

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
AT ARUSHA
APPLICATION No. 033 OF 2016
BETWEEN

MAKUNGU MISALABA **APPLICANT**
AND
THE UNITED REPUBLIC OF TANZANIA.....**RESPONDENT**

C/F THE COURT OF APPEAL OF TANZANIA AT MWANZA
IN CRIMINAL APPEAL No. 351 OF 2013
FROM THE HIGH COURT OF TANZANIA AT MWANZA
IN CRIMINAL SESSIONS CASE No. 121 OF 2012

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 submit this summary of executive for the application as follows:-

1. That, while being accused person in the criminal session case, lastly of the trial, the applicant was convicted for two counts of offence of Murder ^{o/s} 196 of the Tanzania Penal Code Cap 16 RE:2002 and Sentenced to Death Penalty on the 10th October, 2013. A copy of the record attached herein.
2. That, dissatisfied by the High Court decision the applicant had appealed in the above mentioned criminal appeal which was dismissed by the Court of Appeal on the 30th October, 2014. Hence, the applicant made an Application No. 15 of 2014 in the Court of Appeal for review of its judgement under its Rules 2009. The application has neither been heard nor listed for hearing.
3. That, as the judgement of the Court of Appeal had upheld the decision of the High Court to convict the applicant by doubtful prosecution evidence and retracted statement alleged was made by the applicant whose led to the injustice sentence, it had rendered to a serious miscarriage of justice.
4. That, the prejudice of the Court of Appeal to delay hearing the review application on long period of at least two years contrary to the fundamental right to be tried within a reasonable time by the Court. A copy of the Application attached herein as annexure.
5. That, the doubtfulness of the prosecution evidence had been noted from the testimonies of the prosecution witnesses. While PW1 was claimed to

come at the scene after the incident had happened, but he narrated in the Court events of the incident as he was present on the incidence. This witness contradicted in his own evidence on fundamental matters of the Case.

6. That, the evidence of PW2 has inconsistency facts with evidence of PW1 about the same matters of the Case. Thus both witnesses were not credible as their evidence had risen many doubts. A copy of the Court of Appeal Judgement attached herein.
7. That, although the Statement (Exhibit P.2) was admitted in the Court after trial within trial, but the evidence of its writer, PW3 has shown that the procedure of making it was contrary to the law. Thus the Statement needed not be relied for the conviction.
8. That, the sentence of death penalty is injustice as it violates article 13(6) (d) and (c) of the Tanzania Constitution but also violates the right to life which is enshrined in, then in the universal declaration of Human Rights to which Tanzania is a Signatory.
9. That, I pray this honourable Court to restore the Justice where it was isolated by the Courts to make decision of acquitting the applicant or to make any order in favour of the applicant including provisional measures under article 27(2) of the protocol as he is on death row.

VERIFICATION: The executive summary had been drawn by me the applicant and signed by I, myself this 02ND day of JUNE 2016

(Rtp) _____
THE APPLICANT



CERTIFICATION: Certified that the summary has been prepared by the applicant and signed by him before me this 02ND day of JUNE 2016

(Sgd) [Signature]
For O/c BUTIMBA C. PRISON
MWANZA TANZANIA

Lodged at Arusha in the Court Registry this _____ day of _____ 2016

(Sgd) _____
THE REGISTRAR
(AFCHPR)