

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: KIMARO, J.A., MANDIA, J.A., And KAIJAGE, J.A.)

CRIMINAL APPLICATION NO. 2 OF 2011

MAULIDI SWEDIAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(An Application for revision of the judgment of the Court of Appeal of
Tanzania)**

(Msoffe, J.A., Kimaro, J.A., Mandia, J.A.)

Dated the 29th day of June, 2011

in

Criminal Appeal Nos. 185, 186 & 187 of 2008

RULING OF THE COURT

8th & 9th May 2013

KIMARO, J.A.:

The applicant was one of the appellants in the consolidated appeals which are shown above. The appeals were heard by the Court at Tabora on 27th June, 2011 and the judgment was delivered on 30th June, 2011. The Court dismissed his appeal. The conviction on a charge of robbery contrary to section 285 and 286 of the Penal Code, [CAP 16 R.E.2002] and

the sentence of thirty years imprisonment that was imposed by the trial Court and sustained by the first appeal Court were sustained.

The applicant has now filed a motion under Rules 48 and 65(1) and (2) of the Court of Appeal Rules, 2009 requesting the Court to revise the judgment it gave in respect of the consolidated appeals. In the Notice of Motion the applicant laments that the Court did not properly analyse the evidence that was tendered in the trial Court. Instead, it sustained the conviction and sentence while he was not involved in the commission of the offence.

At the hearing of the application the applicant appeared in person. He was not represented. Ms. Jane Mandago, learned State Attorney appeared for the respondent.

The applicant did not have much to tell the Court apart from insisting that he is a layman who does not understand the law, and he is languishing in jail for an offence he did not commit.

Ms. Jane Mandago learned State Attorney opposed the application. She submitted before us that the application was wrongly before us, as the Court does not have jurisdiction to revise its own decision. She said Rules 48 and 65(1) and (2) of the Court of Appeal, 2009 cited by the applicant are concerned with the procedure for filing an application for revision. They do not confer power on the Court of Appeal to hear an application for revision of its own decision. She said the law which confers power on this Court to hear revisions is the Appellate Jurisdiction Act, [CAP 141 R.E. 2002] sections 4(2) in the course of hearing an appeal, or section 4(3) when the Court "*suo motu*" orders for a revision or is moved by a party to do revision. She cited to us the case of **Hallais Pro- Cheme V Wella A.G.** [1996] T.L.R. 269. She said if the applicant wanted to move the Court to correct its decision, the proper procedure was to file an application for review under Rule 66 of the Court of Appeal Rules, 2009. She prayed that the application be dismissed.

We do not think that the application should tax us because the law is clear on the law which governs revision and the circumstances under which the Court should exercise powers of revision.

The learned State Attorney pointed to the Court correctly, that powers of revision by the Court of Appeal are conferred by sections 4(2) and 4(3) of the Appellate Jurisdiction Act. Section 4(2) provides:-

“For all purposes and incidental to the hearing and determination of any appeal in the exercise of jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in the court from which the appeal is brought.”

In essence what the above provision means is that , in the process of hearing an appeal, the Court is vested with power to correct irregularities noted by it, which were not raised as grounds of appeal. The Court can do so “*suo motu*”. This is power which has been exercised by the Court in a lot of cases.

On the other hand section 4(3) provides that:-

“Without prejudice, to sub section (2), the Court of Appeal shall have the power, authority, and jurisdiction to call for, and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, order or any other decision made thereon and as to irregularities of any proceedings of the High Court.”

The Court is also empowered under section 4(3) to call for the record of any proceedings in the High Court to satisfy itself on correctness and legality in the conduct of the proceedings and the orders made in the proceedings. This can be done by the Court on its own motion or can be moved by any party to the proceedings in the High Court. In the case of **Halais Pro-Chemie** (supra) the Court held that:-

“(1) The Court could, on its own motion, and

*at any time, invoke its revisional jurisdiction
in respect of proceedings in the High Court.*

*(ii) A party to proceedings in the High Court
could invoke the revisional jurisdiction of the
Court in matters which are not appealable
with or without leave.”*

When a party moves the Court to exercise the power of revision on the matters listed in the sub-section 3 of section 4, or where the appeal process is not available, the procedure of moving the Court is as provided for in Rules 65(1) to (5) of the Court Rules , 2009. But what is clear in both sections 4(2) and 4(3) of the Appellate Jurisdiction Act, CAP 141 is that the application for revision must not be for correction of the decisions of the Court of Appeal.

The application before us is misconceived. It is struck out.

DATED at **TABORA** this 8th day of May, 2013.

N.P. KIMARO
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

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



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL