IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NDIKA, J.A., SEHEL, J.A. And KHAMIS, J.A.)

CRIMINAL APPLICATION NO. 85/01 OF 2020

SHADRACK MESHAKI MADIGA ..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Application for review of the Decision of the Court of Appeal of Tanzania at Dar es Salaam)

(Lila, Korosso and Sehel, JJ.A.)

dated 6th day of October, 2020

in

Criminal Appeal No. 174 of 2018

.....

RULING OF THE COURT

12th & 25th July, 2023

SEHEL, J.A.:

Before us is an application for review of the judgment of this Court in Criminal Appeal No. 174 of 2018 dated 6th October, 2020 that dismissed the applicant's appeal. The application is by notice of motion taken out under Rule 66 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules) and supported by an affidavit sworn by the applicant, himself. On the other hand, the respondent/Republic opposed the motion by filing an affidavit in reply sworn to by Tumaini Maingu Mafuru, learned State Attorney.

Before dealing with the application, we find it apt to give a brief history giving rise to the present application. The applicant was arraigned before the District Court of Temeke facing a criminal charge of armed robbery, an offence under section 287A of the Penal Code, Cap. 16. Having heard the prosecution case built upon seven witnesses and five documentary exhibits, the trial court found that the applicant's guilt was proved beyond reasonable doubt as charged. Accordingly, the applicant was convicted and sentenced to thirty (30) years imprisonment. After the High Court of Tanzania at Dar es Salaam had dismissed his first appeal, the applicant preferred his second appeal to the Court which was also dismissed. He has now come to this Court by way of review on a single ground that he was deprived an opportunity to rejoin hence his right to be heard was abrogated.

When the application was called on for hearing, the applicant appeared in person, unrepresented, whereas, Mses. Aziza Mhina and Tumaini Maingu Mafuru, learned State Attorneys, appeared for the respondent/Republic.

When invited to submit on the application, the applicant adopted the written arguments he had earlier on filed, and then, referred us to page 15 of the impugned judgment wherein it was recorded that: *"He (the applicant herein) urged the Court to let the respondent Republic*

respond to his appeal and written submission and then he would make a rejoinder." It was his submission that after the respondent had made her reply submission, he was not given a chance to rejoin. He thus urged the Court to allow the application.

Responding to the application, Ms. Mhina admitted that the record, at page 15 of the impugned judgment, indicates that the applicant intimated to the Court that he would rejoin after the learned State Attorney had made his reply submission but the record is silent as to whether he was given that right to make a rejoinder. Despite that fact, she argued, it does not mean that the applicant was denied a right to be heard. Elaborating on that submission, she contended that the purpose of a rejoinder is to respond to the reply submission and it is limited to the issues raised by the responding party. It was therefore her submission that, since the record is silent, it should be taken that the applicant had nothing to rejoin. That, if he had anything to rejoin, he would have stated so before the Court. In addition, she argued that the applicant was not prejudiced since no new issue was raised by the respondent in reply submission. She thus urged the Court to dismiss the application for lack of merit.

Responding to the contention that the applicant had nothing to rejoin, he contended that the judgment would still have indicated so. He

thus reiterated his earlier submission and urged the Court to allow his application.

Having considered the submission by the parties, we find that the critical issue for our determination is whether the non-indication of the rejoinder submission in the judgment amounts to a denial of a right to be heard to warrant the Court to review its own decision under Rule 66 (1) (b) of the Rules.

Luckily, we happened to deliberate on the same complaint in the case of **Ramadhani Said Omary v. The Republic**, Criminal Application No. 87/ 01 of 2019 [2022] TZCA 459 (21 July, 2022; TANZLII) and the Court categorically stated that a judgment is not a transcription of the proceedings that:

> *"...we do not think it would be proper to equate the judgment to a transcription of the proceedings that unfolded before the Court at the hearing of the appeal. What is most important, and is actually discernible from the judgment, is that the Court provided a balanced account of the arguments for and against the applicant's appeal before it interrogated them and dismissed the appeal."*

Flowing from the above position and having taken time to revisit the entire impugned judgment, we noted that, indeed, at page 15 of the impugned judgment, the applicant informed the Court of his intention to

rejoin to the reply submissions. We have also noted that in dealing with the six long and detailed grounds of appeal, the Court conveniently summarized them into seven grounds. It then went on to determine each and every ground of appeal by first, summarizing the arguments made by the applicant, secondly, summarizing the submissions made by the learned State Attorney and thereafter, it made its analysis and determination of that particular ground. For instance, one of the applicant's grounds of appeal was non-compliance with section 38 (3) of the Criminal Procedure Act, Cap. 20. Before dismissing this ground, the Court recorded the following:

> *"In ground four (4) of appeal, the appellant's (the applicant herein) complaint is two-limbed. In the first limb, the appellant has made a long submission elaborating that the provisions of sections 38 (3) of the CPA was not complied with when the stolen car was recovered because no seizure certificate was issued. We think, we need not be detained in this ground. As rightly argued by the learned State Attorney, the evidence on record is clear that the stolen car was found in the football pitch near the appellant's house. It was not seized in the appellant's house after an official search being conducted as envisaged under section 38 of the CPA hence the need to issue a certificate of seizure does not arise.*

The complaint is, for that reason, unfounded and is hereby dismissed."

The above excerpt tells it all that the Court made a balanced account and consideration of both parties' submissions before reaching to its final decision. It should be noted that the above approach was used by the Court throughout its judgment in deliberating on each and every ground of appeal raised by the applicant. In that respect, we entertain no doubt that the applicant's complaint is baseless.

In the upshot, we find that the application is devoid of merit and we hereby dismiss it.

DATED at **DAR ES SALAAM** this 21st day of July, 2023.

G. A. M. NDIKA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The Ruling delivered this 25th day of July, 2023 in the presence of the Applicant in person and Mr. Adolf Kissima, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL