IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

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

CRIMINAL APPLICATION NO. 28/7 OF 2018

ALOYCE MARIDADI..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

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

(Mbarouk, Mugasha, Mwangesi, JJ.A.)

dated the 4th day of July, 2016

in

Criminal Appeal No. 208 of 2016

RULING OF THE COURT

27th February & 5th March, 2019

MWARIJA, J.A.:

In this Application, the applicant, Aloyce Maridadi has moved the Court seeking a review of its decision dated 4/7/2017. The application has been brought under S. 4 (4) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002] and Rules 48 (1) and 66 (1) (a), (c) and (e) of the Tanzania Court of Appeal Rules, 2009 (hereinafter "the Rules").

In the decision sought to be reviewed, the Court upheld the decision of the High Court of Tanzania at Mtwara (Gwae J.) in Criminal Appeal No.

208 of 2016 which originated from Lindi District Court Criminal Case No. 101 of 2013. In that court, the appellant was charged with and convicted of unnatural offence contrary to S. 154 (1) and (2) of the Penal Code [Cap. 16 R.E. 2002]. He was consequently sentenced to thirty (30) years imprisonment. The sentence was however enhanced by the High Court to life imprisonment because the victim of the offence was aged below eighteen years.

As stated above, the applicant's appeal to this Court against the decision of the High Court was unsuccessful hence this application for review. In his notice of motion, he has predicated his application on the following grounds:-

> *"(a) That the decision was based on the manifest error on the face of record resulting to miscarriage of justice.*
>
> *(b) That the decision was procured by perjury*
>
> *(c) That the decision is a nullity."*

At the hearing of the application, the applicant appeared in person, unrepresented while the respondent Republic was represented by Mr. Abdulrahman Mohamed, learned Senior State Attorney assisted by Mr.

Yahaya Gumbo, learned State Attorney. In arguing the application, the applicant opted to hear first, the learned Senior State Attorney's reply to the grounds of review.

Mr. Mohamed opposed the application. He argued that the same is not tenable because the applicant has not raised any ground upon which the Court may consider to review its decision. According to the learned Senior State Attorney, the applicant has only mentioned the grounds on which the Court may review its decision under Rule 66(1) of the Rules. He said that the applicant has not pointed out any manifest error in the judgment of the Court or how the judgment was procured by perjury. He also submitted that the applicant has not stated the nature of the illegality of the Court's decision.

On these shortfalls, it was Mr. Mohamed's submission that the application has been brought without sufficient grounds and thus the Court lacks the material upon which it may consider to review its decision. He prayed that the application be dismissed for want of merit.

The applicant did not have anything to submit in rejoinder. He reiterated his defence that he did not commit the offence and prayed that in any case, the Court should consider to reduce his sentence.

Rule 66 (1) (a), (c) and (e) of the Rules under which the applicant has based his application 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.*
>
> *(b) .....*
>
> *(c) the court's decision is a nullity, or*
>
> *(d) ....., or*
>
> *(e) the judgment was procured illegally, or by fraud or perjury."*

As submitted by the learned Senior State Attorney, the applicant has merely listed in his application, the above stated grounds which if established, may entitle the Court to review its decision. Apart from listing

those grounds, the applicant did not state the nature of the error or, illegality or his reasons for contending that the decision was procured by perjury. Even if his grounds can be considered from the point of view of the contents of his affidavit, except for the contents of paragraph 6 which is itself deficient of particularization of the nature of the perjury, the allegations stated in paragraphs 5 and 7 are based on his dissatisfaction of the Court's decision. He states as follows in paragraphs 5, 6, and 7 of the affidavit.

> *"5. That being aggrieved by the decision of the Court of Appeal I have preferred this application for review because the court failed to consider the manifest error on the face of records in which the age of the alleged victim of crime was never proved in the lower courts. This error is vividly seen in the records where the prosecution side only alleged that the victim was 6 years old without any proof thereof.*
>
> *6. That due to the reason stated in paragraph 5 above, the Court of Appeal should have found the whole proceedings of the High Court a nullity for being based on perjury.*

7. That the Court of Appeal having expunged the exhibit "P1" a PF3, it error by dismissing the appeal and upholding the conviction and sentence while the remaining evidence did not prove the offence. This is manifest error on the face of record resulting into miscarriage of justice."

We have stated above that the applicant has not pointed out how the Court's decision was procured by perjury. As for the allegations in paragraphs 5 and 7, it has been held in a number of decisions that an application for review must not be in the form of an appeal against the Court's decision. In the case of **Karim Kiara v. The Republic**, Criminal Appeal No. 4 of 2007 (unreported), the Court had this to say:-

*"The law on application for review is now settled. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected (See **Thungabhadra Industries vs. Andhra Pradesh** (1964) SC 1372 as cited in MULLA, 14th Ed. Pp. 2335 -36). In a properly functioning legal system, litigation must have finality, thus the latin maxim of 'debet esse finis litium'. This is a matter of public policy. It is not insignificant to point out here that if this were not,*

then as was stated by this Court in ***Marck Mhango (and 684 others) v. Tanzania Shoe Company Ltd and Another****, Civil Application No. 90 of 1999 (unreported), the court's order would have the effect of which –*

'is to reopen a matter otherwise lawfully determined. There should be certainty of judgment ... a system of law which cannot guarantee the certainty of its judgments and their enforceability is a system fundamentally flawed. There can be no certainty where decisions can be varied at any time at the pressure of the losing party and the machinery of justice as an institution would be brought into question."

The Court went on to underscore what was stated by Court of Appeal for East Africa in the case of **Lakhamshi Brothers Ltd v. R. Raja**, Civil Application No. 6 of 1966 and quoted the following passage:-

"In a review the Court should not sit on appeal against its own judgment in the same proceedings. In a review, the Court has inherit jurisdiction to recall its judgment in order to give effect to its manifest intention on to what clearly would have

been the intention of the Court had some matter not been in avertedly omitted."

On the basis of the above stated reasons, we agree with the learned Senior State Attorney that this application is not tenable. In the event, we hereby dismiss it for want of merit.

DATED at **MTWARA** this 1st 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