IN THE COURT OF APPEAL OF TANZANIA AT DODOMA CRIMINAL APPLICATIO N NO. 04/2007 BWANA, J.J.A	**KARIM KIARA VS THE REPUBLIC (from the judgment of the Court of Appeal of Tanzania at Dodoma by MUNUO, KAJI, KIMARO JJJA)**	1 - Law on applications for review. A review is by no means an appeal in disguise whereby an erroneous decision is heard and corrected. 2 - Case of Thungabhadra industries VS. Andhra Pradesh (1964) SC 1372 as cited by MULLA, 14th Ed. Pp 2335 – 36) 3 - Case of Marcky Mhango (and 684 others) VS. Tanzania Shoe Company Ltd. and another; Civil Application No. 90 of 1999 (Unreported)

IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: MSOFFE,J.A., RUTAKANGWA,J.A. And BWANA,J.A.)

CRIMINAL APPLICATION NO. 4 OF 2007

KARIM KIARA .....APPLLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

(From the judgment of the Court of Appeal of Tanzania at Dodoma)

(MUNUO, KAJI, KIMARO, JJJA)

Dated the 22nd day of June, 2007
in
Criminal Appeal No. 8 of 2006

RULING OF THE COURT

20 & 23 October, 2009

BWANA, J. A.:

This application has a backdrop which seems to be out of the ordinary. We say so at this early stage for the reasons that will be shown shortly.

Initially the applicant was charged with Rape contrary to Sections 130 (1) (2) and 131 (1) of the Penal Code (the PC) as amended by Section 5 of the Sexual Offences Special Provisions Act (SOSPA). He was convicted by the District Court of Iramba at Kiomboi and sentenced to serve a prison term of twenty (20) years with ten (10) strokes of the cane. Aggrieved by that decision, he appealed to the High Court at Dodoma. Invoking the provisions of Section 45 (2) of the Magistrates Courts Act, 1984 as amended by

Act 2 of 1996 (the MCA), the said appeal was transferred to be heard by a Resident Magistrate with Extended Jurisdiction.

On 23 September 2005, J.M. Somi, PRM with Extended Jurisdiction, dismissed the appeal. In addition, he found (and rightly so) that the sentence of 20 years was unlawful. Under the SOSPA, such an offence carries a mandatory minimum sentence of thirty (30) years imprisonment. He therefore set aside the 20 years sentence and in its place, imposed one of 30 years imprisonment. Still undaunted, the applicant appealed to this Court. His appeal was dismissed on 22nd June, 2007.

Further dissatisfied he has now come before us again, this time with an application for review of that decision of this Court dated 22nd June, 2007. He filed this application pursuant to Article 13 (3) and (6) of the Constitution of the United Republic, 1977, as amended (the Constitution) and Rule 3 (2) of the Court of Appeal Rules, 1979 (the Rules). In his grounds for review, the applicant raises nine (9) reasons which by their outlook are similar to grounds of appeal. When invited to address us on the subject before the Court, the

applicant, in essence, repeated what is stated in his "grounds for review" filed in Court. Mr. Justus Mulokozi, learned Principal State Attorney for the respondent Republic, controverted the application basically submitting that the applicant's averments are synonymous to grounds of an appeal. He therefore requested this Court to dismiss the application.

The law on applications for review is now well settled. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected (see **Thungabhadra Industries vs Andhra Pradesh** (1964) SC 1372 as cited by MULLA, 14th Ed. Pp. 2335 – 36). In a properly functioning legal system, litigation must have finality, thus the Latin maxim of "*debet esse finis litium.*" This is a matter of public policy. It is not insignificant to point out here that if this were not so, then as was stated by this Court in **Marcky Mhango (and 684 others) vs. Tanzania Shoe Company Ltd and Anothe**r – Civil Application No. 90 of 1999 (unreported), the court's order would have the effect of which-

"is to reopen a matter otherwise lawfully determined. There should be certainty of judgments ….a system of law which cannot guarantee the certainty of its judgments and their enforceability is a system fundamentally flawed. There can be no certainty where decisions can be varied at any time at the pressure of the losing party and the machinery of justice as an institution would be brought into question…"

The principle underlying review is that the court would have not acted as it had if all the circumstances had been known. Therefore review would be carried out when and where it is apparent that –

First, there is a manifest error on the face of the record which resulted in a miscarriage of justice. The applicant would therefore be

required to prove very clearly that there is a manifest error apparent on the face of the record. He will have to prove further, that such an error resulted in injustice (see **Dr. Aman Walid Kabourou vs The Attorney General and Another** – Civil Application No. 70 of 1999 – unreported).

Second, the decision was obtained by fraud.

Third, the applicant was wrongly deprived the opportunity to be heard.

Fourth, the court acted without jurisdiction (see **C.J. Patel vs Republic** – Criminal Application No. 80 of 2002).

Although this Court held in **Tanzania Transcontinental Co. Ltd** vs **Design Partnership Ltd** (civil) Application No.

62 of 1996) that the list of grounds for review is not exhaustive, it did observe further in the same case, that –

> "We need to emphasize however, that the **Court will not readily extend the list of circumstances for review**, the **idea being that the Court's power of review ought to be exercised sparingly and only in the most deserving cases**, bearing in mind the demand of public policy for finality of litigation and for certainty of the law as declared by the highest Court of the land." (emphasis provided).

In the instant application, as stated earlier, the applicant has not shown, in our view, any of the four grounds for review enumerated above. His nine grounds presented before this Court are nothing but grounds of what would appear to be another appeal

against the decision of this Court delivered on 22nd June, 2007. This should not be allowed since it amounts to an appeal in disguise. The Court of Appeal of East Africa (in **Lakhamshi Brothers Ltd vs R. Raja** – Civil Application No. 6 of 1966) did observe and rightly so, in our considered view, that –

> "In a review the court should not sit on appeal against its own judgment in the same proceedings. In a review, the court has inherent jurisdiction to recall its judgment in order to give effect to its manifest intention on to what clearly would have been the intention of the court had some matter not been inadvertently omitted."

That cannot be said to be the case in the present application.

Having thus considered what the applicant presented before us, we see no merit in the same to warrant this Court to review its judgment dated 22nd June, 2007 in Criminal Appeal No. 8 of 2006. Therefore this application fails and is accordingly dismissed.

DATED at DODOMA, this 23rd day of October, 2009.

J. H. MSOFFE
JUSTICE OF APPEAL

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

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

(Z. A. MARUMA)
DEPUTY REGISTRAR