IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MBAROUK, J.A., MKUYE, J.A. And WAMBALI, J.A.)

CRIMINAL APPLICATION NO. 68/04 OF 2016

JACKSON GODWIN.....APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for review from the decision of the Court of Appeal of Tanzania at Bukoba)

(Kileo, J.A., Mjasiri, J.A. And Mmilla, J.A.)

dated the 17th day of February, 2016

in

Criminal Appeal No. 278 of 2015

RULING OF THE COURT

27th August & 3rd September, 2018

MKUYE J.A.:

The applicant, Jackson Godwin was charged before the District Court of Biharamulo with two offences of Armed robbery contrary to section 287 A and rape contrary to section 130(1) and 131(1) of the Penal Code, Cap. 16, R.E. 2002 (the Penal Code). He was convicted on both counts and sentenced to 30 years imprisonment on each count. The sentences were ordered to run concurrently. He was also ordered to pay Tshs. 500,000/= compensation to the victim of rape. Aggrieved, he

unsuccessfully appealed to the High Court of Tanzania at Bukoba. Upon being dissatisfied with the High Court's decision, he appealed to this Court vide Criminal Appeal No. 278 of 2015 (Kileo, J.A, Mjasiri, J.A. And Mmilla, J.A.), but his appeal was also dismissed. Still undaunted, he has brought to this Court the application for review.

In the Notice of Motion the applicant has advanced three grounds which can be conveniently extracted as follows:-

1) The essential elements of visual identification including the intensity and location were overlooked.

2) The protomozoa (sperms) in hymen were not determined though he was arrested soon after the allegedly offence was committed.

3) The evidence of Exh P1 (PF3) was defective.

When the application was called on for hearing, the applicant fended for himself unrepresented, whereas the respondent Republic enjoyed the services of Ms. Chema Maswi, learned State Attorney.

When the applicant was given the floor to elaborate his application, apart from adopting his grounds of review in his Notice of Motion, he

opted to let the learned State Attorney submit first and respond later if need would arise.

On her part, Ms. Maswi did not support the application. She submitted that the applicant has not raised any of the grounds under Rule 66(1) (a) to (e) of the Rules to which this Court can review. She pointed out that, the applicant has instead, advanced grounds of appeal which challenge the evidence while the same were addressed by the Court in the appeal. While referring to the case of **Damian Ruhale v. Republic**, Criminal Appeal No. 4 of 2013 (unreported), she contended that this Court has no jurisdiction to sit on another appeal. She stressed that the litigation must come to end. She concluded by imploring the Court to dismiss the application for failure to comply with Rule 66(1) (a) to (e) of the Rules.

In reply the applicant did not have anything to add except that he prayed for the Court's indulgence to allow his application.

It is without question that this Court's inherent power to review its decisions is provided for under Rule 66(1) (a) to (e) of the Rules. The provision sets out the grounds upon which this Court can review its decisions as hereunder:

"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 an opportunity to be heard;

(c) the Court's decision is a nullity;

(d) the Court had no jurisdiction to entertain the case; or

(e) the judgment was procured illegally, or by fraud or perjury."

It is significantly noteworthy that, the inherent power of the Court is exercised in the rarest cases and for restricted grounds which are stipulated in Rule 66(1) of the Rules; and mere dissatisfaction with the decision of the Court is not among those grounds. (See **Deogratius Nicholas @ Jeshi and Joseph Mkwamo v. Republic,** Criminal Application No.1 of 2014 (unreported). It is also important to note that, an application for review is not an appeal in disguise whereby a decision which is erroneous can be heard and corrected. (See **Karimu Kiara v.**

Republic, Criminal Appeal No 4 of 2007**; Patrick Sanga v. Republic**, Criminal Application No. 8 of 2011; and **Ghati Mwita v. Republic**, Criminal Appeal No 3 of 2013 (all unreported). The reason for restricting such kind of the Court sitting on its own decisions is to abide to the public policy that litigation must come to an end. (See **Chandrakant Joshubai Patel v. Republic**, [2004] T.L.R 218).

In this case, as it was submitted by Ms. Maswi, the grounds raised by the applicant in his notice of motion are seeking this Court to review the evidence which was relied upon to ground a conviction against him. In grounds 1, 2 and 3 of the notice of motion which seem to be not clear the applicant is challenging the Court's overlooking the evidence of visual identification which was insufficient; failure to determine the hymen protomozoa (sperms) though he was arrested immediately after the commission of the alleged offence; and acting on evidence of Exh P1 (PF3) which to him was obtained out of leading questions. In her submission, Ms. Maswi intimated us that those grounds had been raised in his appeal before the Court and already determined by the Court.

After having perused the decision sought to be reviewed, we have observed that, indeed, the major grounds of appeal for determination were that the appellant was not properly identified; and that the

conviction of the appellant was against the weight of the evidence on record. These grounds almost carry the same gist as the ones raised in application for review. However, we wish to emphasize what was stated by this Court in the case of **Damian Ruhele** (supra) that;

> *" In review, the Court does not sit as a court of appeal from its own decision; nor will it sit for the purpose of re-litigating arguments already considered by the Court. The purpose of the jurisdiction is not to provide a back door method by which unsuccessful litigants seek to re-argue their cases".*

Even in this case, since the purported grounds of review raised by the applicant were addressed by the Court in the decision sought to be impugned, he cannot bring them again to this Court. This Court has no jurisdiction to entertain an appeal in a back door.

The most unfortunate part of the story is that, though the applicant premised his application under Rule 66 of the Rules, he has failed to show under which paragraph (a) to (e) of sub rule (1) of Rule 66 of the Rules which vests jurisdiction to this Court to entertain a review. He has not shown clearly which paragraph was contravened.

We, therefore, agree with Ms. Maswi that, indeed, the applicant's application for review has failed to meet the requirements under Rule 66 (1) (a) to (e) of the Rules.

In view of what we have endeavored to demonstrate hereinabove, we are inclined to agree with Ms. Maswi that the application has no merits. Hence, we dismiss it in its entirety.

DATED at **BUKOBA** this 3rd day of September, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

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

E. Y. MKWIZU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL