

TANZANIA / JUDGMENT

20170224 TZCA Bukoba

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IN THE COURT OF APPEAL OF TANZANIA AT BUKOBA CORAM: MJASIRI, J.A., MMILLA, J.A., And MZIRAY, J.A. CRIMINAL APPLICATION NO. 1 OF 2012 GO BETH CLEOPHACE

..... APPLICANT VERSUS THE REPUBLIC :-"

..... RESPONDENT (Appeal from conviction of the High Court of Tanzania at Bukoba {Mzuna, J.} Dated the 20th day of July, 2010 in Criminal Appeal No. 34 of 2008 RULING OF THE COURT 23 rd & 27th day of February, 2017 MZIRAY, J.A.: This is an application for review of the decision of this Court in Criminal Appeal No 210 of 2010 delivered on 16/11/2011 in which the applicant's appeal was dismissed. The background leading to the present application is that, in the High Court of Tanzania (Mzuna, J) sitting at Bukoba, the applicant was charged and convicted of the offence of Murder c/s 196 of the Penal code, Cap 16 1 RE 2002. He was sentenced to suffer death by hanging. Aggrieved, he appealed to this Court but, his appeal was dismissed in its entirety. He has now filed an application for review advancing grounds stating that:-

- (1) The court erred in convicting the applicant for murder fn_~Jead of manslaughter as the death was enunciated by fighting.
- (2) The Court erred in law and fact in upholding the High Court decision which is based on contradictory evidence.
- (3) The court grossly erred in law and fact to base the conviction on the caution statement which was induced by threat and oppression. In this application, the applicant appeared in person unrepresented, whereas Ms. Chema Maswi, learned State Attorney represented the respondent /Republic. At the hearing, the applicant opted to adopt his grounds of review as found in the Notice of Motion and allow the learned State Attorney to react first to his application. On her part, ·Ms. Maswi from the outset opted not to support the application, because the grounds stated in the Notice of Motion appear like grounds of appeal. She added that the grounds raised were thoroughly 2 discussed in the judgment of this Court. On that basis she· urged us to dismiss the application for lack of merit. In his rejoinder submission, the applicant had nothing useful to add. He simply prayed for his application to be allowed. It is trite law that, it is not each and every ground which qualifies to be a ground for review. The grounds on which this Court could exercise its review jurisdiction are explicitly set out in Rule 66(1) of the Court of Appeal Rules (the Rules), which reads as follows; "66 (1) the Court may review it judgment or order, but no application for review shall be entertained

except on the follow grounds:-

- (a) the decision was based on a manifest error on the face of record, resulting in the miscarriage of justice; or
- (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; or 3 (e) the Judgment was procured illegally, or by fraud and perjury. Having gone through the Notice of Motion and the accompanying affidavit, basically the applicant is inviting the Court to re-assess the evidence afresh. Re-assessment of evidence is not one of the grounds enumerated under Rule 66(1) of the Rules. However, to re-assess the issue advanced by the applicant is like to sit in another appeal of our own decision. This would not be possible as allowing the same, litigations will not come to an end. This is against public policy which demands the need of litigation to come to an end. (See Samson Matiga V.R., Criminal Application No. 6 of 2011, Patrick Sanga V.R, Criminal Application No. 8 of 2011. Richard Mgaya @ Sikubali Mgaya V.R. Civil Application No 1 of 2010 and Eusebia Nyenzi V.R, Criminal Application No. 6 of 2013 (all unreported). In view of the above elaboration and the preceding authorities cited, we agree with Ms. Maswi that the application does not meet the criteria set in Rule 66 (1) of the Rules. That said, we dismiss the application for lack of merit. 4 DATED at BUKOBA this 24 th day of February, 2017. S.MJASIRI JUSTICE OF APPEAL B.M.MMILLA JUSTICE OF APPEAL R.E.S.MZIRAY JUSTICE OF APPEAL I certify that this is a true copy of the original. ~ = P.B~PIKYA SENIOR DEPUTY REGISTRAR COURT OF APPEAL 5

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