th April, 2013. His notice of motion has raised three grounds; **one** that the provisions of section 192 of the Criminal Procedure Act Cap. 20 of the Revised Edition, 2002 (the CPA)

were not complied with in that the preliminary hearing was not conducted; **two** that the charge sheet was defective in that the words "unlawful" were missing; and **three** that he was not reminded the charge before the commencement of the trial.

At the hearing of the application, the applicant appeared in person and was not represented, while Ms Subira Mwalumuli, learned State Attorney, represented the respondent Republic.

On being given the opportunity to submit on his application, the applicant, a layman, had nothing material to say.

On her part however, Ms Mwalumuli hurried to submit that none of the grounds raised by the applicant met the requirements stipulated under Rule 66 (1) of the Rules which governs applications such as this. She challenged that the applicant's complaint that section 192 of the CPA was not complied with was unfounded because that aspect was discussed by the Court during the determination of the appeal. She submitted further that the applicant was neither deprived of his right to be heard, nor was there any misdirection. She also asserted that this Court's judgment was

not procured illegally. She therefore asked the Court to dismiss the application for being baseless.

On his part, the applicant submitted that he did not commit the offence he was convicted of. He contended that his conviction was based on circumstantial evidence and that vital witness such the village leaders were not called to testify during the trial. He pressed the Court to allow the application.

As correctly submitted by Ms Mwalumuli, the grounds upon which a party may apply for review are expressed under Rule 66 (1) of the Rules. That Rule provides as follows:-

"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;

(c) the court's decision is a nullity;

(d) the court had no jurisdiction to entertain the case."

Where the grounds raised by a party do not pick from these grounds, the application is bound to fail, destining the Court to dismiss it.

The immediate issue before us is weather the applicant in the present application has fulfilled the requirement set out under Rule 66 (1) of the Rules. In our view, the answer is in the negative.

In the first place, we hurry to agree with Ms Mwalumuli that none of the applicant's grounds fall under the conditions stipulated under Rule 66 (1) of the Rules. As she correctly submitted, the ground touching on section 192 of the CPA was raised, dealt with and decided on appeal by the Court. On the other hand, we are satisfied that the applicant's remaining two grounds, including his complaints raised from the bar that his conviction was based on circumstantial evidence, and that vital witnesses such as the village leaders were not called to testify during the trial, were proper grounds for appeal, not a review.

It is imperative to emphasize here that a review of the judgment of the Court should be exercised in rarest and most deserving cases which meet the specific benchmarks stipulated in Rule 66 (1). In essence, the stipulation under this Rule stands as an exception to the general rule that a

Court should not sit on appeal against its own judgment in the same proceedings. This position has been reaffirmed in a number of cases including those of **James @ Shadrack Mkungilwa & Another v. Republic**, Criminal Application No. 1 of 2012, CAT and **Patrick Sanga v. Republic**, Criminal Appeal No. 8 of 2011, CAT (both unreported). In the former case of **James @ Shadrack Mkungilwa & Another v. Republic**, the Court stated that:-

> *"It is settled law that a review of the judgment of the highest Court of the land should be an exception. The review jurisdiction should be exercised in the rarest of cases and in the most deserving cases which meet the specific benchmarks stipulated in Rule 66 (1). A review application, therefore, should not be lightly entertained when it is obvious that what is being sought therein is a disguised re-hearing of the already determined appeal, as is obviously the case in these proceedings. Since the applicants have failed to meet, even remotely, the benchmarks for review under our laws, we are constrained to hold that we have no jurisdiction to grant the relief being sought by the applicants."*

meet even remotely, the benchmarks for review stipulated under Rule 66 (1) of the Rules, and guided by the cited cases above, we have no better option but to hold that the application lacks merit, the consequence of which is for the Court to dismiss it as we are accordingly do.

DATED at **DAR ES SALAAM** this 14th day of July, 2015.

E. A. KILEO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

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

E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL