

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

APPLICATION NO. 043 OF 2016

C/F FROM THE COURT OF APPEAL OF TANZANIA AT MWANZA  
IN CONS CRIMINAL APPEAL NO. 182 AND 183 OF 2007  
BETWEEN

SHABANI MENGE \_\_\_\_\_ APPLICANT

AND

THE REPUBLIC OF TANZANIA \_\_\_\_\_ RESPONDENT

THE EXECUTIVE SUMMARY OF THE APPLICATION

MADE UNDER RULE 19 OF THE COURT'S RULES FROM PROVISION No. 17 OF THE  
COURTS PRACTICE DIRECTIONS

Your, honorable Justice, I submit to this honorable, court this executive summary of my application under the following grounds: -

1. THAT, I, am mere applicant in this application, and a prisoner who serving penalty sentence of thirty years' imprisonment at Butimba central prison Mwanza Tanzania after being convicted on 22/02/2005 for offence of armed robbery c/ss 285 and 286 of the Tanzania Penal Code cap. 16 R:E 2002 after trial in the cr. Case No 156 of 2004 at Bukoba District Court within Tanzania.
2. THAT, I appealed against the D/court decision, at the Tanzania High Court Bukoba in criminal appeal No, 39 of 2005 consolidating with cr. Appeal No. 41/2005 of my Co-appellant who was Co-accused person in the D/court case. The appeals were dismissed on the 30/05/2007 in Toto.
3. THAT, due to my aggrieving by the High Court Verdict, I appealed then to the court of appeal by Cr. App No. 182 Consod. With appeal No 183 which also was dismissed on the 20.02.2012 Hence, I and my co-appellant in the appeals applied by cr. Application No. 12 of 2013 in the Court of Appeal at Bukoba for review of it's judgment. But up to now the application is still be heard nor listed for hearing. For evidence of all stated here in above, attached copies of the court of appeal records, judgment and review as annex terries S.M 1, SM 2 and SM 3.
4. THAT, as the Court of appeal had dismissed my appeal by its judgment within manifest errors resulting miscarriage of justice and prejudiced to make its review, these acts are errors in the law and contrary to the fundamental rights which required to be solved by this honorable court.
5. THAT, the conviction was relied to evidence of Doctrine of Recent Possession of the alleged stolen engine. But the ownership of the property by the complainant as the property was not positively proved by the alleged owner in his testimonies at the trial. on other side the possession was wrongly invoked to the applicant in circumstances of the case.

6. THAT, further error, the identification of the stolen property (engine) was reflected in the altered charge. So at the new charge there was no any identification. Thus there was no any engine as exhibit ever produced in to court for identification purpose. These matters violated sect. 234(1), (2)(A)(B) of the Tanzania Criminal Procedure Act cap 20 RE. 2002 and s. 228(1) of the same.
7. THAT, there is no any description that the complainant had properly identified the property before it is shown to him so that when it is subsequent tendered and the identification was impeccable perfect or not. In view of that, the evidence regarding the doctrine of recent possession had no probative value in the prosecution case against the applicant.
8. THAT, the review application and it's written submissions whose attached its copy here in, have full explanation of complains in this application. If this honorable court will consider them in deeply, it would observe that the decision of the court of appeal as the lower courts had violated the fundamental rights contrary to the African charter and protocol.
9. That, this court is required to solve the complaints and restore justice under article 27 (1) of the protocol to the African charter for setting aside the decision of the court of appeal to acquit the applicant from the custody by its order.
10. THAT, the court may be pleased to grant any other order (s) or relief(s) for favour of the applicant in the circumstances of the complaints.

This application has been drawn and signed by the above named applicant here at Butimba Central Prison Mwanza Tanzania on 14<sup>TH</sup> the day of JULY 2016

(Rtp) \_\_\_\_\_

THE APPLICANT



Certification: certified that the application had been prepared by the applicant and signed by him before me this 14<sup>TH</sup> day of JULY 2016.

(Sgd) \_\_\_\_\_

For o<sup>1</sup>/c Butimba c. prison

**MILK. MKUU WA CEREZA  
BUTIMBA MW NZA**

Lodged at Arusha in the registry of the court on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Sgd) \_\_\_\_\_

THE REGISTRAR  
AFCHPR