

IN THE AFRICAN COURT HUMAN AND PEOPLE'S RIGHTS

AT ARUSHA

APPLICATION NO 032 OF 2016

HOJA MWENDESHA.....APPLICANT

AND

THE UNITED REPUBLIC OF TANZANIA.....RESPONDENT

C/F COURT OF APPEAL OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO. 201 OF 2014

FROM THE HIGH COURT OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO. 63 OF 2013

FROM THE DISTRICT COURT OF MISUNGWI AT MISUNGWI

IN ORIGINAL CR. CASE NO. 125 OF 2008

EXECUTIVE SUMMARY OF THE APPLICATION

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

I, the applicant present this summary of executive for the application under the following grounds namely:-

1. That, the applicant had been convicted for an offence of Rape C/S 130 (2) (e) and 131 of the Tanzania Penal Code Cap 16 (RE: 2002) as first count, while second count for offence of Impregnating a school girl C/S 5 of the Education, Act No. 25/1978 (Rules 2003) was an alternative of the first count, thus he sentenced to thirty years imprisonment from date of 27/05/2010.
2. That, dissatisfied by the trial /District Court decision, the applicant had lodged the first appeal supra which dismissed by the High Court on the 28th day of March, 2014. Hence, the applicant was preferred the second appeal in the Court of Appeal whereby it was dismissed in toto on the date of 30.11.2015.
3. That, the Court of appeal had upheld the conviction without solving some essential ingredients of the law. The conviction had been based on the evidence of the prosecutrix only. Though the D/Court satisfied that the witness was right according to her evidence, but the all courts didn't question themselves why the witness did not report the crime early. This circumstance made the witness uncredible.
4. That, on other issue, the Court of Appeal incurably failed to observe that the prosecutrix evidence needed to be corroborated by other evidence as the trial Court was not satisfied that she had known the duty of telling

- the truth through the voire dire test, at the same time age of the witness was not proved by any other document for making her at the tender age.
5. That, the court of Appeal was over directed it self to consider the alleged confession of the applicant that is corroborated the prosecutrix evidence while the trial court didn't use it to the conviction at all. Thus the trial court had been satisfied by the prosecution witnesses only under reason that it is not the duty of the applicant to prove his innocence but the prosecution side must prove its case strengthly.
 6. That, the Court of Appeal was required to consider that the cautioned statement needed to be corroborated by the evidence of the applicant who alleged its maker. As the applicant had denied to make the statement, thus it can't corroborate other evidence as itself needs corroboration.
 7. That, in view of the dictates of Tanzania Evidence Act Cap 6 (RE: 2002) especially sect; 127 (7) which allows to convict with evidence of victim only while the Court is satisfied that she is truth. On approaching that, the Court should record reasons in the proceeding. But in the instant case this had not been done by the trial court.
 8. That, this honourable Court may consider the application and solve all over looked ingredient of the case as the above facts were not solved thus make injustice against the applicant. Under above mentioned circumstances the decisions of the trio-Courts were miscarriage the right of human and people against the applicant to be in the custody illegally.

VERIFICATION: The executive Summary has been prepared by me the applicant and signed by myself hereat Mwanza this 01ST day of JUNE 2016.

(Rtp) _____



THE APPLICANT

CERTIFICATION: Certified that the Summary had been prepared by the applicant and signed by him before me this 01ST day of JUNE 2016.

(Sgd) L. Habushi INSP

For O/C BUTIMBA C. PRISON

MWANZA TANZANIA

MR. M. M. M. PEREZA
REGISTRAR

Lodge at Arusha in the Court Registry this _____ day of _____ 20_____

(Sgd) _____

THE REGISTRAR

(AFCHPR)