

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

(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)

CRIMINAL APPLICATION NO 5 OF 2011

**1. ALLY KINANDA
2. SILVANO HENRY
3. ABUBAKARI JAMBIA** } **APPLICANTS**

VERSUS

THE REPUBLIC..... RESPONDENT
(Appeal from the decision of the Court of Appeal of Tanzania at Dodoma)
(Kileo, Bwana, Oriyo, JJA.)

dated the 6th day of April, 2011)
in
Criminal Appeal No. 206 of 2007

ORDER OF THE COURT

JUMA, J.A.:

When the application for review was called for hearing today, Mr. Evod Kyando, learned State Attorney who appeared for the respondent/Republic informed the Court that there is a notice of preliminary objection by the respondent notice of which was filed in Court on 31/10/2013. The notice of objection contends that the affidavit which the applicants filed in support of their application for review is incurably defective for violating the Oaths and Statutory Declarations Act Cap. 34.

Expounding the nature of the defect, he pointed at the way the three applicants prepared one joint affidavit without stating whether each of them affirmed as Moslems or took oath as Christians.

On this defect, Mr. Kyando submitted that their application for review did not comply with Rule 49(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) which in mandatory terms direct that where formal applications are made to this Court, a notice of motion must be supported by a valid affidavit.

Mr. Kyando insisted that the position taken by this Court in several decisions when applications are supported by defective affidavits, has been to strike out such an application so that the applicants would go back to the drawing board and prepare formal applications that comply to the laws. He cited the decision of the court in **Esio Nyomoleo & Another v. Republic**, Criminal Application No. 19 of 2012 (unreported) where this Court restated that the omission to state the name of the deponent in the affidavit is fatal. That defect alone, the Court had insisted, sufficed to dispose of the application.

the defects which the learned State Attorney has outlined. But he blames this defect on failure by the High Court Registry and the prison department to avail them with a copy of the decision of this Court in Criminal Appeal No, 5 of 2011 which dismissed their appeal. He submitted that their efforts to prepare a proper application is also thwarted for their efforts to prepare a proper application is also frustrated by failure of the Registry to avail them a copy of order that clandestinely released Idd Alfani while leaving them in prison. He asked us to use our powers to ensure that all the documents they are need are made available.

Just like the first applicant, Silvano Henry (the second applicant) appeared in person. He agreed with what the first applicant told the Court.

Aboubakar Jambia (third applicant) reiterated what others have said. He too wanted to be availed copies of the documents to enable them to come back to this Court with a proper application.

On our part, we agree with both the learned State Attorney and the three applicants that without a proper affidavit that has been prepared in

accordance with the laws they cited, this Court cannot have any jurisdiction to hear the application for review. Rule 49(1) of the Rules states:

"49(1) every formal application to this Court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts."

In the result, this application before us is hereby struck out.

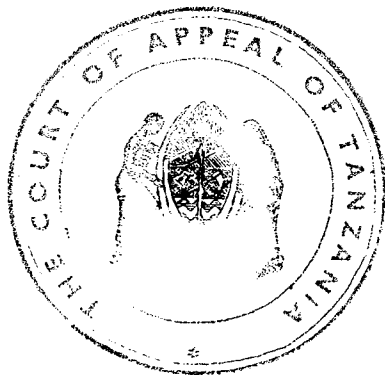
DATED at **DODOMA** this 19th day of April, 2016.


E.A. KILEO
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL