

TANZANIA / JUDGMENT

2010NA TZCA Dar es Salaam

COURT
TZCADECIDED
1 January 2010

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF THE COURT OF APPEAL OF TANZANIA .. AT DAR ES SALAAM (CORAM: MUNUO. J.A., KIMARO, J.A., And MJASIRI. J.A.) I CRIMINAL APPLICATION NO. 4 OF 2007: . ABRAHAMANI MAPUNDA AND OTHERS APPLICANTS VERSUS . THE REPUBLIC J. RESPONDENT I .
(Application for Review of the judgment of the Court of Appeal of Tanzania at Dar es Salaam) (Munuo, J.A.; Kaji, J.A. and Kimaro, J.A.) . . Criminal : : : : : f0:02 . -, I , , i '1'n r:H,L"-c':t'-i'1"f)'N .. r, : , ... : , - , - Ji , t I "j , , l , , : r _ ... r - : ! : r · J. 1·'1. t : , , , ; - · N·ih , \ , . , · .

- Oi:-' ... , · ')(\ ... · , JUDGMENT OF THE COURT 19th February & KIMARO, J.A.: The applicants were charged in the district Court of Bagamoyo at Bagamoyo, ' , , , ' ; , - , .. " : ; , ~ ; , · l , t _ ; 1/l:W' O! LI ll·j·u0grHUi1L e , , u]l: ~0,J; .. ; ; , · , ; , ; , ; , . . 1 . . and convicted of the offence of robbery contrary to sections 285 and 286 of the Penal Code, Cap 16 R.E 2002. They were sentenced to a term of fifteen years imprisonment. The applicants were aggrieved and they filed Criminal Appeal No.75 of 1999 in the High Court of Tanzania at Dar es Salaam. Trial. Registry. bq , it unsuccessful. n was dismissed but the sentence was enhanced to thirty years imprisonment because the first appellate court found that the applicants committed gang robbery. . . · vLJ\Jr,L'\! ,U.11 l':L ·-~UH.· _
- • , I Still aggrieved, the applicants lodged Criminal Appeal No.114 of 2002 in the Court which was also dismissed for lack of merit. Still protesting their innocence, the applicants are before the Court again with an application for review of its judgment.. They relied on Rule 44 of the Court of Appeal Rules 1979. Their joint supporting affidavit shows that they are challenging the prosecution evidence on the identifying circumstances which they claimed not to be conducive for their correct identification. They also complain that the torch which assisted the witnesses to identify the applicants was not tendered in the trial court as exhibit. They prayed that the judgment of this Court be reviewed and set aside and they be acquitted. During the hearing of the application, the applicants were not represented. They appeared in person. Mr. Boniface, the Principal State Attorney appeared for the . ~ ... , , ' respondents. In support of the application the applicants generally reiterated what they averred in their joint affidavit. They also added that failure to conduct a preliminary hearing under section 192 (1) and (2) of the Criminal Procedure Act, Cap 20 of 2002

- ...; ~.'j" ~"'!j ... , •:; - ~.. ••': •• also influenced the proceedings in that the trial court failed to give a fair decision. They prayed that the application be allowed: On his part the learned Principal State Attorney had a very brief reply. He vehemently challenged the application on two grounds. First, was the limitation period for filing the application .. ij,H~i(s~iSrJ,~~Li~,P,P,l!~pJigpp}X~~/!1~8 ,out()f .time. because the judgment the applicants are challenging . is dated on 22 nd December 2006 while the application was filed on 4th May, 2007. The limitation period for filing applications for . 2 ri . - - - - -1- - - - - ' . . ~ review, contended the learned Principal Stat~ Attorney is sixty days. ; Since the application was filed beyond the sixty days, Mr. Boniface said it was time barred.
- _ ; : , , , ... r . , ~ - , • Second, was the reason for filing the application~. In his view the applicants have not I . ! given any ground which permits the Court to all~w a review because what is before the Court is a second appeal and not a review.
- I . • In their brief rejoinder, the applicant sa,dthe application was filed within time because the judgment was not delivered on the: date it was signed but was delivered on 23 rd March 2007 as reflected on the first page of the judgment. On this point we agree I with the applicants that the application was filed within time because the date of the I~ delivery of the judgment which is being challenged is reflected on judgment. I issue can be found in the new Court of AppealI Rules 2010, which became effective on 1st February 2010. The relevant rule is 66. Under rule 66(1) an application for review
- ... - I • cannot be entertained except on the following !grounds: I I. I
 - (a) "The decision was based on a manifest error on the face of the record resultin in the miscarriage of g 1 , .. i . : i - f 1 n - thr - ~ f trst = - paat ~ r - ot - tnr , .. ! l ! " (q ; ; r ' i l ~ -
 - (b) A party was wrongly qeprived of an opportunity to be heard.
 - (c) The court's decision i~ a. nl, lllity; or . , n \ , "' . ' i : ~ ' i ~ (, (~ : ! } n (~) f , : ' r - / ~ \ 1 , ... , 3'I
 - (d) The court-had nojurisdiction to entertain the case; or
 - (e) The judgment was procuted illegally, or by fraud or perjury." ' Sub rule 2 of rule 66 deals with- the mode for filing a r~view. Subject to necessary modification, a review has to b~e instjtuted in the same mode as a revision. I Sub rule (3) of rule 66 sets the limitation period for filing an application for review and it is sixty days. It is mandatory to set out clearly the grounds for review. ~ . - Back to the application, we must out tightly say that th~ application has no I merit. None of the grounds set out in rule. 66(1) of the Rules has been. satisfied by the applicants. As the learned Principal State A~orney said, correctly in our view, the applicant have not filed a review but a • secohd appeal. They have not in any way . I . - - - ~ - - - + - - - I . ~ - r - ~ challenged the judgment of the Court. The applicants have not even complied with the . . ' ' 1 ~ , , , . . . proper procedure for filing the application; ~ut we appreciate that they are lay men and the application was filed under th~ ol~ repealed rules which did not have a provision dealing with a review. ~ ~ , , , ... Neverth~less, as... ; ; ~ , , ! , 111 , ... , ... 11.. 1v11_jjJLlt"".... i , , , , , we ~ ...have , • • stated, they have not, . • 1 faulted the judgment of Court.

Instead, they kept on repeating the ground of appeal. If on identification, which was relied upon when they filed their appeal in this Court. In dealing with that issue we said: "The learned judge considered the issue of identification of the appellants and held that the trial magistrate in my view analysed exhaustively the testimony of the main prosecution witnesses, to wit, P.W.1, P.W.2, P.W.3 and P.W.4 and found as established that those witnesses properly identified the appellants at the scene of the crime on the basis of familiarity prior to the robbery and due to existence of favourable circumstances i.e. moon and torch light on the fateful night. Like the trial magistrate I find it established from the prosecution witnesses that the appellants were properly identified and further that there is corroboration on identification by P.W.1, P.W.3 and P.W.4 who saw the

- The appellants at the scene of crime at different intervals i.e. P.W.3 and P.W.4 were together while P.W.1 came to the scene of crime moments later." number, had with them a pressure lamp, whose bright light properly lit the go down thereby enabling them to steal 600 bags of salt which they loaded in a small boat which was about five paces from the go down. P.W.1, P.W.3, P.W.4 identified one Marwa who escaped and is at large. We are satisfied that the conditions of identification and visibility were favourable which was why the appellants were identified by P.W. and his watchmen. Out of the 20 gang of thieves, 1 invaders, P.W.1, P.W.3, P.W.4 and P.W.5 only identified the appellants who were 5' familiar persons; they could not identify the strangers. We are settled in our minds that the identification of the appellants by the bright light of the pressure lamp was watertight so the conviction was properly grounded. The applicants have not pointed out the error we committed in the analysis of how the issue of identification was dealt with in the courts below and why we were satisfied that the analysis was correct. Instead, they brought the issue of identification fresh as if it has not been dealt with. Obviously this is wrong. The court is "functus officio" in as far as their appeal is concerned as it has already been determined. Since the applicants have failed to satisfy the conditions for granting a review, the application is dismissed. JUSTICE OF PEACE

- The appellants at the scene of crime at different intervals i.e. P.W.3 and P.W.4 were together while P.W.1 came to the scene of crime moments later." number, had with them a pressure lamp, whose bright light properly lit the go down thereby enabling them to steal 600 bags of salt which they loaded in a small boat which was about five paces from the go down. P.W.1, P.W.3, P.W.4 identified one Marwa who escaped and is at large. We are satisfied that the conditions of identification and visibility were favourable which was why the appellants were identified by P.W. and his watchmen. Out of the 20 gang of thieves, 1 invaders, P.W.1, P.W.3, P.W.4 and P.W.5 only identified the appellants who were 5' familiar persons; they could not identify the strangers. We are settled in our minds that the identification of the appellants by the bright light of the pressure lamp was watertight so the conviction was properly grounded. The applicants have not pointed out the error we committed in the analysis of how the issue of identification was dealt with in the courts below and why we were satisfied that the analysis was correct. Instead, they brought the issue of identification fresh as if it has not been dealt with. Obviously this is wrong. The court is "functus officio" in as far as their appeal is concerned as it has already been determined. Since the applicants have failed to satisfy the conditions for granting a review, the application is dismissed. JUSTICE OF PEACE
- The appellants at the scene of crime at different intervals i.e. P.W.3 and P.W.4 were together while P.W.1 came to the scene of crime moments later." number, had with them a pressure lamp, whose bright light properly lit the go down thereby enabling them to steal 600 bags of salt which they loaded in a small boat which was about five paces from the go down. P.W.1, P.W.3, P.W.4 identified one Marwa who escaped and is at large. We are satisfied that the conditions of identification and visibility were favourable which was why the appellants were identified by P.W. and his watchmen. Out of the 20 gang of thieves, 1 invaders, P.W.1, P.W.3, P.W.4 and P.W.5 only identified the appellants who were 5' familiar persons; they could not identify the strangers. We are settled in our minds that the identification of the appellants by the bright light of the pressure lamp was watertight so the conviction was properly grounded. The applicants have not pointed out the error we committed in the analysis of how the issue of identification was dealt with in the courts below and why we were satisfied that the analysis was correct. Instead, they brought the issue of identification fresh as if it has not been dealt with. Obviously this is wrong. The court is "functus officio" in as far as their appeal is concerned as it has already been determined. Since the applicants have failed to satisfy the conditions for granting a review, the application is dismissed. JUSTICE OF PEACE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/328557/
source_file/5a2609aa491cd12b/2010NA_TZCA_Dar_es_Salaam.pdf](https://media.tanzlii.org/media/judgment/328557/source_file/5a2609aa491cd12b/2010NA_TZCA_Dar_es_Salaam.pdf)

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/the-republic-reviewofappellatejudgment-tzca-2010>

Prepared on 23 October 2026 · Esheria