

IN THE AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS

AT ARUSHA

APPLICATION No...017.....OF 2016.....

C/F COURT OF APPEAL OF TANZANIA AT MWANZA
CRIMINAL APPEAL No. 211 OF 2010
IN THE HIGH COURT OF TANZANIA AT BUKOBA
ORIGINAL CR. SESSIONS No.113 OF 2004

BETWEEN

DEOGRATIAS NICHOLAUS @JESHI.....APPLICANT

AND

THE UNITED REPUBLIC OF TANZANIA }RESPONDENT
ATTORNEY GENERAL }

EXECUTIVE SUMMARY OF THE APPLICATION

**MADE UNDER RULE 19 OF THE COURT RULES FROM PROVISION No.17 OF THE
COURT PRACTICE DIRECTIONS.**

The executive summary is submitted under the following named grounds

1. THAT, the applicant had charged on information for offence of murder c/s 196 of the Tanzania penal code cap 16 of the law District court of Karagwe at kayanga Karegwe on the 22nd .08.2003 and latter on 11th .11.2004 in the high court of Tanzania at Bukoba.
2. THAT, the applicant was convicted for the offence and sentenced to death on the 15th 07.2010 by the high court after the trial in the above mentioned original criminal sessions. Then the decision of the High court was upheld by the court of appeal on the 07th.03.2012 in the supper criminal appeal.
3. THAT, the applicant had lodged him self an application in the court of appeal foe review of its judgment but the application had been heard but not granted as field out of time although registered as no of 2013.

4. THAT, the judgment of the court of appeal was procured by serious misdirection on the points of law that occasioning failure of justice and miscarriage of justice, latter prejudiced to make it's review by not listing hearing.
5. THAT, as the conviction had based on the extrajudicial statements (p:8 and p,9) of the applicant and his co-accused person including the alleged stolen articles (p.7). These exhibits were admitted and considered by the trial court and then satisfied by the court of appeal with misdirection of points of law.
6. THAT, although exhibit p9 was admitted after the trial within trial, the ruling of the trial was overlooked contradiction of the prosecution witness which confirmed that the procedure of making the exhibit had misdirected to the point of laws.
7. THAT, farther more, the exh. P9 which was used by the court to find an intension of the applicant to commit unlawful act. If the intension in the exhibit, is not at all for killing the deceased but for stealing only. Thus the court had erred to the point of law to decide that the applicant was fully participated on killing the deceased while the evidence had nothing for this claim.
8. THAT, on the exh. P.8, the statement of co-accused, the court had erred to rely on it for conviction of the applicant, confusion of the co-accused in the statement must be in addition with other independent testimonies to corroborate. On other side, according to the law, the statement can only be used as leading assurance to other evidence against the co-accused thus it can't be used as the base for prosecution case on conviction of the applicant as co-accused. Ref. SELEMAN RASHID AND ANOTHER V. REP. (1981) TLR 252 HDC in TANZANIA.
9. THAT, on the exh. P.7, the alleged stolen articles were not proved their ownership documentary as not distinguished from other articles. There were no any marks on the exhibits to certify that had owned by the deceased.

Thus, the exhibit evidence needed to be corroborated by the independent evidence than of the co-accused evidence. As well stated law that the evidence which it self requires corroboration cab not act as a corroboration evidence. Ref: - ALLYS MSUTU V. REP (1980) TLR.1, ABRAHIMAN WILSON SANGURAW & TWO OTHERS V. REP (1981) TLR.265 (Kisanga .J) AND FADHINI MOHAMED V. REP (1968) TLR 58.

10. THAT, both courts, completely misapprehended the substance, naught and quality of the evidence, resulting in an unfair conviction. Hence, the applicant was convicted by doubtful and incredible evidence from the prosecution, where they were not supposed to deal with questions of law but this approach rest on the premise than the finding of fact are based on a correct apprehension of the evidence.
11. THAT, it's obvious the applicant was violated by the decision of the court of appeal and same as violating the fundamental rights of the character of the African article 3(2) which required every individual to be entitled to equal protection of the law.
12. THAT, where the court of appeal had heard but not granted the application of review of the judgment. This act has violated the fundamental rights of the charter of African article 7(1)(d) same as article 13(6)(A) and 107(a)(2)(b) of the Tanzania constitution 1977.
13. THAT, the applicant humbly begs to this honorable court to re-store justice where it was overlooked and quash both conviction and sentences imposed upon him and set him at liberty.
14. THAT, in the circumstance of this case, this court may grant any other order(s) or relief(s) sought that may deem fit.

15. THAT, in supporting the application, accompanied by a copy of record of the court of appeal, its copy of the judgment, the Ruling of the Review and the ruling for its extension of time.

This executive summary has been prepared by the applicant at Butimba central prison in Mwanza Tanzania and signed by may self this 09TH day of MARCH 2016.



(Rtp)

APPLICANT

CERTIFICATION: Certified that this executive summary had been prepared by the applicant and endorsed before me this 09TH day of MARCH 2016.

(Sgd) *[Signature]*

For OFFICER INCHARGE
BUTIMBA CENTRAL PRISON
MWANZA TANZANIA

**U. MKUU WA CEPEZA
BUTIMBA MWANZA**

Lodged at the registry office of the African enourton Human and peoples Rights, p.o.Box 6274, Arusha, Tanzania thisday of 2016.

(Sgd)

REGISTRAR OF THE COURT
(AFCHPR)