

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MTWARA**

**CORAM: MWARIJA, J.A., MZIRAY, J.A, And WAMBALI, J.A.)**

**CRIMINAL APPLICATION NO. 01 OF 2016**

**MUSTAPHA MAULID RASHID .....APPLICANT**

**VERSUS**

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

**(Application for lodging a Review from the decision of the Court of Appeal  
of Tanzania**

**at Mtwara)**

**(Othman, CJ., Mjasiri, J.A., And Mmilla, J.A.)**

**Dated the 15<sup>th</sup> day of December, 2015**

**In**

**Criminal Appeal No. 241 of 2014**

.....

**RULING OF THE COURT**

27<sup>th</sup> February &.1<sup>st</sup> March,2019

**MZIRAY, J.A.:**

This is an application for Review of the decision of this Court in Criminal Appeal No. 241 of 2014 handed down on 3/2/2016 in which the applicant's appeal was dismissed. The notice of motion is premised under Rule 48(1) and 66(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and is supported by an affidavit deponed by the applicant.

In a nutshell, this application has this background. In the High Court of Tanzania at Mtwara, the applicant was charged with and convicted of the offence of murder contrary to section 196 of the Penal Code, Cap. 16 Revised Edition 2002, and was sentenced to suffer death by hanging. It was alleged by the prosecution that on 18/6/2011 the appellant hired a motorcycle operated by the deceased from Nagaga Village to Nakarara Village within Masasi District in Mtwara Region. Upon reaching Nakarara Village he took the deceased to his home where he led him to the fields and attacked him to death with an iron bar.

In this application the applicant appeared in person, unrepresented while on the part of the respondent Republic had services of Mr. Abdrahaman Mohamed, learned Senior State Attorney, assisted by Mr. Yahaya Gumbo, learned State Attorney.

The grounds under which the applicant is relying as reflected in the notice of motion reads as follows:

- 1. That the decision of this Court was based on a manifest error on the face of record resulting in the miscarriage of justice.*
- 2. That the Court's decision is a nullify.*
- 3. That the judgment was procured by perjury.*

When called to elaborate the above grounds, the applicant opted to let the learned State Attorney to submit first and he would respond if need be.

In a brief but focused submission the learned Senior State Attorney argued that the applicant has not met the requirements of Rule 66(1) of the Rules by failing to point out in the notice of motion the manifest error in the decision of the Court which resulted in miscarriage of justice or how the said decision was a nullity. Additionally, he could not show in the notice of motion how the judgment was procured by perjury. Criticising the judgment without elaborating the three grounds on which he relies upon in his notice of motion is not sufficient to grant the application, he argued. He therefore asked the Court to dismiss this application for want of merit.

In response, the applicant argued that the decision of this Court which is the subject matter of this application was erroneous in that it was given against the weight of the evidence. He pointed out that there was no one who saw him receiving the motor cycle (exhibit P3) which connects him with the alleged offence. He went on to state that the autopsy report which had lot of deficiencies was illegally received. He

then prayed that his application be allowed and justice to be done to him.

Rule 66(1) of the Tanzania Court of Appeal Rules, 2009 under which the application is premised provides 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 miscarriage of justice, or*
- b) A party was wrongly deprived of an opportunity to be heard, or*
- c) The Court's decision is nullity, or*
- d) The Court had no jurisdiction to entertain the case, or*
- e) The judgment was procured illegally, or by fraud or perjury".*

For an application for review to succeed the applicant must satisfy one if not all the conditions stipulated under Rule 66(1). It is only within the scope of that Rule that the applicant can seek for the judgment of this Court to be reviewed.

In the notice of motion, the applicant's application is premised on items, (a), (c) and (e) of sub-rule 1 of Rule 66. He is alleging that the judgment of this Court in Criminal Appeal No. 241 of 2014, at Mtwara delivered on 3/2/2016 was in breach of Rule 66(1) (a) (c) and (e). However, in his submission before us he criticised the Court on matters of evidence and failed completely to justify how the decision was based on manifest error on the face of record resulting in miscarriage of justice. He could not substantiate either the allegation that the said judgment was procured by perjury or in what manner the said decision was a nullity. His submission was focused more on the alleged weakness in evidence which is not one among the conditions in Rule 66(1).

The submission of the applicant when looked closely, it is as if he is inviting the Court to revisit and re-assess the evidence. This is impossible because if we do so it will be like to sit in another appeal of our own decision. See **John Kashinde v. R**, Criminal Application No. 16 of 2014 (unreported). It is at this point we agree with the submission of the learned Senior State Attorney that the applicant was supposed to elaborate on the three grounds he raised and the mere mentioning them in the notice of motion was not sufficient to justify the

grant of the application. That said, we find this application to have no merit and dismiss it.

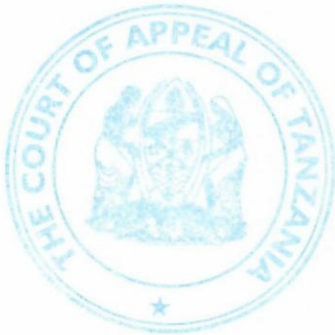
**DATED** at **MTWARA** this 1<sup>st</sup> day of March, 2019.


A.G. MWARIJA  
**JUSTICE OF APPEAL**

R.E.S. MZIRAY  
**JUSTICE OF APPEAL**

F.L.K. WAMBALI  
**JUSTICE OF APPEAL**

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



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