

IN THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

AT ARUSHA

APPLICATION NO. 034 OF 2016

BETWEEN

JUMA HARUNA.....APPLICANT

AND

THE REPUBLIC OF TANZANIA.....RESPONDENT

C/F COURT OF APPEAL OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO. 106 OF 2002

FROM THE HIGH COURT OF TANZANIA AT TABORA

IN CRIMINAL APPEAL NO. 90 OF 2001

FROM THE DISTRICT COURT OF NZEGA AT NZEGA

IN CRIMINAL CASE NO. 20 OF 2000

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, in the D/Court, the applicant and two others persons were charged for an offence of Robbery with violence C/S 285 and 286 of the Penal Code of Tanzania. Cap 16 Vol 1 of the laws as amended by Act No. 6 of 1994 and later two of them convicted for offences of burglary C/S 294(1) of the Penal Code and armed robbery C/S 285 and 286 of the Act while the other one died before hearing of the Case. Thus, the due sentenced to five years on the 1st offence and thirty years on 2nd offence to run concurrently in jail from 14th day of May 2001.
2. THAT, dissatisfied by the D/Court decision, the applicant and Co-Convict appealed in the High Court (T) Tabora at Tabora in the above first criminal appeal with Cr. Appeal No. 39/2001 which dismissed in toto on the 15th day of July, 2002. Hence they appealed in the Court of Appeal super which also dismissed entirely on the 16/07/2004. The record of the Court attached herein as annexure No. JH 1.
3. THAT, Albert the Judgement copy of the Court of Appeal is failure to be endorsed with the application herein, it the same is not differ with the finding and decision of the High Court whose its Judgement is in the record. The copy of Judgement of the Court of Appeal could be found from the Court or the Respondent as the applicant had fallen to find it when if Lost.
4. THAT, the prosecution evidence which had relied for conviction was directed to visual identification of the complainants (PW 1 & PW 2) as family (husband and wife) against the applicant. But the evidence has contradictions and

inconsistencies which defect its, credible. The witnesses had claimed to identify their robbers through torch light which was handed by PW 1 while one of the robbers also has a torch. Though the witnesses didn't say anything about when the robbers torch was used, it is infact borne in mind that the torch was shone towards them. So they could how to identify their robbers while they are shining by the torch? This fact was not observed and solved by the Courts while it goes to the root of the Case.

Furthermore, the witnesses didn't mention their robbers to the alarmists among them PW3 who was claimed that he had not known the thieves while hunting them.

5. THAT, PW1 was alleged that the 4th thief Hussein by name was not caught. Strange is that, he claimed that the thief was with some stolen money. The question is how the witness had know the money taken by the thief while was disappeared before his co-robbers to be caught.
6. THAT, PW2 had answered the applicant on the Cros-examination that they (the robbers) were caught on the road. The argument is how she was known where the robbers were caught while she was not among who were chased the robbers. Even this fact is among those make doubts to the prosecution evidence.
7. THAT, PW3 as PW1 had narrated in the trial Court that the 4th thief had escaped with the stolen money. It is stange also at how procedure he (the witness) was confirm that while it alleged that the thief was disappeared before his co-thiefs to be apprehended.
8. THAT, the Courts were falled to consider that the evidence of the applicant was raised more issue on the prosecution side as the applicant had been claimed about fabrication case against him by the witness PW3 who was the village chairman at that time. According to the evidence, the witness had quarreled with the applicant because he wanted to sell the applicant Plot. This claim was not taken on account by the Courts.
9. THAT, the local leaders under organization of the PW3 and gang people of Sungusungu took applicants' bicycle and sold it. This Act also was not considered by the Court to prove that the applicant right for his property had been prejudiced by the Court.
10. THAT, under the above noted circumstances, this honour Court is required to restore the justice where it is overlooked and to make decision of acquittal of applicant from the custody by setting out the conviction and sentence.
11. THAT, the Court may decide and any order for benefit of the applicant under circumstance of the Case.

VERIFICATION: I verify here at Mwanza that this summary had been prepared by I, the applicant on my best knowledge and belief that all stated in it is true and correct by my sign hereunder this 30TH day of MAY 2016.

(Rtp) _____

THE APPLICANT



CERTIFICATION: Certified that the summary has drawn by the applicant himself and signed by him before me this 30TH day of MAY 2016.

(Sgd) [Signature]
FOR ⁰¹/c BUTIMBA C. PRISON

MIL. MKUU WA CEREZA
BUTIMBA MW NZA

Lodged at Arusha in the Court Registry this _____ day of _____ 20____

(sgd) _____
THE COURT REGISTRAR
(AFCHPR)