

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
AT ARUSHA, TANZANIA

APPLICATION NO. 019 OF 2016

C/F FROM THE COURT OF APPEAL OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO.222 OF 2012

ARISING FROM THE HIGH COURT OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO.72 OF 2009

AND,

C/F FROM THE RESIDENT MAGISTRATES COURT OF MWANZA

ORIGINAL RM. CRIMINAL CASE NO.28 OF 2008

1. JOB ^{S/O} MLAMA	}APPLICANTS
2. ANICETH ^{S/O} EDWARD		
3. SHIJA ^{D/O} MADATA		

VERSUS

1. THE UNITED REPUBLIC OF TANZANIA	}RESPONDENTS
2. ATTORNEY GENERAL		

THE JOINT EXECUTIVE SUMMARY OF THE APPLICATION

(MADE UNDER RULE 19 OF THE COURT'S RULES AND PROVISION 17 OF THE
COURTS PRACTICE DIRECTIONS)

YOUR HONOURABLE JUSTICES:

We, the afore named applicants do hereby request your Honourable court to be pleased grant leave for the applicants to file memorandum of complaints of violation of fundamental human rights and justice for consideration, on the grounds as hereunder follows:-

1. **THAT**, we are the applicants convicts serving incarceration sentence of twenty (20) years per capita at Butimba central prison within Mwanza city in Tanzania. Such a peremptorily punishment (sentence) stem from the judgment of the trial Resident Magistrate's court of Mwanza pronounced on 04th.05.2009 vide RM. CR. Case No.28 of 2008, after being transferred from Sengerema District court vide original criminal case No.54 of 2008 whereby sexual offence was concerned. In both occasion the Respondent state

vigorously and in deceitful way had resisted the applicants application for bail pending trial basing on the conditions of section 148 (4) of the Tanzania criminal procedure Act Cap 20 (Revised Edition 2002) however, in terms of article 13(4) of the constitution of the united Republic of Tanzania, 1977 and in principles of justice, such section is NULL and VOID.

2. **THAT**, exhausted with local remedies as from the original RM cr. Case No.28 of 2008 within the trial RM's court supra, before the joint applicants being unsuccessful appealed in both Respondent state courts, that are the High Court (T) Mwanza vide HC. CR. Appeal No.72 of 2009 and the court of appeal of Tanzania in criminal Appeal No.222 of 2012, where we (applicants) were convicted of sexual exploitation against a child contrary to section 138 B (1) (e) of the Tanzania penal code cap 16, (Revised Edition 2002), still aggrieved, the applicants press three hitches to be resolved by this court, to wit denial of bail pending trial to the applicants was unconstitutional rendered principles of justice nugatory also, dissatisfactory for being committed on the basis of a non – existing offence, and lastly, the recording, assessment of determination of the evidence was not free from unfairness, dishonest and partiality mindset of the trial respondent state Magistrate.
3. **THAT**, under the Respondent state court supra, the applicants were jointly and alternatively being convicted under section 138 B (1) (e) of the Tanzania Penal Code Cap 16 and the sentence of twenty (20) years imprisonment was sustained upon each applicants during the appellate stages, under the highest court of Appeal of the state regardless the adopted recital section of law in title of sexual Exploitation against a child supra, had not and still do not define the evidence laid down by the Respondent state as far as the claimed offence (act) of sexual conducts (if truly was committed as alleged) was/is unnatural kind as it asserted to have had committed by a beast/dog against human being (a daughter) and not otherwise, unlike to the terms of specific section 154(1), (b) of the penal code of the country supra dictates; whichever inapplicable in the circumstances of this case. Thus, in view of such unnatural kind of offence (act); and in a legal sage, means; the basis of the applicants sentence is mounted on a Non – existing offence which is a serious violation of the constitution of the united republic of Tanzania, 1977 stipulated in part III of the article 13(6) (c), and article 7(2) of the charter on the African court

which enshrined that, no person should be inflicted with a sentence when the crime committed that sentence was not enforced. Even the local jurists had hinted this default on their judgments see Annexure JAS "1" at page 88/17 and page 165/31 to 166/32, also Annexure JAS "2" at page 16.

4. **THAT**, likewise, the cited provision of law under which the applicants were convicted of i.e section 138 B(1)(e) of the Tanzania penal code supra is coached in contravention to the constitution of the United Republic of Tanzania, 1977 to Article 13(1),(2),(3),(4) and (5) as well as Article 2 and 3 sub article 1 and 2 of chapter on this court in as much as specification of chapter XV (offences against Morality) of the Tanzania Penal code cap 16(supra) are coached in sexism issues.
5. **THAT**, and recording, assessment, and determination of the applicants case was automatically premeditated in the mindset of the trial Respondent state Magistrate who influenced the entire evidence by his unfairness, dishonest, and partiality conducts proved when giving undeserved credence to the victim (PW1) and her partisan witnesses regardless their weakness neither in proving the matter (by illustration) nor their incurable intricacies in material facts, thus, infringes article 13(1) (2) (6) (a) of the constitution of the United Republic of Tanzania, 1977, and Article 7, (1)(b) of the charter on the Africa court on Human and people's right's. The Respondent state's remarks at Page 89/18 paragraph 2 of the Annexure JAS "1" contradicts the evidence as to when the victim PW1 was appeared into court at first time to meet with the trial Magistrate after being recovered; this proves prematured decision infringes article 13(1),(6) (a) of the constitution of the united republic of Tanzania, 1977 and article 7 1(b) and (d) of the charter on African court on Human and Peoples' rights as far as the predecessor magistrate was automatically turned to be a witness against the applicant's case.
6. **THAT**, our request to this court is to be pleased to intervene the unconstitutional of the respondent state that is, the constitution of the united republic of Tanzania, 1977 and violation of the fundamental rights against the applicants and restore justice where it was overlooked by quashing both conviction and sentence meted upon us by the Respondent state court and set us (applicants) free from the custody.

7. **THAT**, the applicants above named, on our own behalf wishes to be granted reparation pursuant to Article 27(1) of the protocol of the court and rule 34 (5) of the courts rules to remedy the violation.
8. **THAT**, this court may be pleased to grant any other order(s) or relief (s) that may deem fit and just to grant in the circumstances of the complaints.
9. **THAT**, the applicants prays to be facilitated with free legal representatives or legal assistance under rule 31 of the RULES OF THE COURT and Article 10 (2) of the protocol of the court.
10. **THAT**, the application will be supported by submission (written) in support of our complaints and the annexed courts record of proceeding plus its judgments.

This application has been drawn and signed by the above named applicants at Butimba central prison on Wednesday the 23rd day of MARCH 2016.

(RPT).....
1ST APPLICANT
(JOB S/O MLAMA)

(RPT).....
2ND APPLICANT
(ANICETH S/O EDWARD)

(RTP).....
3RD APPLICANT
(SHIJA D/O MADATA)

VERIFICATION: I am verifying that this application has been drawn and signed by the above named applicants as joint and endorsed before me this 23rd day of MARCH 2016.

(SGD).....
FOR – OI/C BUTIMBA CENTRAL PRISON
P.O. BOX 38
MWANZA.

MKUU WA GFREZA
BUTIMBA Mwanza

LODGED at the Registry office of the African Court on Human and Peoples' Rights P.O. Box 6274 Arusha Tanzania this.....day of.....2016.

(SGD).....
REGISTRAR OF THE COURT
(ACHPR – ARUSHA, TANZANIA)