

IN THE AFRICAN COURT ON HUMANS AND PEOPLE'S RIGHTS

AT – ARUSHA

APPLICATION NO. 004 OF 2016

C/F COURT OF APPEAL OF TANZANIA AT MWANZA

CRIMINAL APPEAL NO.258 OF 2009

IN THE HIGH COURT OF TANZANIA AT MWANZA

CRIMINAL SESSION CASE NO.116 OF 2005

IN THE DISTRICT COURT OF NYAMAGANA AT MWANZA

ORIGINAL CR. /MURDER CASE NO.14 OF 2003

BETWEEN

EVODIUS S/O RUTECHURA @ THEOBARD NESTORY APPLICANT

AND

THE UNITED REPUBLIC OF TANZANIA }RESPONDENT
ATTORNEY GENERAL }

EXECUTIVE 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 request this honourable court of Justice on Human and People's Rights to allow lodging a memorandum of complaint of violation of Human Rights and justice for the following reasons:-

1. **THAT**, the applicant was convicted and sentenced from the 19.11.2008 to death for murder, which is a serious offence, in above mentioned session case then the decision was upheld in the above noted criminal appeal on the 13.09.2012.
2. **THAT**, on observing that the appellate court judgment has some misdirection on point of law under Rule 66(1)(a) of the its Rule of 2009. The applicant lodged an application No.4 of 2012 in the court of Appeal through prison officer In charge for review of the judgment, but before listed for hearing it observed that the application was filed out of prescribed period. Thus the application withdrawn and lodged an application No.2 of 2015 in the court for

extension of the time but it was dismissed on the 8.06.2015. Hence the applicant filed an application for revision of the ruling of the application No.2/2015 through the prison in charge on the 3.07.2015 which still neither listed for hearing nor given its registration number.

3. **THAT**, as the application of the extension of time was dismissed while the court had confirmed by its ruling that the applicant was prevented by illness from filing the application for review in good time, thus the court was erred to consider dissonately the application has not shown that if the court grants it there will be succession review where the ground of review had been stated in the afore application for review. So that, the court is/was prejudiced to make its review.
4. **THAT**, on above narrated circumstances of the prejudice, the right of the applicant to be heard obvious is isolated by the decision and procedure of the court. These acts are violating the fundamental rights of the charter of the court contrary to article 7(1)(d) same as article 13(6)(a) and 107A(2)(b) of the constitution of the united Republic of Tanzania, 1977.
5. **THAT**, as the applicant was no legal representative on the hearing the applications, thus his right to be heard was deprived leading the prejudice this position had violating the fundamental right of the charter of the court article 7(1)c.
6. **THAT**, on side of the decision in the appellate court judgment; it was based on visual identification of the prosecution witnesses who were relatives. The court should be carefully examined the evidence of the family before to accept it for the conviction. The witnesses had their own interests to serve on the matter where there was no any independent person/people who alleged that were responded the alarm, came in court to testify for corroboration the claim.
7. **THAT**, according to the evidence, it is strange to a person who knew each other, like the applicant to the witnesses to perform on the incidence as alleged by the witnesses. It's obvious to consider that the witnesses had a powerful motive for not speaking the truth and consequently to fabricate their evidence implicating the applicant.
8. **THAT**, the appellate court had failed to observe that the applicant was arrested by mere suspicion as overtly claimed by the prosecution witnesses relating to caution given to them earlier by the late head of their family (land –

lord) that the applicant was sometimes involved in complaints which were lodged at police station.

9. **THAT**, the court of appeal had overlooked the law to admit documentary evidence without its contents being read over to the applicant and/or being asked on whether or not he has any objection to it's being admitted in the evidence. Furthermore, the document had not supported by oral evidence of its maker while the applicant being stated that he did not know cause of the death of the deceased.
10. **THAT**, by those errors which are serious misdirection, in the judgment of the court, on point of law were needed to be solved by the court. The court failure to do so is violating the fundamentally rights of the applicant contrary article 3(1) of the African charter which needs every individual to be equal before the law same as article 3(2) of the charter which required every individual to be entitled to equal protection of the law.
11. **THAT**, the applicant humbly begs this honourable court to restore justice where it was overlooked and quash both conviction and sentence imposed upon him and set him at liberty. Also he wishes to be granted reparation pursuant to article 27(1) of the protocol of the court.
12. **THAT**, this court may grant any other order(s) or relief(s) sought that may deem fit in the circumstances of the complaint.
13. **THAT**, the application is intended to be supported by submission of complaints of violation of human Rights and justice accompanied by a copy of record of the court together with a copy of its judgment.

This Executive summary has been prepared by me, the applicant at Butimba central prison at Mwanza and signed by my-self this^{29TH} day of DECEMBER 2015.....



(RTP).....
APPLICANT

CERTIFICATION: I hereby certify this Executive summary has been prepared by the applicant himself and endorsed before me on this day of 29TH DECEMBER 20 15.....

(SGD)
[Signature]

For. OFFICER INCHARGE
BUTIMBA CENTRAL PRISON
MWANZA, TANZANIA

**MKUU WA GEREZA
BUTIMBA MW NZA**

Lodged at the Registry office of the African court of Humans and People's Rights,
P.O. Box 6274, ARUSHA – TANZANIA

This day of 20

(SGD)
REGISTRAR OF THE COURT
(ACHPR)

DRAWN AND LODGED BY:

EVODIUS S/O RUTECHURA @ THEOBARD NESTORY /APPLICANT
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SERVED UPON:

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