

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MTWARA**

**(CORAM: MBAROUK, J.A., MUGASHA, J.A., And MWANGESI, J.A.)**

**CRIMINAL APPLICATION NO. 18 OF 2015**

**RAJABU S/O TARATIBU.....APPLICANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**(Application for Review of the decision of the Court of Appeal  
of Tanzania at Mtwara)**

**(Mbarouk, J.A, Mjasiri. J.A and Mmilla, J.A.)**

**dated the 12<sup>th</sup> day of October 2015  
in  
Criminal Appeal No. 237 of 2014**

**.....**

**RULING OF THE COURT**

3<sup>rd</sup> & 6<sup>th</sup> July, 2017

**MBAROUK, J. A.:**

The applicant, Rajabu s/o Taratibu is seeking for review of the judgment of the Court (MBAROUK, J.A, MJASIRI, J.A and MMILLA, J.A) in Criminal Appeal No. 237 of 2014 dated 12<sup>th</sup> October, 2015. In his application made by way of notice of motion under Rules 48(1) and 66(1) of the Court of Appeal

Rules, 2009 (the Rules), the applicant has raised two main grounds, namely:-

1. That, the decision was based on the manifest error on the face of the record resulting to miscarriage of justice.
2. The judgment was procured by perjury.

In the affidavit in support of the notice of motion sworn by Rajabu Taratibu (the applicant), it was stated that:-

*"2. That, I was charged with murder C/S 196 of the penal code Cap. 16 (R.E. 2002) in the District Court of Lindi, and found guilty of murder, conviction and sentenced to suffer the mandatory punishment of death by hanging, before Hon. M.G. (MZUNA).J. of the High Court of Tanzania at Mtwara on 4<sup>th</sup> day of August, 2014.*

*3. That, upon being aggrieved by the High Court decision I appealed to the Court of Appeal of Tanzania at Mtwara on 12<sup>th</sup> of October, 2015 in criminal appeal No. 237 of 2014 but my criminal appeal was dismissed*

*entirely before Hon. M.S. MBAROUK, J.A, S.  
MJASIRI, J.A and B.M. MMILLA, J.A.*

*4. That, upon being further aggrieved by  
decision of the Court of Appeal of (T) at Mtwara  
I pray to lodge my application for review in this  
court of appeal to review the court of appeal  
decision as well to have quash aside the  
conviction and set aside the sentence.*

*5. That, it will be the interest of justice if my  
application for review will be allowed to the court  
of appeal of Tanzania at Mtwara from the  
original Criminal sessions case No. 33 of 2013.”*

In this application, the applicant appeared in person, unrepresented and Mr. Ledislaus Komanya, learned Senior State Attorney assisted by Ms. Lulu Twalib Mangu, learned State Attorney represented the respondent/Republic.

At the hearing, the applicant opted to allow the learned State Attorney to submit first and if the need arises he will respond thereafter.

On her part, Ms. Mangu from the outset indicated not to support the application as there were no grounds for granting review shown in the affidavit in support of the notice of motion. Ms. Mangu added that even if two grounds were mentioned in the notice of motion but no justification was given in the affidavit of the applicant in support of those grounds.

Ms. Mangu further added that, review is not an appeal, the applicant has to comply with the requirement stated in Rule 66(1) of the Rules. She said, as the applicant has failed to comply with the mandatory requirement of Rule 66(1) of the Rules, this Review has no merit and deserves to be struck out.

As pointed out in the decision of this Court in the case of **John Samwel @ Kaboka and Another v. the Republic**, Criminal Application No. 12 of 2014 (unreported) where the Court stated that:-

*"The law governing review of decisions of the Court is now sanctioned by a recent amendment to section 4 of the Appellate Jurisdiction Act Cap. 141 R.E. 2002 by Act No. 3 of 2016 by the new section 4(4) with effect from 7<sup>th</sup> July, 2016. But prior to that the Court used to review its decisions under Rule 66 of the Court Rules which is what is applicable in the present application"*

As this application was lodged on 20<sup>th</sup> May, 2016, hence Rule 66(1) of the Rules is the one applicable and the same reads as follows:-

*"66.-(1) 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; or*
- (d) the court had no jurisdiction to entertain the case; or*
- (e) the judgment was procured illegally, or by fraud or perjury.*

As shown herein above, Rule 66(1) of the Rules mandatorily direct that no application for review shall be entertained except the five distinct grounds set out are complied with by stating and justifying in the affidavit in support of the notice of motion. It is not enough to state them plainly in the notice of motion, they have to be stated and elaborated in the affidavit in support of the application.

In the instant application, the applicant has completely failed to state in his affidavit which among the five grounds stated in Rule 66 (1) (a) – (e) of the Rules are applicable in this application for review so as to justify a grant of an order

for review of our decision in Criminal Appeal No. 237 of 2014 dated 12<sup>th</sup> October, 2015.

It is a trite law that review should not be utilized as a back door method to unsuccessful litigants to re-argue their case. See **Kamlash Varma Vs. Mouawato and Others**, Review Application No. 453 of 2012 EAC (unreported). Also an application for review is by no means an appeal in disguise whereby an erroneous decision can be reheard and corrected. See **Ngasa s/o Nhabi Vs. Republic**, Criminal Application No. 2 of 2014 (unreported) citing **Karim Kiama, Vs. Republic**, Criminal Application No. 4/2007 (unreported). In the case of **Tanzania Transcontinental Co. Ltd Vs. Design Partnership Ltd**; Civil Application No. 62 of 1996 (unreported), this Court stated that;

*" The Court will not readily extend the list of circumstances for review, the idea being that the Court's power of review ought to be exercised sparingly and only in the most deserving cases, bearing in mind the demand*

*of public policy for finality of litigation and for  
certainty of the law as declared by the highest  
Court of the Land.”*

All said and done, in view of the applicant's failure to  
state and justify in his affidavit the stated grounds as per  
Rule 66(1) of the Rules, we are constrained to find the  
application devoid of merit and we accordingly dismiss it.

**DATED** at **MTWARA** this 4<sup>th</sup> day of July, 2017.

M. S. MBAROUK  
**JUSTICE OF APPEAL**

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

S. S. MWANGESI  
**JUSTICE OF APPEAL**

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

  
A.H. Msumi  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**