IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

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

CRIMINAL REFERENCE NO. 1 OF 2014

JIBU AMIR @ MUSSA AND ANOTHER ..... APPLICANTS
VERSUS
THE REPUBLIC..... RESPONDENT

(Application for Reference from the Decision of the Court of Appeal of Tanzania at Dar es salaam)

(Mandia, J.A)

Dated 20th day of November, 2013
In
Civil Appeal No. 249 of 2009

RULING OF THE COURT

8th July 2015
KILEO, J.A.

This is a reference from the decision of Mandia, J.A. in which he dismissed an application for extension of time to file an application for review against the decision of this Court, in Criminal Appeal No. 249 of 2009. The application before Mandia J.A. was dismissed because of defects in the two affidavits that accompanied the Notice of Motion. The first affidavit was found to be an omnibus one which did not reveal the identities of the deponents. No names were mentioned in the affidavit, which was signed by the "first applicant" and "second applicant". The

second affidavit was neither signed nor dated. Reference from a single judge is provided for under Rule 62 of the Court of Appeal Rules, 2009. Where a reference is in relation to a criminal matter an applicant may apply to have his application be determined by the Court. (Rule 62 (1) (a)). This means that the application for extension of time to file an application for review is now before us.

At the hearing both applicants appeared in person with no legal representation. They did not have much to say but prayed to Court to be given an opportunity to prepare proper documents. They pointed out that as they are layman who are in custody everything is done for them by prison authorities.

Ms. Honorina Munishi appeared for the respondent Republic. She was of the view that the Hon. single justice having found the application to be incompetent ought to have struck it out rather than dismiss it.

We have examined the affidavits in support of the notice of Motion in the application for extension of time to apply for review. Like the single justice we find the affidavit to be fatally defective. As rightly observed by the single justice, the identities of the deponents in the first affidavit were not disclosed and the 2nd affidavit was neither signed nor dated.

All in all we find the application to be incompetent for being accompanied by defective affidavits. Rule 48(1) of the Court of Appeal Rules, 2009 requires that every application to the Court be by notice of motion and be supported by affidavit. Where an affidavit is defective it means that there is no affidavit in support of the notice of motion.

In the circumstances the incompetent application is struck out. It is so ordered.

DATED at **DAR ES SALAAM** this 8th day of July, 2015.

E. A. KILEO
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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

P. W. Bampikya
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL