**IN THE COURT OF APPEAL OF TANZANIA**

**AT TANGA**

**(CORAM: MUGASHA, J.A., KOROSSO, J.A., And MWANDAMBO, J.A.)**

**CRIMINAL APPLICATION NO. 58/12 OF 2020**

**YUSUFU HASSANI..... APPLICANT**

**VERSUS**

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

**(Application for review from the decision of the Court of Appeal of Tanzania, at Tanga)**

**(Munuo, Msoffe, Kimaro, JJ.A.)**

**dated the 12th day of March, 2010**
**in**
**Criminal Appeal No. 152 of 2008**

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## RULING OF THE COURT

8th & 10th June, 2021

**MUGASHA, J.A.:**

This is an application by way of Notice of Motion seeking a review of the decision of this Court dated 12/3/2010 in Criminal Appeal No. 152 of 2008 which dismissed the appeal against the decision of the High Court in Criminal Appeal No. 5 of 2007. The application is predicated under Rule 66 (1) (a) (b) and (c) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and it is accompanied by the affidavit of Yusuf Hassani, the applicant who has raised three following grounds: -

1. That the Justices of appeal in their final analysis based on manifest error on the face of record as the matter of identification lacks credibility to stand as it has to be by law.

2. The prosecution witnesses claimed to know well the applicant but surprisingly the applicant was identified in the identification parade conducted at the police station.

3. The justice (sic) of appeal in their final analysis erred in law by failing to analyze that the charge sheet is defective as it lacks proper provision of the law, since the applicant [was] convicted [under] a wrong provision of the law resulting in a miscarriage of justice.

At the hearing the applicant appeared in person, unrepresented whereas the respondent Republic had the services of Messrs. Winluck Mangowi and Paul Kusekwa, both learned State Attorneys.

On taking the floor, the applicant adopted the grounds in the notice of motion, and the accompanying affidavit. Then, in explaining the gist of the 3rd ground he contended that, since he was charged with armed robbery contrary to sections 285 and 286 of the Penal Code [CAP 16 RE. 2002], the appropriate sentence is 15 years' imprisonment instead of 30

years' imprisonment meted on him. He thus urged the Court to consider the grounds of motion and on account of manifest errors on the face of the record, review the impugned decision accordingly.

On the other hand, the application was opposed by the learned State Attorney who pointed out that the grounds upon which the motion is sought do not meet the criteria of review. On this, he submitted that while the two first grounds are on the propriety or otherwise of the identification of the applicant at the scene of crime, the Court sitting on appeal considered the evidence adduced at the trial and was satisfied that, the applicant was properly identified at the scene of crime owing to the circumstances surrounding the robbery incident. These included, the visibility because the incident was committed at 6.45 p.m. in the evening and the familiarity of the appellant to the identifying witnesses. As such, he argued that the Court's finding on the visual identification is not infested with manifest error.

Pertaining to the ground on the defective charge, he argued that, the same does not meet the prescribed criteria for the review. Finally, it was argued that, there is no manifest error in the impugned decision as

suggested by the applicant who is all out seeking to utilise the review as a backdoor to re-argue an appeal which is not permissible. He concluded that, since the applicant has not made out a case for review, it is deserving to have the application dismissed.

In rejoinder, the applicant stated that he was not properly identified because those who claimed to have identified him were his fellow businessmen and reiterated his earlier prayer on the improper sentence of imprisonment.

After a careful consideration of the submissions of the learned State Attorney, the only point for consideration is whether the applicant has made out a case warranting the review.

It is undisputed that, the applicant lost in the first appeal before the High Court against the decision of the trial court. He was as well, unsuccessful in the second appeal to the Court in Criminal Appeal No. 152 of 2008 which was dismissed on 13/3/2010. The basis of the dismissal was that; the charge of armed robbery was proved beyond reasonable doubt that he did commit the offence because he was properly identified at the

scene of crime by the prosecution witnesses. Gathering from both the Notice of Motion and the affidavit, what is contained in the applicant's grounds of motion and the deposition is geared to challenge the inadequacies in the evidence at the trial and the first appellate court and the propriety or otherwise of the sentence meted on him.

It is now settled that; this Court has jurisdiction to review its own decision in any given case in terms of section 4 (4) of the Appellate Jurisdiction Act CAP 141 RE. 2019. Notably, jurisdiction for review is necessary to ensure that a manifest injustice does not go uncorrected. This is aimed at ensuring justice between the litigants involved and to ensure public confidence in the administration of justice, remedying wrong decisions, clarifying and developing the law and setting precedents. However, this should not compromise a sound policy that litigation must come to an end. See - **SEE NGUZA VIKINGS @BABU SEYA AND ANOTHER VS REPUBLIC,** Criminal Application No. 5 of 2010 (unreported).

Apart from the remedy being mainstreamed in statute, the grounds upon which review can be predicated are stated under Rule 66 (1) (a) to (e) of the Rules which stipulate 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;*
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> *(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;*
>
> *(e) the judgment was procured illegally, or by fraud or perjury.*

The stated circumstances clearly indicate that review is limited in scope to the Court's decisions and on grounds stated there under. The same is also reflected in the principles governing the exercise of review as established by case law in our jurisdiction and from various jurisdictions.

Some of these principles are: **One;** a judgment of the final court is final and review of such judgment is an exception. See - **BLUE LINE ENTERPRISES LTD. vs. THE EAST AFRICAN DEVELOPMENT BANK,** (EADB), Civil Application No. 21 of 2012. **Two;** the power of review is limited in scope and is normally used for correction of a mistake but not to substitute a view in law. See - **PETER NG'HOMANGO vs. GERSON A.K. MWANGA** and **ANOTHER**, Civil Application No. 33 of 2002 (unreported) and **DEVENDER PAL SINGH v. STATE, N.C.T. of NEW DELHI AND ANOTHER,** Review Petitions No. 497, 620, 627 of 2002 (India Supreme Court). **Three;** the review should not be utilized as a backdoor method to unsuccessful litigants to re-argue their case which is tantamount to the exercise of appellate jurisdiction which is not permissible. See - **MEERA BHANJA vs. NIRMALA KUMARI CHOUDURY** (1955) ISCC India. **Four;** a Court will not sit as a Court of Appeal from its own decisions, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision. **Five;** a point which may be a good ground of appeal may not be a good ground of review. See - **BALINDA VS KANGWAMU** [1963] EA 557.

Guided by the principles governing the exercise of review, we founding the present application seeking to have the impugned decision of the Court reviewed on account of a manifest error on the face of the record is wanting. What constitutes a manifest error was considered by the Court in the case of **CHANDRANKANT JOSHUBHAI PATEL vs REPUBLIC**. [2004] T.L.R. 218. In the said case, the Court quoted with approval an excerpt from MULLA, 14th edition at page 225 as follows:

> *"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions... A mere error of law is not a ground for ordering review... it can be said of an error that is self-apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established."*

Since the applicant is inviting the Court to revisit the evidence adduced at the trial court so as to establish the propriety or otherwise of visual identification, this, obviously involves a long drawn process of reasoning on points raised on which there may conceivably be two opinions

and as such, it does not qualify to be a manifest error apparent on the face of the record. That apart, in view of the limited scope of the review jurisdiction of the Court which is necessary to ensure that a manifest injustice does not go uncorrected, the present application is untenable. We say so because before us, the applicant is all out to utilise the review to re-argue his appeal which is not acceptable because a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only where there is a patent error. See - **CHANDARAKANT JOSHUBHAI PATEL VS REPUBLIC** (supra) and **THUNGABADRA INDUSTRIES LTD VS STATE OF ANDRA PRADESH** (1964) S.C 1372).

Notwithstanding the aforesaid, looking at the impugned decision, the complaint on the propriety of visual identification was a ground of appeal which was well addressed by the Court. Having considered the respective criteria stated in several cases including the case of **WAZIRI AMANI VS REPUBLIC** [1980] T.L.R. 250 the Court held:

> *"The evidence on record in this case meets the above criteria on identification. The armed robbery occurred during day time at 6.45 p.m. Moreover, the 2nd appellant was not a*

*stranger to PW2, PW3 and PW5. These three witnesses knew him before. When PW3 asked the 2nd appellant what he was doing at the village, the latter inflicted a panga cut on him. PW2 noted that the 2nd appellant often visited his girlfriend at Bwiti village was also corroborated by PW5 Salum Mohamed. When PW5 got word that bandits had invaded the complainant's shop, he went to the scene of crime with another co- villager, PW4 TAO Mchemba,...In view of the fact that armed robbery was committed during the day when visibility was favourable and considering that PW2, PW3, PW4 and PW5 knew the 2nd appellant before the incident, we have no doubt in our minds that his identification was watertight. He spent considerable time at the shop first as customer and while his co- bandits were looting in the shop after injuring PW2 with a panga, the 2nd appellant remained outside the shop warding off people."*

We do not see any manifest error in the said decision and as such, we are satisfied that, in bringing this application the applicant seems to have been dissatisfied with the decision of the Court which dismissed his appeal. In the case of **TANGANYIKA LAND AGENCY LIMITED AND 7 OTHERS VS MANOHAR LAL AGGRAWAL,** Civil Application No. 17 of 2008

(unreported), the Court was confronted with the application of this nature and it held:

> " *For matters which were fully dealt with and decided upon appeal the fact that one of the parties is dissatisfied with the outcome is no ground at all for review. To do that, would, not only be an abuse of the Court process, but would result to endless litigation. Like life, litigation must come to an end."*

Apart from a grievance on the Court decision not constituting a ground for the review, condoning an application of this nature would also open a flood gate to dissatisfied parties trying their luck after the appeal is decided against them. See - **PETER NG'HOMANGO VS GERSON A.K MWANGWA AND THE ATTORNEY GENERAL**, (*supra*).

Regarding the ground on the defective charge sheet and the propriety of the sentence, we are satisfied that, there is no manifest error in the decision of the Court warranting the review because a point which may be a good ground of appeal may not be a good ground of review. See **BALINDA VS KANGWAMU** [1963] EA 557. Moreover, the complaint on the defective charge and propriety of the sentence were not raised as grounds of appeal in the impugned decision, they have been raised as an

afterthought in the current application which in itself is not a ground of review.

Thus, in view of what we have endeavoured to discuss, and having regard to the nature of the present application, we are satisfied that, the applicant has not made out a case warranting review which renders the application not merited and we proceed to dismiss it.

**DATED** at **TANGA** this 9th day of June, 2021.

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

W.B. KOROSSO
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO
**JUSTICE OF APPEAL**

The Ruling delivered this 10th day of June, 2021 in the presence of the Applicant in person and Mr. Joseph Makene, learned State Attorney for the Respondent/Republic, is hereby certified as true copy of the original.

F. A. MTARANIA
**DEPUTY REGISTRAR**
**COURT OF APPEAL**