

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

APPLICATION NO. 029 OF 2016

BETWEEN

KACHUKURA NSHEKANABO @ KAKOBEKAAPPLICANT

AND

THE REPUBLIC OF TANZANIARESPONDENT

**C/F COURT OF APPEAL OF TANZANIA AT BUKOBA
IN CRIMINAL APPEAL NO. 314 OF 2015**

**FROM THE HIGH COURT AT TANZANIA AT BUKOBA
IN CRIMINAL SESSION NO. 56 OF 2008**

EXECUTIVE SUMMARY OF THE APPLICATION

**(MADE UNDER RULE 19 OF THE COURT RULES FROM PROVISION
NO.17 OF THE COURT PRACTICE DIRECTIONS)**

I, the applicant present this summary of executive for the application as follows grounds namely:-

1. That, the applicant as accused person had been charged in the criminal session case No. 56 of 2008 at the High Court Tanzania at Bukoba for trial where in the hearing he was convicted for two counts offence of murder c/s 196 of the Tanzania Penal Code cap 16 thus sentenced to death penalty by the court judgment delivered on the 26 June,2015.
2. That, being aggrieved with the High Court decision, the applicant appealed in the Court of Appeal (T) at Bukoba in the criminal appeal No.314 of 2015 whereby the High Court decision was

upheld on the 23 February, 2016. Hence he, the applicant present this application in this honour court.

3. That, the Court of Appeal as the trial Court had convicted by doubtful evidence and decided the unconstitutional sentence of death. The conviction was based on the alleged identification of the applicant by the one person at the scene of the incident on the incidence. The evidence and witness were not credible but the court accepted them to the sentence of unconstitutional.
4. That, the witness had claimed to be very familiar to the applicant before incident as he was a frequent visitor to the scene, but the witness didn't name him at the earliest time. The evidence had been based on suspicion infact that the applicant was a stranger in the area.
5. That, on the issue of the sentence, as one of judges in the bench of the appeal decided to beside himself to uphold the death penalty. The judge had confirmed that the death penalty not only violates article 13(6)(d) and (c) of the constitution of the United Republic of Tanzania but it also violates the right to life which is enshrined in then in the universal declaration of Human Rights to which Tanzania is a signatory. The right to life is provided for in article 14 of the constitution.
6. That, the applicant is on death row and it appears from this application that, there exists a risk of irreparable harm to the Applicant. Thus, in the light of the particular circumstances like this, the court should make use of its power provided for under Article 27(2) of the protocol and Rules 51(1) of the Rules to order provisional measures proprio motu of extreme gravity.
7. That, on hearing the application, the applicant prays to be with the present advocate by fovour of the court and also to grant the application by setting aside the decision of the court of Appeal for acquitting the applicant from the custody.

