

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

AT – ARUSHA, TANZANIA

APPLICATION No. 044 OF 2016

C/F FROM THE COURT OF APPEAL OF TANZANIA

AT MWANZA IN CRIMINAL APPEAL No. 264 OF 2012

ARISING FROM THE HIGH COURT OF TANZANIA

AT MWANZA IN CRIMINAL APPEAL No. 161 OF 2010

C/F FROM THE DISTRICT COURT OF MUSOMA

AT MUSOMA IN ORIGINAL CASE No. 86 OF 2007

JOHN S/O MWITA.....APPLICANT

VERSUS

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

EXECUTIVE SUMMARY OF THE APPLICATION

[MADE UNDER RULE 19 OF THE COURTS' RULES AND PROVISION NO.17 OF
THE COURT'S PRACTICE DIRECTIONS]

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The instant application is for the following request:-

1. **THAT**, this court may be pleased to grant the applicant to lodge memorandum of complaints of violation of fundamental human rights and justice for consideration.
2. **THAT**, the applicant is an inmate serving thirty (30) years custodial sentence here at Butimba Central Prison at Mwanza – Tanzania; my imprisonment sentence arised from the judgment of trial Respondent state court supra mentioned whereby the applicant was charged, prosecuted and convicted of Armed Robbery offence contrary to section 287A of Tanzania Penal Code Cap 16, Revised Edition 2002 before my appeal in both first and second appellate stages being toto dismissed though the applicant had denied to the aligned charges.
3. **THAT**, then the applicant was unsuccessful requested for bail pending his trial which is contrary to the justice and unconstitutional as per Article 13 and 15 of the constitution of the United Republic of Tanzania, 1977 likewise such stance reflected in the Article 3 sub article 1 and 2 and Article 6 of the charter to this

court, So the respondent state court injustice refused the applicant's basic rights to be bailed before he was committed to jail.

4. **THAT**, Aggrieved, the applicant had unsuccessful appealed in the circuit court of the land, i.e. the High court (T) at Mwanza vide criminal Appeal No.161 of 2010, as well as the court of Appeal Tanzania in criminal Appeal No.264 of 2010 albeit both courts concerned had not properly assessed the entire court record of proceeding before wrongly and partiality accorded underserved credence upon insufficient evidence to sustain his conviction basing on demeanour and credibility of the prosecution witnesses particularly PW.1 and PW.6, nor considered the applicant's opinion as to the issue of constructive and improbably doctrine of recent possession of the stolen property Exh. P.2 which was highly misapplied in principles thereof thus renders principles of justice stipulated in Article 2, 7(b) (c) and (d) and Article 9(2) of the charter of the African court on Human and peoples' rights nugatory considering the applicant was condemned unheard.
5. **THAT**, exhausted in the local remedies as to this matter vide criminal case No. 86 of 2007 within Musoma District court, the applicant was then appealed to the High court Tanzania at Mwanza in criminal appeal No.161 of 2010 and in the court of appeal Tanzania vide criminal appeal No. 264 of 2012 but both in vain.
6. **THAT**, the only evidence that was relied upon both courts is of the Doctrine of recent possession of the alleged stolen Mobile phone exhibit P.2 purported to be the property of the victim PW.1.
7. **THAT**, this court be pleased to note that during the trial at the subordinate court, and at first and second appellate stages, the applicant had no legal representative (counsels) so a violation to the charter of this court in article 7 (1) (c).
8. **THAT**, it is my request to this court to intervene the unconstitution of the respondent state i.e. constitutional of the United Republic of Tanzania, 1977 and violation of fundamental rights against the applicant and order the respondent state to quash both conviction and sentence imposed upon him and set him at liberty.
9. **THAT**, this court on Human and Peoples' Rights may grant any other order(s) or relief(s) that may deem fit and just to grant in the circumstances of the complaints.

10. THAT, the court is pleased to grant the applicant's prayer to be facilitated with free legal representatives or legal assistance under Article 10 (2) of the protocol of this court and Rule 31 of the Rules of this court.

11. THAT, the application will be supported by submission in support of the applicant's complaints appended to the application and the annexed court record of proceeding marked as annexure JM "two" plus its final judgement annexure JM "three".

12. THAT, the applicant wishes to be granted reparation pursuant to Article 27 (1) of the protocol of this court and Rule 34 (5) of the court's rules in order to remedy the violation.

This application has been drawn and signed by the above named applicant at Butimba Central Prison on THURSDAY the 14th day of July 2016



(RTP) _____

APPLICANT

(JOHN ^{S/O} MWITA)

CERTIFICATION: - I am verifying that this application has been drawn and signed by the above named applicant and endorsed before me this 14th day of July 2016

(SGD) _____

FOR; O/C BUTIMBA CENTRAL PRISON

P.O. Box 38,

MWANZA - (T)

KILILWA MKUU WA CERFZA

BUTIMBAMWANZA

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

(AFCHPR – ARUSHA, TANZANIA)