

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

APPLICATION NO. ⁰⁵⁰... OF 2016

FROM THE COURT OF APPEAL OF TANZANIA
AT BUKOBA

IN CRIMINAL APPEAL NO. 232 AND 233 OF 2014

ARISING FROM THE HIGH COURT OF TANZANIA
AT BUKOBA

IN CRIMINAL SESSION CASE NO. 13 OF 2013

1. CROSPERY GABRIEL } APPLICANTS
2. ERNEST MUTAKYAWA }
VERSUS

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

THE JOINT EXECUTIVE SUMMARY OF THE APPLICATION

(MADE UNDER RULE 19 OF COURTS RULES FOR PROVISION NO. 12 OF
THE COURT'S PRACTICE DIRECTIONS)

YOUR HONOURABLE JUSTICE

We are the above named applicants do hereby humbly your Honorable Court to be pleased grant leave the applicants to file memorandum of the complaints of violation of fundamental right and justice for consideration on the grounds, viz:-

01. That, the applicants Crospery Gabriel and Ernest Mutakyawa herein after referred to as the 1st and 2nd applicants respectively were each sentenced to suffer DEATH following their conviction of the High Court of Tanzania at Bukoba of the offence of Murder contrary to section 196 of the penal code cap 16 RE 2002.

02. That, being aggrieved by the conviction and sentence of the High Court of Tanzania at Bukoba, the applicants instituted their

appeals as criminal appeal No.232 and 233 of 2014 in the Court of Appeal of Tanzania at Bukoba whereby (Rutakangwa J.A, Luanda J.A and Juma J.A) dismissed the applicant's appeals.

03. That, the applicants now are filing this application before this court contesting the decision saying that the Trial Judge and the first appellate Court had not been fair.
04. That, the decision of the High Court and the first appellate court did not take into account the applicant's defence.
05. That, the evidence used to convict the applicants contained DISCREPANSIES and CONTARDICTIONS which cast doubt on the credibility of the witnesses of Abdallah Twaha (PW3) and Safina Twaha (PW4).
06. That, the trial court and the first appellate court failed to consider the fact that the event took place at night hence the conviction for identification were not favorable.
07. That, the trial court and the first appellate court did not comply with section 240 of the criminal procedure Act cap 20, RE 2002.
08. That, the postmortem which the prosecution and the court based to convict the applicants was improperly admitted in evidence as per section 240(3) of the criminal procedure Act cap 20, RE 2002, hence was required to be expunged from the record and in evidence of the prosecution side.
09. That, the Act of the trial court and the first appellate court failed to determine the matter which the domestic court's have jurisdiction to determine is the strong evidence that the domestic court's have no power to hear this case that is the reason the application send this case to this court for fair hearings.
10. That, the prosecution witnesses failed to prove this case without reasonable doubt.
11. That, the trial court and the first appellate court did not assign reasons on why it discarded or disbelieved the defence evidence

and to convict also the sentence the applicants capital punishment which violates the right to life which is enshrined in the universal declaration of human rights to which Tanzania is a signatory and it violates both Article 13(6)(d) and Article 14 of the constitution of the United republic of Tanzania,1997.

12. That, the applicant's request to this court, is to be pleased to INTERVENE the unconstitutional of the Respondent state and violation of the fundamental rights against the Applicants and restore justice where it was overlooked by quashing both conviction and sentence mated upon the applicants and set the applicants FREE from the custody.
13. That, the applicants wishes to be granted reparation pursuant to Article 27(1) of protocol of the court and rule 34(6) of the courts rules to remedy the VIOLATION.
14. That, this court 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.
15. That, the applicants pray to be facilitated with FREE LEGAL representatives or LEGAL assistance under rule 31 of the rules of the courts and article 10(2) of the protocol of the courts.
16. That, the application will be supported by courts record proceeding plus its judgment.

CERTIFICATION: Certified that, this application has been drawn and signed by the Applicants at Butimba Central Prison on^{29th}.....the day of^{July}.....2016.

(RTP).....
1ST APPLICANT
CROSPERY GABRIEL

(RTP).....
2ND APPLICANT
ERNEST MUTAKYAWA

VERIFICATION: I am verifying that, this application has been drawn and signed by the applicants and endorsed before me thisday of2016.

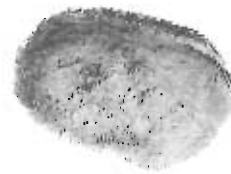
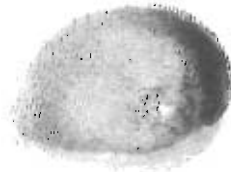
(SGD)
FOR: OFFICER IN CHARGE
BUTIMBA CENTRAL PRISON
BUTIMBA MW NZA

Lodged in this Registry office of the African Court in Human and
People's Rights P.O BOX 6274 Arusha Tanzania thisday
of2016.

(SGD)
REGISTRAR OF THE COURT
(ACHPR) ARUSHA - TANZANIA

DRAWN AND FILED BY:

1. CROSPERY GABRIEL
2. ERNEST MUTAKYAWA
C/O BUTIMBA CENTRAL PRISON,
P.P BOX 38,
MWANZA TANZANIA.



29/07/2016

SERVED UPON:

THE UNITED REPUBLIC OF TANZANIA,
C/O ATTORNEY GENERAL'S CHAMBERS,
P.O BOX 1492,
DAR-ES-SALAAM.