

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

(CORAM: LUANDA, J.A., MZIRAY, J.A., And NDIKA, J.A.)

CRIMINAL APPLICATION NO. 1 OF 2010

**SHAIBU JUMA..... FIRST APPLICANT
SAID ISMAIL BUGHE..... SECOND APPLICANT**

VERSUS

THE REPUBLIC RESPONDENT

**(Application for Review from the Decision of the Court of Appeal of Tanzania at
Tanga)**

(Ramadhani, C.J., Mbarouk, J.A., And Mandia, J.A)

dated 10th day of July 2009

in

Criminal Appeal No. 23 of 2009

RULING OF THE COURT

10th & 13th July 2017

NDIKA J.A.:

Following a full trial before the District Court of Muheza, Shaibu Juma and Said Ismail Bughe, the applicants herein, were convicted on three counts as follows: first, armed robbery c/ss 285 and 286 of the Penal Code, Cap. 16 RE 2002; secondly, unlawful possession of firearms c/ss 34 (1), (2) and (3) of the Arms and Ammunition Act, Cap. 223 RE 2002; and finally, unlawful possession of ammunition c/ss 4 and 34 (1), (2) and (3) of Cap. 223 (supra). Their first appeal against the aforesaid conviction as well as the prison

sentence imposed on them was dismissed by the High Court sitting at Tanga. Their further appeal to this Court was partly successful as their convictions on the second and third counts were quashed and set aside because the prosecution of those counts was effected without the mandatory written assent of the Director of Public Prosecutions. The appeal was dismissed as regards the first count as the conviction and sentence on it were sustained.

Undaunted, the applicants lodged this application under rule 66 (1) (a) and (e) of the Tanzania Court of Appeal Rules, 2009 ("the Rules") seeking review of the aforesaid decision of this Court. The application is supported by the applicants' joint affidavit.

Opposing the application, the respondent Republic duly lodged a notice of preliminary objection under rule 4 (2) (a) of the Rules contending that:

"The application is bad in law as it contravenes Rule 66 (3) of the Tanzania Court of Appeal Rules."

For ease of reference, we reproduce the above-cited rule thus:

*"(3) The **notice of motion for review shall be filed within sixty days** from the date of the judgment or order sought to be reviewed. **It shall set out clearly the grounds for review.**"*[Emphasis added]

At the hearing of the preliminary objection, Ms. Jenipher Kaaya, learned State Attorney, appearing for the respondent, made a two-pronged argument. First, she contended that the instant application, required to be lodged within sixty days of the delivery of the judgment sought to be reviewed, was filed in Court out of time on 31st March 2010. She appeared to have reckoned the prescribed limitation period of sixty days from 10th July 2009, a date appearing on the judgment sought to be reviewed.

Replying, the first applicant denied that the impugned judgment was delivered on 10th July 2009. He tendered to the Court two summonses dated 15th February 2010, which suggested that they appeared on 16th February 2010 for delivery of the judgment, now the subject of the application.

After the learned State Attorney examined, at the direction of the Court, the notice of motion, the two summonses proffered by the applicants from the dock and the provisions of rule 75 (1) of the Rules on lodgment of processes by an applicant or appellant in prison custody, she conceded that the impugned judgment of the Court was actually delivered on 16th February 2010 and that the present notice of motion was lodged within the prescribed limitation period on 20th March 2010 upon being presented by the applicants to the Officer in

Charge of the Maweni Prison where they are serving their respective jail terms. On that basis, Ms. Kaaya abandoned the first part of the preliminary objection.

The second part of Ms. Kaaya's argument was that the notice of motion discloses no grounds for review contrary to rule 66 (3) of the Rules. She relied upon the unreported decision of this Court in **Tabu Nyanda @ Katwiga v The Republic**, Tabora Criminal Application No. 2 of 2007 in which the Court struck out an application for review on account of a similar omission to state the grounds upon which review was sought. She thus urged us to strike out the application, as the defect was incurable.

Responding, both applicants readily conceded that their joint notice of motion was irredeemably deficient although initially they appeared to pass the buck to the prison authorities that helped them draw up and lodge the notice of motion.

On our part, we agree that the notice of motion in this matter is evidently a contravention of the provisions of rule 66 (1) of the Rules, which requires that a notice of motion on an application for review must "set out the grounds for review." Apart from stating that the application was laid under rule 66 (1) (a) and (e) of the Rules, that notice discloses no detail as to what forms the basis for the intended review. We agree with Ms. Kaaya that, as held in **Tabu**

Nyanda @ Katwiga v The Republic (supra), the ailment in this matter renders the notice of motion incurably defective. This Court took the same position in **Abdallah Hamisi Salim @ Simba v Republic**, Criminal Appeal No. 15 of 2008, CAT at Arusha (unreported).

In the final analysis, we sustain the preliminary objection that the notice of motion is incurably defective for not disclosing the grounds for review rendering the matter incompetent. The application for review is consequently struck out.

DATED at TANGA this 12th day of July 2017.

B.M. LUANDA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL

G.A.M. NDIKA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL