

IN THE AFRICAN COURT OF HUMANS AND PEOPLE'S RIGHTS

AT ARUSHA

APPLICATION NO. 026 OF 2015

C/F COURT OF APPEAL OF TANZANIA AT MWANZA

CRIMINAL APPEAL NO. 259 OF 2010

IN THE HIGH COURT OF TANZANIA AT MWANZA

CRIMINAL APPEAL NO. 29 OF 2005

IN THE DISTRICT COURT OF NYAMAGANA AT MWANZA

ORIGINAL CRIMINAL CASE NO. 744 OF 2003

BETWEEN

HAMIS SHABAN @ HAMIS USTADH ..... 026/2015 ..... APPLICANT

VERSUS

THE UNITED REPUBLIC OF TANZANIA

ATTORNEY GENERAL

..... RESPONDENT

EXECUTIVE SUMMARY OF THE APPLICATION

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

I, the above named applicant request this honourable Court of Justice Human and People's Rights to allow lodging a memorandum of complaints of violation of Human Right and Justice for the following reasons:-

1. That, the applicant was convicted and sentenced from the 05/04/2004 to serve in jail thirty years in above mentioned original case, then the decision upheld in the above noted criminal appeals.
2. That, the judgment of the Court of Appeal which had been pronounced on the 14/03/2013 was procured by fraud (a dishonest trick) and some errors patent in the face of record resulted to miscarriage of justice. As in the record (file) of the Court is missing two documents/exhibits which the applicant wanted to rely upon them in the appeal, thus agreed with the applicant to proceed the hearing by discarding an evidence that makes reference to the two documents and a

banding two grounds of the applicants' memorandum of appeal which were touching on the two documents.

3. That, the Court of Appeal, in its judgment, overlooked the agreement by holding the discarding evidence without considering the abandoning grounds which were rising doubtful of the evidence. This procedure contrary to Article 3 (1) of the African Charter which needs every individual to be equal before the law.
4. That, the Court of Appeal, in its judgment, is proved that the missing documents in the record was out of the usual and normal, and the effort to get even their copies was proved futile though ordered to trace them from the State Attorney Office, the police case file and the Court Registrar who has responsible under Rule 71 (2) (f) and 76 (3) of the Tanzania Court of Appeal Rules, 2009.
5. That, as the loser was out of the applicants' control and ability, the Court of Appeal was needed to solve the matter by not only to comply the foreign laws but also to consider Article 107 B and 107 A (2) C of the country constitution 1977 for allowing the applicants' appeal and set him free from the custody under Rule 4 (2) of its Rules (2009) to achieve substantive justice under Rule 2 of its Rules (2009) as particular case.
6. That, it's obvious the applicant was isolated on procedure and decision of the Court of Appeal. The acts were violating the fundamental rights of the charter of the Court under Article 3 (2) which required every individual to be entitled to equal protection of the law.
7. That, although the applicant has lodged on the 29/09/2014, in the Court of Appeal, an application for review its judgment under Rule 66 (1) (a) and (e) of its Rules. The application registered as Criminal Application No. 09 of 2014 but still not listed for hearing while some other applications had been heard though they were registered after it in the same Registry.
8. That, as the applicant was/has no legal representative, his right to be heard were/are deprived leading to prejudice. This position has violating the fundamental rights of the charter of the Court contrary to Article 7 (1) (c) and (d) same as Article 13 (6) (A) and 107 a (2) (b) of the country constitution 1977.
9. That, the applicant humbly begs that, this Court to re-store justice where it was overlooked and quash both conviction and sentence imposed upon him and set him at liberty.
10. That, the applicant herein above on his own behalf wish to be granted reparation pursuant to Article 27 (1) of the protocol of the Court.

11. That, this Court may grant any other order(s) or relief(s) sought that may deem fit in the circumstances of the complaint.
12. That, the application is intended to be supported by a submission of complaints of violation of Human Rights and Justice accompanied by a copy of record of the Court in the criminal appeal, together with a copy of the Court of Appeal judgment.

This executive summary has been prepared by me, the applicant at Butimba Central Prison at Mwanza and signed by me myself this 14<sup>TH</sup> day of SEPTEMBER 2015.

(RTP).....

APPLICANT

CERTIFICATION: I hereby certify this executive summary has been prepared by the applicant himself and endorsed before me on this 14<sup>TH</sup> day of SEPTEMBER 2015.

(Sgd).....

FOR OFFICER INCHARGE

BUTIMBA CENTRAL PRISON

MWANZA, TANZANIA.

**K. J. M. MKUU WA GEREZA  
BUTIMBA MW NZA.**

Lodged at the Registry Office of the African Court of Human and People's Rights, P. O. Box 6274, Arusha, Tanzania this ..... day of ..... 20....

(Sgd).....

REGISTRAR OF THE COURT

(ACHPR)

**SERVED UPON:-**

THE REPUBLIC OF UNITED OF TANZANIA/RESPONDENT  
ATTORNEY GENERAL CHAMBERS  
P. O. BOX 11492  
DAR ES SALAAM, TANZANIA

**DRAWN AND FILED BY:-**

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**MWANZA, TANZANIA.**

14/09/15

