

TANZANIA / JUDGMENT

20100218 TZCA Arusha

COURT
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18 February 2010

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IN THE COURT OF APPEAL OF TANZANIA ATARUSHA CRIMINAL APPLICATION NO. 1 OF 2008
FADHILI YAHAYA APPELLANT VERSUS THE DPP
..... !1..... RESPONDENT (Application for Extension of
Time to file Revision from the Decision of the Court of Appeal of Tanzania at Arusha) (Kaji, JA,
Kileo JA, and Kimaro JA.) dated the 21 st day of April, 2008 in Criminal Appeal No. 209 of 2006

RULING

11 th & 1st February, 2010 NSEKELA, J.A. The applicant filed a chamber summons in this Court on the 18.2.2009 under Section 361 of the Criminal Procedure Act, 1985 supported by an affidavit affirmed by the applicant himself. Paragraphs 2 and 4 are incomplete. Paragraph 2 does not disclose when the applicant was convicted and sentenced. Paragraph 4 does not show when this Court dismissed his appeal. The verification clause has not been dated. It is not known when it was filed and signed in the High Court. I am not so sure that there is a valid affidavit in support. Perhaps more important, on the 8.2.2010, the respondent Republic filed a notice of preliminary objection to the effect that the applicant had not properly moved this Court to hear and determine the application. Mr. Zakaria Elisaria, learned State Attorney, submitted that section 361 of the Criminal Procedure Act, 1985 is inapplicable to applications to this Court. The applicant being a layman was unable to respond to this legal point. With respect, I agree with the learned State Attorney. In Civil Reference No. 22 of 2005, China Henan International Cooperation Group v Salvand K.A. Rwegasira {unreported} the Court stated this- " It is now settled that wrong citation of a provision of the law or rule under which the application is made renders the application incompetent." In the application at hand, it is an inapplicable rule which the applicant has moved the Court, which is worse. Section 361 of the Criminal Procedure Act, 1985 deals with appeals to the High Court. I therefore uphold the preliminary objection. The application is hereby struck out. I make no order as to costs. It is so ordered. DATED at ARUSHA this 16th day of February, 2010. H. R. NSEKELA JUSTICE OF APPEAL I certify that this is a true copy of the original M.A. DEPUTY REG ST ~- COURT OF APPEAL 3

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