

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

APPLICATION NO. 026 OF 2017

IN THE MATTER OF THE COURT OF APPEAL OF TANZANIA AT TABORA

IN CRIMINAL APPEAL NO. 186 OF 2008

AND

IN THE MATTER OF HIGH COURT OF TANZANIA AT TABORA

ORIGINAL CRIMINAL CASE NO.43 OF 2006

AND

IN THE MATTER ARISING FROM THE TRIAL DISTRICT COURT OF NZEGA

AT NZEGA

ORIGINAL CRIMINAL CASE NO.62 OF 2004

BETWEEN

MAULID S/O SWEDI @ MSWEZI .....APPLICANT

AND

THE REPUBLIC OF TANZANIA

ATTORNEY GENERAL 'S CHAMBERS..... RESPONDENT

**EXECUTIVE SUMMARY OF THE APPLICATION.**

{ Made under rule 19 of the Court's rules from provision No 18 and 19 of the Court's }  
practice direction. }

I, the applicant herein above, do hereby request this Honourable Court of Justice Human and people's rights to allow me to lodge a Memorandum of complaints of violation of of the principles of law, Human rights occasioned to me by the Court of appeal of Tanzania for the following grounds inter alia;-

1. That, the applicant was arraigned before the District Court of Nzega (The Trial Court) convicted and sentenced to a term of thirty (30) years imprisonment with effect from 21.9.2005 in the aforementioned criminal case, the decision which was upheld by the two appellate Court in the two aforementioned criminal appeals.

2. That, the judgment of the Court of appeal of Tanzania which was pronounced at Tabora on 29.6.2011 was procured out of violation of the principles of law and practice government of Tanzanian criminal justice system.
3. That, the Court of appeal of Tanzania had upheld the concurrent findings of facts by the two Courts below it without regard to the fact that the trial Court did not accord the applicant a fair trial which violated his right to fair trial enshrined under articles 13 (6) (a) of constitution of the United Republic of Tanzania same as Articles 2 and 3 of African charter.
4. That, during the trial of the applicant Hon.K.M.RASHIDI -RM (Esq) wrongly assumed jurisdiction to hear the case when he took over the trial from his predecessor Hon. A.A.RUTECHURA - SDM (Esq) who presided over the case and recorded the testimonies of the first five prosecution witnesses (PW.1-PW.5) and failed to complete the hearing.
5. That, Hon. K.M.RASHIDI-RM (Esp) did not comply with the requirement of section 214 (1) of the criminal procedure Act. Cap. R.E 2002 (The Criminal Procure Act) which controls a situation where one trial Magistrate completes a case partly heard by another Magistrate who cannot hear the same case to completion.
6. That, HON.K.M.RASHIDI-RM (Esq) THE SUCCESSOR Magistrate composed the decision of the trial Court by relying on the evidence by the witnesses whom he didn't have an advantage of seeing them testify and asses their demeanor
7. That, the effect on non compliance to the requirements of section 214 (1) of the criminal procedure Act Cap.20 R.E 2002 is that Hon.K.M.RASHIDI-RM had no jurisdiction to hear the applicant's case and the latter was prejudiced as was not accorded a fair trial.
8. That, since the right to fair trial is enshrined under Article 13 (6) (a) of the constitution of the United Republic of Tanzania, it is thus a fundamental right which cannot be easily violated.
9. That, the law further guides that any decision that breaches the right to fair trial and principles of the natural justice cannot stand, and it is immaterial whether the same decision would have been arrived at in the absence of any other violation.

10. That, unfair trial aside, the applicant's case was yet riddled with another violation in that his defence evidence was not considered when composing the judgment in all the three Courts (The trial Court, High Court and the Court of appeal) as it can be discerned from their judgments.

11. That, since the applicant was availed by the trial Court, an opportunity to be heard, that is to defend his case, but the same Court and all no subsequent appellate Courts, failed to take into consideration his defence evidence. This is tantamount to convicting the applicant unheard, yet another, violation which breaches fair trial and principles of natural justice namely the rule against bias.

12. That, since the applicant had no legal representation both at trial and appellate level, his rights were jeopardized.

13. That, the applicant humbly pray this Honourable Court to restore justice where it was overlooked and quash out both the conviction and the sentence imposed upon him and set him at liberty.

14. That, this Court may grant any other order(s) that it may deem fit and just to grant in the circumstances of this application.

VERIFICATION;- This Executive summary has been prepared by me, the applicant here at Tabora and signed by myself on this.....<sup>11<sup>th</sup></sup>.....day of.....<sup>April</sup>.....2018



THE APLICANT:- MAULID S/O SWEDI @ MSWEZI

CERTIFICATION.

I, hereby certify that this executive summary of complaints has been prepared by Applicant (Prisoner) himself and there is no alteration thereto.

Certified this .....day of .....2018

  
.....  
THE OFFICER INCHARGE

UYUI CENTRAL PRISON

TABORA

MAJID WA GEREZA  
UYUI TABORA

To:- HONOURABLE THE JUSTICE OF AFRICAN COURT ON HUMAN AND  
PEOPLES RIGHTS OF ARUSHA TANZANIA.

LODGED IN THE REGISTRY OFFICE OF THE AFFRICAN COURT OF HUMAN  
AND PEOPLES RIGHTS ARUSHA P O BOX 6274 ARUSHA-----TANZANIA

.....  
REGISTRAR OF THE COURT (AFCHPR)

DRAWN AND FILED BY:-

THE APPLICANT:- MAULID S/O SWEDI @ MSWEZI

C/O OFFICER INCHARGE

UYUI CENTRAL

TABORA.

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COPY TO SERVED UP ON.

THE UNITED REPUBLIC OF TANZANIA

ATTORNEY GENERAL'S CHAMBERS

P O BOX 11492

DAR- ES-SALAAM - TANZANIA.