

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., WAMBALI, J.A. And KEREFU, J.A.)

CRIMINAL APPLICATION NO. 63/01 OF 2016

SP CHRISTOPHER BAGENIAPPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONSRESPONDENT

**(Application for Review of the Judgment of the Court of Appeal of Tanzania
at Dar es Salaam)**

(Luanda, Mjasiri and Kaijage JJJA.)

Dated the 16th day of September, 2016

in

Criminal Appeal No. 358 of 2013

RULING OF THE COURT

14th June & 14th August, 2019

WAMBALI, J.A.:

The applicant, SP Christopher Bageni, has preferred this application for review under section 4(4) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (the AJA) and Rule 66 (1) (a) (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant requests the Court to review the judgment that was delivered on 16th September, 2016 in respect of Criminal Appeal No. 358 of 2013. The application hinges on the following grounds of review:

(a) *That the applicant was denied equal and fair opportunity of hearing as when re-evaluating and re-appraising the evidence on record, the court selectively inclined only to the prosecution's evidence: -*

(i) *In analysing evidence upon which the decision of the court is based, the court only dealt with examination –in –chief evidence of the prosecution and simply gave cursory looking at the evidence of the defence particularly that of the Applicant or none at all.*

(ii) *There has been traverse of justice in that the Applicant herein has been denied equal opportunity and fair right of hearing by the court being selectively inclined to prosecution side and by totally failing to consider defence evidence.*

(b) *That decision of the court is based on manifest error on the face of the record resulting to miscarriage of justice for:*

(iii) *For failure to consider the guiding principles on the nature, value and application of corroborative evidence. Having failed to critically analyse and*

evaluate the evidence on record the court failed to make a finding that the 4th Respondent's evidence circumstantial as it is, is patently lacking and valueless for it to require corroborative evidence, and thus unsafe to base conviction.

- (iv) For failure to see and consider that the purported corroborative evidence is not independent, immaterial to the issue to be proved (PW27) and non-existing (PW36).*
- (v) For failure to critically make wholesome analysis of evidence on record otherwise the Court ought to have seen that the burden of proof in criminal cases was not attained. The Court in deciding as it did, in so far as the participation of the Applicant to the crime is concerned, failed to find that in totality the prosecution evidence as a whole does not prove its case beyond any reasonable doubt.*
- (vi) For failure as the first appellate Court, to rehear and re adjudicate the appeal as its obligation in*

law. The Court did not treat evidence on record as a whole to that fresh and exhaustive scrutiny which the Applicant was entitled to expect.

- (vii) That by overruling and/or interfering with the findings of the trial judge who had advantage of visiting scene of crime, seeing and hearing witnesses testifying in court, in absence of supportive evidence so to do/or and without assigning good reasons.*
- (viii) For setting aside the Applicant's acquittal and substituting it with conviction basing on non-existing evidence (of 4th Respondent in the judgment, PW27 and PW36) and on hearsay and highly doubtful evidence.*
- (ix) For total failure to comply with mandatory provisions of section 312 of the Criminal Procedure Act, Cap 20 R.E. 2002. That in light of plainest evidence on record showing that the alleged CPL SAAD did not shoot the deceased, from the*