

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: MASSATI, J.A., MUSSA, J.A. And MWARIJA, J.A.)

CRIMINAL APPLICATION NO. 6 OF 2008

NGOBEKO KASESA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Msoffe, J.A., Kimaro, J.A., And Mandia, J.A.)

Dated the 22nd day of June, 2011

In

Criminal Appeal No. 21 of 2008

RULING OF THE COURT

5th & 11th April, 2016

MUSSA, J.A.:

The applicant seeks to review the decision of this Court (Msoffe, J.A., Kimaro, J.A. and Mandia, J.A.) comprised in Criminal Appeal No. 21 of 2008. The application is by a Notice of Motion “purportedly” taken out under the provisions of Rules 42(1), 48(1) and 66 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit which is, again, “purportedly” sworn by the applicant.

We have purposely used the word “purportedly” in reference to the applicant’s notice of motion and the affidavit, the more so as both

documents are not signed by the applicant. To begin with the notice of motion, the same does not, at all, bear the signature of the applicant, whereas the affidavit is only signified by the thumb print of the applicant on the attestation clause. The applicant did not, so to speak, append his thumb print below the verification clause so as to assume authorship of the affidavit.

At the hearing before us, the applicant was fending for himself, unrepresented, whereas the respondent Republic had the services of Mr. Rwegira Deusdedit, learned State Attorney.

When prompted to address us on the apparent infractions, the applicant conceded that he did not append his signature in the notice of motion and a portion of his affidavit. As to the consequences of the non-compliance, the applicant left the matter for the decision of the Court but pleaded to be directed on the way forward. For his part, Mr. Deusdedit submitted that the lack of applicant's signatures in the two documents was a fatal omission which has the effect of rendering the application incompetent.

Addressing the glaring omissions, we propose to first observe that in terms of Rule 66(2) of the Rules, an application for review is required to be

instituted in the same mode as an application for revision, subject of course, to such modification as may be necessary. Reflecting, then, on the mode through which an application for revision is instituted, it is instructive to reproduce the provisions of Rule 65 (1), (2) and (3) in full:-

"65 – (1) save where a revision is initiated by the Court in its own accord, an application for revision shall be by notice of motion which shall state the grounds of the application.

*(2) The notice of motion **shall be signed by or on behalf of the applicant.***

(3) The notice of motion shall be supported by one or more affidavits of the applicant or some other person or persons having knowledge of the facts." [Emphasis supplied]

As is obviously discernible from the foregoing extracted portions of the Rule, the procedure for the institution of an application for revision or review entails its own prerequisites. For one, the notice of motion which is a mandatory requirement must imperatively be signed by or on behalf of the applicant and; for another, it must be supported by one or more affidavits of the applicant or some other person or persons having knowledge of the facts.

When all is said and done, to the extent that the notice of motion before us is not signed by the applicant, it is incurably defective. The same is the case with the supporting affidavit which is just as well incurably defective for want of the deponent's signature. We are, therefore, left with no other option than to expunge the documents from the record and, once that is done the application for review is left with no leg to stand on. The purported application is, accordingly, struck out. The applicant may wish to refresh his quest subject to the Rules of limitation. It is so ordered.

DATED at TABORA this 8th day of April, 2016.


S.A. MASSATI
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

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




P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL