

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHT
AT ARUSHA TANZANIA
APPLICATION NO **056** OF 2016
FROM THE COURT OF APPEAL OF TANZANIA AT BUKOBA
IN CRIMINAL APPEAL No 114 OF 2016
ARISING FROM THE HIGH COURT OF TANZANIA AT BUKOBA
IN CRIMINAL SESSION NO 07 OF 2012

GOZBERT HENERICO APPLICANT

VERSUS

1. THE UNITED REPUBLIC OF TANZANIA
2. ATTORNERY GENERAL

} RESPONDENTS

EXCUTIVE SUMMARY OF THE APPLICATION

(MADE UNDER RULE 19 OF THE COURT RULES FROM PROVISION No 17 OF THE COURT PRACTICE DIRECTIONS)

I, the above named applicant who submits into the court this executive summary of application as follows;

1. GOZBERT HENERICO (hereinafter referred as the applicant) is a citizen of the United Republic of Tanzania and a prisoner at Butimba central prison at Mwanza who had been convicted with the above noted original criminal session No 07 of 2012 whereby the applicant was convicted of MURDER c/s 196 of the penal code (cap. 16 R.E 2002) and sentenced to DEATH by hanging.
2. **THAT**, being aggrieved by the finding sentence and conviction of the high court of Tanzania he had prepared an appeal in the court of Tanzania at Bukoba, whereby the said was dismissed on 26/02/2016.
3. **THAT**, immediately after the appeal being dismissed, the applicant was perused through a copy of judgment of the court of appeal of Tanzania and observed that there are some errors

in the judgment, resulted to miscarriage of justice which needs to be solved in the African court on Human and peoples' rights.

4. **THAT**, the appellate courts erred both in law and fact to support conviction and sentence on account that the prosecution proved their case against the applicant beyond reasonable doubt.
5. **THAT**, the appellate courts erred both in law and in fact to convict the applicant basing on the evidence of VOICE and VISUAL identification of PW1,PW2 and PW3 who were incredible and unreliable.
6. **THAT**, the appellate courts erred in law and fact for failure to note that, the evidence of HUBERT FILBERT (PW4) and SHEKEREWA MWERINDE (PW5) their similarly unreliable.
7. **THAT**, the appellate courts erred in law and fact for failure to note that, the evidence of PW4 that the applicant surrendered to him and that the applicant had a blood stained panga was not corroborated by any other independent evidence and was unsuitable
8. **THAT**, the appellate courts erred in law and on fact for failure to take in consideration that the evidence of PW5 who was the owner of the panga allegedly used by the applicant in perpetuating the assault was similarly unreliable for the strong reason that, it was not corroborated.
9. **THAT**, the appellate courts were required to note that the circumstances under which the offence occurred and the possibility of identifying the applicant using the Wick lamp creates doubts.
10. **THAT**, the appellate courts erred both in law and fact to convict the applicant basing on the evidence of visual identification which is the weakest types and most reliable.
11. **THAT**, the appellate courts erred in law and fact for failure to take in consideration that, followed Exhibit P.4 be expunged in the record there is no tangible evidence for the applicant to be convicted with.
12. **THAT**, the appellate courts erred in law and fact for failure to note the DISCREPANCIES and CONTRADICTIONS which cast doubt on the credibility of the witnesses of THEONESTINA GRASIAN (PW1) and A/INSP CHRISTOPHER KAPERA (PW7).
13. **THAT**, the appellate courts erred both in law and fact to conclude that, the applicant was properly identified as the person who committed the crime while there are problems in the voice and visual identification evidence of pw.1, pw.2 and pw.3.
14. **THAT**, the appellate courts erred in law and fact for failure to note the evidence of pw7, that the room was 2m x 3m was an afterthought and should not be relied upon because the sketch map he (pw.7) drew constituted in Exhibit p.2 did not contain those measurements.

15. **THAT**, the appellate courts erred in law and fact for failure to take in consideration the defense evidence and worse more without any sufficient reason for doing so.
16. **THAT**, the appellate courts erred in law and fact to convict and sentence the applicant CAPITAL PUNISHMENT which violated the right to LIFE which is enshrined in the Universal Declaration on Human rights to which Tanzania is signatory and it violates both Article 13(6) (d) and Article 14 of the constitution of the United Republic of Tanzania, 1977.
17. **THAT**, the paragraph 3-16 are the basic fundamental right of the applicant which the trial court and the appellate court violates as directed under Article 1,3,5,6,7(1) and 9(1) of the African Charter on Human and people's Rights, also as directed under Articles 12, 13,14 and 15 of the constitution of the United Republic of Tanzania 1977.
18. **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 right against the applicant and restore justice where it was overlooked by quashing both conviction and sentence mated upon the applicant and set the applicant FREE from custody.
19. **THAT**, the applicant wishes to be granted reparation pursuant to Article 27(1) of protocol of the court and Rules 34(6) of the courts rule to remedy the violation.
20. **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.
21. **THAT**, the applicant prays 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.
22. **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 applicant at Butimba central prison in Mwanza Tanzania on.....the day of August 2016

(RTP)  APPLICANT

VERIFICATION: I am verifying that, this Executive summary has been prepared by the Applicant and endorsed before me on this ... 25th ... day of ... August ... 2016

(SGD) 

For, OFFICER IN CHARGE,
BUTIMBA CENTRAL PRISON
MWANZA TANZANIA



LODGED at the Registry office of the Africans court on Human and peoples' Rights P.O Box 6274, ARUSHA TANZANIA

This Day of2016

(SGD)

REGISTRAR OF THE COURT
(ACHPR)

DRAWN AND FILED BY:

GOZBERT HENERICO, C/O OFFICER IN CHARGE..... APPLICANT

BUTIMBA CENTRAL PRISON

P.O BOX 38

MWANZA TANZANIA



24/08/2016

SERVED UPON

THE UNITED REPUBLIC OF TANZANIA,

ATTORNEY GENERAL'S CHAMBERS,

P.O BOX 11492,

DAR ES SALAAM- TANZANIA.