

**IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**  
**AT ARUSHA**  
**APPLICATION NO. 003 OF 2019**  
**BETWEEN**  
**THOMAS S/O MGIRA.....APPLICANT**  
**AND,**  
**THE UNITED REPUBLIC OF TANZANIA.....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 applicant present this executive summary of my application under following grounds:-

1. **THAT**, I was arrested on 2<sup>nd</sup> October, 2002 for suspicion of murder of somebody who was unknown to me before the death on 1<sup>st</sup> October, 2002. Then I was charged in the District Court of Magu in cr. case No. 24 of 2004 and later be committed for trial in the RM. Criminal Sessions Case No. 40 of 2004 in the Resident Magistrate's Court of Mwanza with extended jurisdiction from HC. Criminal Session Case No. 79 of 2003 of the High Court (T) Mwanza.
2. **THAT**, after the trial in the RM's Court I was convicted for the offence of Murder u/s 196 of the Penal Code Cap. 16. Hence I was sentenced to death by hanging on the 8<sup>th</sup> April, 2005. On my aggrieve by the decision, I lodged a criminal Appeal No. 87 of 2005 in the Court of Appeal at Mwanza which dismissed on 29<sup>th</sup> April, 2010 and upheld the decision. Copies of the proceeding and judgment are attached herein as annexures TM.01 and TM.02.
3. **THAT**, the judgment of the Court of Appeal observed it has several errors which require the judgment to be reviewed by the court itself. But the period of applying the Review was expired. Thus, I applied extension of the period by criminal application No. 2 of 2011 in the court of appeal at Mwanza, but also it was dismissed by the court on 19<sup>th</sup> September, 2013. Copies of the application and the Ruling are attached herein as annexures TM.03 And TM.04.
4. **THAT**, I decide to apply by this application remedy as I had access to the Highest Court of the Respondent state. Thus I have exhausted local remedies. Delay of filing the application was caused by my position as Condem Prisoner and layman in matters of law, indigent and incarcerated without of legal counsel and legal assistance. So I pray this honourable Court to hold the requirements under consideration since have been fully met in admission of my application.
5. **THAT**, the court of the Respondent had convicted me particularly by weakest Visual Identification from evidence of single witness (PW1). Both Courts didn't eliminate all possibility mistaken identification. As the incident was at Night, there was no testimony of intensity of the wick lamp, size of the room/scene, distance between me and the witness as between me and the lamp even the witness and position of the lamp. Further, there is inquire of why and how the witness was enabled to see exactly while torched by torches at the shock condition.

6. **THAT**, the evidence had several basic contradictions and inconsistencies which were shaken its credibility same as the witnesses. Sometimes the key witness PW1 was confirmed her forgotten events to differ between the testimony and her statements at Police. The witness contradicted herself and with her co-witness about whether the applicant was named earliest and how, where and when arrested. In fact PW1's evidence has no any claim that I was named any where contrary to the other evidence of her co-witness. Also their evidence are differed about what exactly words said by I the applicant on the incident.
7. **THAT**, the uncorroborated and unsworn evidence of the key witness PW1 was required to be supported with any of the said other three people who claimed to be at the scene and the said postmortem examination or/and said doctor who examined the deceased. But the witnesses were not testified neither the p/examination tendered.
8. **THAT**, as borne in my mind if the court of appeal could be allowed the extension of time to review its judgment, whether its errors might be solved. Thus the denied application by the court had proceeded the violation against me with consideration of lack of service of counsel for the application though I was afore with counsels for my defence on the trial and appeal while they adduced by the Respondent without my choice.
9. **THAT**, under above stated circumstances, I was violated by the Respondent as there was violation of my right to equal protection before the law provided for in Article 3 and 7 of the charter. Thus I believe this honourable court will consider the application and find the violations.
10. **THAT**, after the court find the violations, I request it to make appropriate order(s) to remedy the violation by my acquittal from the prison custody including payment as the court seems fit to access though <sup>under</sup> income ratio of a citizen of the country per year for each year of my prison custody.

I humbly submit to the court through the prison this.....17<sup>th</sup> day of DEC. 2018.....

(RTP).....

**THE APPLICANT**

**CERTIFICATION:** Certified that the executive summary had been prepared by the applicant and signed it before me this .....17<sup>th</sup> day of DEC. 2018.....

(SGD).....

**FOR OI/C BUTIMBA C. PRISON  
MWANZA-TANZANIA**

**M.N.Y. MKUU WA GEREZI  
BUTIMBA MWANZA**

Lodged at ARUSHA in the Registry this.....day of.....20.....

(SGD).....

**THE REGISTRAR**

**AFCHPR ARUSHA-TANZANIA**