IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MBAROUK, J.A., ORIYO, J.A., And JUMA, J.A.)

CRIMINAL APPLICATION NO. 25 OF 2012,

KARIM RAMADHANI ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for review from the Judgement of Court of Appeal of Tanzania at Dar es Salaam)

(Munuo, J.A., Mbarouk, J.A., Oriyo, J.A.)

Dated the 27th May, 2011

In

Criminal Application No. 259 of 2008

RULING OF THE COURT

Dated 9th & 14th July, 2015

JUMA, J.A.:

On 2nd June, 2011, this Court delivered its judgment in Criminal Appeal No. 259 of 2008, dismissing the second and final appeal by Karim Ramadhani (the applicant herein) against his conviction for the offence of armed robbery, for which he was sentenced to serve thirty years in prison. The dismissal of his appeal has prompted the applicant to file the instant notice of motion under Rule 66 (1) of the Tanzania Court of Appeal Rules,

2009 (the Rules). The applicant is moving the Court to review its final appellate decision in Criminal Appeal No. 259 of 2008. He relies on one ground, which the motion describes as "manifest error on the face of the record". In its essence, this ground questions the probity of the evidence of Cheza Korneli Tamba (PW1), the first prosecution witness. The applicant expressed his concern that despite PW1 alleging his close familiarity with the applicant, he had all the same failed to mention the name of the applicant at the earliest possible opportunity. The applicant also contests his conviction on the basis of the evidence of his cautioned statement, which had placed him in the car; yet PW1 still claimed to have identified him at the scene of crime.

On 9th July, 2015, the applicant appeared before us to argue his motion in person. Ms Neema Haule, learned Senior State Attorney, appeared for the respondent Republic. She at the very outset opposed the application, contending that the grounds upon which the applicant bases his motion, do not fall within the purview of paragraphs (a) to (e) of Rule 66 (1) of the Rules governing proper grounds for the Court to be seized with jurisdiction to review its own decision. The learned counsel added that

the grounds which the applicant preferred should be dismissed because they urge the Court to embark on yet another round of re-evaluation of evidence which do not fall under the purview of the Court sitting to review its decision. To support her prayer that this instant application should be dismissed, Ms Haule placed reliance in the decision of the Court in **Mbijima Mpigaa & Another vs. The Republic**, Criminal Application No. 3 of 2011 (unreported) where the Court declined to allow a review stating:

> *"...In our instant case, the applicants' grounds of review stated on page one (1) of this ruling refer to the evidence in the case. This is tantamount to asking this Court to re-open the case because they are asking us to re-assess the evidence instead of dwelling on errors or otherwise in the judgment in Criminal Appeal No. 181 of 2003 as they have invited us to do. We candidly decline the invitation because we do not have jurisdiction...."*

When his opportunity came for him to reply, the applicant expressed his lack of knowledge on such intricate matters of law that govern

applications for review. He left it at the discretion of the Court to grant or refuse to grant him his application for review.

The instant application is clearly predicated on paragraph (a) of Rule 66 (1) of the Rules. This provision which the applicant cited, is couched in mandatory terms to the effect that **no application for review shall be entertained** if that application does not fall under any of the grounds enumerated under its paragraphs (a) to (e):

> *66.-(1) The Court may review its judgment or order,* ***but no application for review shall be entertained except on the following grounds*** *–*
>
> ***(a)- the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice;*** *or*
>
> *(b)- a party was wrongly deprived of an opportunity to be heard;*
>
> *(c)- the court's decision is a nullity; or*
>
> *(d)- the court had no jurisdiction to entertain the case; or*
>
> *(e)- the judgment was procured illegally, or by fraud or perjury.*
> [Emphasis added]

It is evident therefore that this Court can only accede to the prayer to to review its decision in the Criminal Appeal No. 259 of 2008 if the applicant shows that there is *"a manifest error on the face of the record resulting in the miscarriage of justice"*. Our decision in **Mbijima Mpigaa & Another vs. The Republic** (supra) which Ms Haule referred to us, has articulated the settled position of the law that in a review, the Court does not sit to re-evaluate the evidence all over again. Instead, the review Court is restricted to determine if there are errors or otherwise apparent on the face of the decision subject of an application for review. We must also at this juncture, point out that our decision in **Mbijima Mpigaa & Another vs. The Republic** (supra) was an application for review which was brought under the revoked Court of Appeal Rules, 1979. The revoked Rules did not enact any equivalent of Rule 66 (1) of the current Rules of 2009. It suffices to say that there are numerous decisions of the Court which discuss and expound the scope of the Court's power of review under Rule 66 (1) of the Rules.

In so far as the instant application is concerned, it is not sufficient for purposes of paragraph (a) of Rule 66 (1) of the Rules, for the applicant to

merely allege that the final appellate decision of the Court was "based on a manifest error on the face of the record," if his elaboration of those errors disclose grounds of appeal rather than manifest errors on the face of the decision. It is appropriate to point out that in his supporting affidavit, the applicant has neither successfully expounded the "error on the face of the record" nor has he established any linkage between those purported grounds of review with the resulting miscarriage of justice required under paragraph (a) of Rule 66 (1) of the Rules.

It seems to us that the ground where the applicant alleges the misapprehension of the identification evidence of PW1 cannot be canvassed as grounds for review. It falls under the purview of the first and second appellate courts. The same applies to the ground questioning the discrepancies between the evidence of the applicant's cautioned statement and what a witness (PW1), testified on. In **Abel Mwamwezi vs. The Republic**, Criminal Application No. 1 of 2013 (unreported) the Court had an occasion to reiterate that a ground of review inviting the Court to reconsider any evidence afresh amounts to inviting the Court to determine an appeal against its own judgment. This shall not be allowed. This is the

exact stance which we shall also take with respect to the instant application. We have no option other than to conclude that there is nothing the applicant has presented before us, from which we can discern legitimate grounds for a review of the final judgment of the Court in Criminal Appeal No. 259 of 2008.

In the result, this application is hereby dismissed. It is so ordered.

DATED at **DAR ES SALAAM** this 13th day of July, 2015.

M.S. MBAROUK
JUSTICE OF APEPAL

K.K. ORIYO
JUSTICE OF APEPAL

I.H. JUMA
JUSTICE OF APEPAL

I certify that this is a true copy of the original.

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL