

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

APPLICATION NO.035..... OF 2017

**FROM COURT OF APPEAL OF TANZANIA
AT MWANZA**

**IN CRIMINAL APPLICATION NO. 17 OF 2013
ARISING FROM COURT OF APPEAL OF TANZANIA
AT MWANZA**

IN SECOND CRIMINAL APPEAL NO. 223 OF 2011

**FROM THE HIGH COURT OF TANZANIA
AT MWANZA**

IN THE FIRST CRIMINAL APPEAL NO. 31 OF 2009

**ORIGINATED FROM THE DISTRICT COURT OF MUSOMA
AT MUSOMA.**

IN CRIMINAL CASE NO. 276 OF 2007

BETWEEN

SIJAONA CHACHA @MACHERA _____ APPLICANT

AND

**i. THE UNITED REPUBLIC OF TANZANIA }
ii. ATTORNEY GENERALS } _____ RESPONDENTS**

EXECUTIVE SUMMARY OF THE APPLICATION

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

I, Sijaona Chacha @ Macherera, the above named Applicant who submits into the court this Executive summary of Application as follows:-

1. THAT, Sijaona Chacha @ Macherera herein after referred as the applicant is a citizen of the United Republic of Tanzania and a prisoner at Butimba central

Prison Mwanza, who was charged with Unnatural offence c/s 154 (a) of the penal code cap 16 RE. 2002 and sentenced to thirty years imprisonment as from 21/05/2008 before Hon. E.L.Ngigwana, RM, in criminal case No. 276 of 2007.

2. THAT, being aggrieved by the decision of the Judgment of the District court of Musoma, before E.L. Ngigwana, RM. he had prepared an appeal in the High court of Tanzania at Mwanza vide criminal appeal No. 31 of 2009, where by on 05/08/2011 this appeal was dismissed before Hon. A.N.M. Sumari. J.
3. THAT, on 31/07/2013 the applicant's second appeal No. 223 of 2011 was dismissed before trio judges Msoffe, Kimaro and Juma, JJJ.A. On 23/08/2017 the applicant's application for review No. 17 of 2013 also dismissed by the three justices i.e. MJASIRI, LILA, and NDIKA, JJJ.A After perused the said to miscarriage of justice which needs cured and solved in this court.
4. THAT, three justice in the judgment of the review erred both in law and in fact to dismiss the applicant's review without considering that, the grounds of the applicant raised in the review did comply with the condition under the Rule 66 (1) of the Tanzania court of Appeal Rules.
5. THAT, the three justices erred both in law and in fact for failure to note that, the absence of conviction entered in the judgment of the trial court render the decision based on a manifest errorriage of justice as per Rule 66(1) (a) of Rules.
6. THAT, the three justices grossly incurably erred for failure to note that the trial court having heard both the complainant and the accused person and their witnesses and the evidence, shall convict the accused before passing a sentence.
7. THAT, the three justices erred in law for failure to note that, Failure for the trial court to convict the applicant before passing the sentence and in the absence of the of the conviction entered in the judgment the decision of the High court, and court of Appeal had no legs to stand on. And was prepared illegally, fraud and perjury as shown in Rule 66(1) (e) of the Rules.
8. THAT, the three Justices erred in law for failure to note that, the appellate judge or the three justices in the second appeal or the three justices in the applicant's review was required to nullify the proceedings and judgment of the trial court, or the High court or the court of Appeal for strong reasons that, were based on an incompetent appeal as per rule 66(1)(b) of the Rules.
9. THAT, the three justices did err both in law and fact for failure to note that, the trial court to pronounce a sentence without reading a conviction is to failure to complete a judgment and failure to complete the judgment is the same as failure of justice as per Rule 66(1) (a) of the Rules.
10. THAT, the three justices had incurably erred for failure to take in considering that the trial court having found the Applicant guilty of the offence charges, it was imperative upon the magistrate to CONVICT the applicant before passing sentence; which was the main point of the grounds of the Applicant in his review.
11. THAT, the three justices grossly and incurably erred in law by dismissing the applicant's review without considering that; in the absence of conviction in the

trial court's judgment, the appeal/ judgment of the High court and the decision of the second appeal of the court of appeal had no legs to stand on.

12. THAT, the three justices grossly and incurably erred in law for failure to note that, the learned magistrate did force to admit the evidence of PW1 while he not attested of grounds of credibility who gave his evidence without oath.
13. THAT, the three justices erred both in law and in fact for failure to note that, the trial court admitted in evidence the Exhibit P1 and P2 illegally, and the evidence of Pw6 admitted illegally in court.
14. THAT, the three justices misdirected themselves or misused their jurisdiction as the Learned justices for failure to consider that, the trial court magistrate did not afford the applicant a fair and impartial when did not assist the attendance of the defence witnesses enlisted by the applicant in the preliminary hearings worse enough the learned magistrate did not take in consideration the defence of the applicant.
15. THAT, the three justices erred in law for failure to note that, the learned trial magistrate was not heard the case as the law required.
16. THAT, there was no sufficient evidence to hold the applicant liable for commission of the said offence and he ought to have been given a benefit of doubt made by the trial court and the period the applicant had spent in PRISON since 2007 up to day.
17. THAT, it is clear and strong evidence before this court that, what the trial court, High court of appeal and the respondent did up the applicant was to VIOLATE the basic / fundamental rights of the applicant as directed in Article 1,2,3,4,5,6,7(1), 9(1) of the charter and Article 12,13,15,23,24 and 107B of the constitutional of Tanzania,1997..
18. THAT, the applicant request this court to re-store justice where it was over looked by quashing the charge and sentence mated upon or against the Applicant and SET the applicant FREE from custody.
19. THAT, the Applicant wishes to grant reparation pursuant to article 27(1) of the protocol of the court and Rule 34(6) of the court Rules to remedy the violation.
20. THAT, this court be pleased to grant any other order(s) or relief(s) that may deem fit and just to grant in the circumstances of the complainant.
21. THAT, the applicant prays to be facilitated with free LEGAL representatives or LEGAL assistance under rule 31 of the Rule and article 10(2) of the protocol of the court.
22. THAT, the application will be supported by the court's record proceedings plus the judgement of the High court, court of Appeal and the Judgment of Application for review of the three justices.

CERTIFICATION, Certified that, this application has been drawn and signed by the applicant at Butimba central Prison – Mwanza Tanzania on ~~18th~~..... the day of ~~18th~~..... OCTOBER..... 2017

(RTP)
APPLICANT

VERIFICATION, I am verifying that this Executive summary has been prepared by the applicant and endorsed before me, on this ~~18th~~..... Day of OCTOBER..... 2017.

(SGD)
For. OFFICER IN CHARGE
Butimba Central Prison
Mwanza - Tanzania

Lodged at the Registry officer of the African court on Human and people's Rights of P.O.BOX 6274, Arusha -- Tanzania.

This Day of 2017.

(SGD)

Registry of the court
(ACHPR)

DRAWN AND FILED BY:-

SIJAONA CHACHA@MACHERA,
% OFFICER IN CHARGE,
BUTIMBA CENTRAL PRISON,
P.O. BOX 38,
MWANZA - TANZANIA.

18/10/2017.

COPY TO BE SERVED UPON
THE UNITED REPUBLIC OF TANZANIA,
ATTORNEY GENERAL'S CHAMBERS,
P.O.BOX 11492,
DAR ES SALAAM - TANZANIA.