

IN THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

AT ARUSHA

APPLICATION NO 053 OF 2016

BETWEEN

OSCAR JOSIAH .....APPLICANT

AND

THE REPUBLIC OF TANZANIA ..... RESPONDENT

c/f COURT OF APPEAL OF TANZANIA AT BUKOBA

IN CRIMINAL APPEAL NO. 441 OF 2015

FROM HIGH COURT OF TANZANIA AT BUKOBA

IN CR.SESSION CASE NO 16 OF 2014

EXECUTIVE SUMMARY OF THE APPLICATION

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

I, the applicant present this summary of executive for the application as follows:-

1. **THAT**, am a condemned prisoner at Butimba central Prison within Mwanza city in Tanzania and a mere applicant in the instant application, previously I was accused in above mentioned criminal session where in convicted at Karagwe in Kagera region for offence of murder c/s 196 of the Tanzania penal code cap.16 RE: 2002 and sentenced to death.
2. **THAT**: The decision of the high court was upheld by the court of appeal in the above mentioned criminal appeal. Hence, on observation that the court of appeal judgment has manifest errors patent in the face of records resulted to miscarriage of justice which needs to be solved , I the applicant decide to apply by this application in the court of Africa for re-storation of justice where it was overlooked.
3. **THAT**: One of the errors is when the court of appeal was misdirected itself to decide dismissing of the second ground of the memorandum of appeal while it was argued that the cause of the death has contradictions and inconsistence facts.
4. **THAT**: Among several prosecution witnesses is the only one of them was claimed that the deceased baby had been strangled and carried on by the plate. These evidences were not only talked by any other of his co-witnesses. It is the same as the only one witness was claimed about the use of spear. These contradictions and inconsistencies were not evaluated as well by the court while they had declared that the witnesses were incredible.

5. **THAT:** the contradictions and inconsistencies had gone to the root of the matter as they were in the evidence concerning the cause of death of the child contrary to the evidence of PW1 (the doctor) and exhibit P1 (the report on the post-mortem)
6. **THAT:** another error of the court of appeal was that of failure to observe the evidence of DW 2 that is was not needed to be used for the conviction while the court had decided to expunge it. The witness as a wife of the applicant she gave birth of the child after being questioned by PW2 and his colleagues regarding the where about of the child but for a long time she did not respond. Then she told them the child slipped into the pit latrine later on, she changed the story that the applicant snatched the child and threw it in the bush.
7. **THAT:** On the above evidence, I the applicant had been incriminated by the evidence of untruth witness which was decided by the court that is not reliable.
8. **THAT:** the above noted circumstances this honorable court is required to restore the justice where it is overlooked and to make decision of my acquittal from the custody by setting the conviction and sentence.
9. **THAT:** the court may decide any order for benefit of I, the applicant under circumstance of the case.

**VERIFICATION:** I verify here at Mwanza that this summary had been prepared by I under my best knowledge and belief that all stated in it is true and correct by my sign here under this .....<sup>25TH</sup> day of <sup>AUG</sup>.....2016.

(rtp).....

**THE APPLICANT**

**CERTIFICATION:** Certified that the summary has been drawn by the applicant himself and signed by himself before me this .....<sup>25TH</sup> day of <sup>AUG</sup>..... 2016

(sgd).....

FOR. O<sup>1/c</sup> BUTIMBA C. PRISON

W. J. MKUWA CEREBE  
BUTIMBA MWA NZA

Lodged at Arusha in the court registry this ..... Day of .....20.....

(sgd) .....

**THE REGISTRAR  
(AFCHPR)**