THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ARACH-AMOKO; MWANGUSYA; OPIO-AWERI; MUGAMBA; BUTEERA; JJ.S.C;)

CRIMINAL APPLICATION NO. 10 OF 2018

1. **BAKUBYE MUZAMIRU :::::::::::::::::::::::::::: APPLICANTS**
2. **JJUMBA TAMALE MUSA**

VERSUS

UGANDA :: RESPONDENT

(Arising from Supreme Court Criminal Appeal No. 56 of 2015)

RULING OF THE COURT

Bakubye Muzamiru and Jjumba Tamale Musa relied on Article 126(2) (e) of the Constitution and Rules 2(2) and 35 of the Rules of this Court to file this notice of motion. The motion sets out the orders applied for as follows:

`*1. That the Applicants be granted leave to be heard on Criminal review*

2. That the convictions and sentences upheld by the Court in SCCA No. 56 of 2015 be set aside on account of omission and overlooked matters contained in the judgment

3. That any other relief be issued'.

Following are the grounds for this application as stated:

i. *THAT the intended review will avail Court the chance for correction of errors, omissions and overlooked material matters in its previous judgment which is the subject of the reference application.*

ii. *THAT this Court has inherent obligation and jurisdiction under rule 2(2) and 35 of SCR to correct errors arising from accidental slip, omission and overlooked material matters in its own judgment.*

iii. *THAT whereas the Court upheld the 30 years and 40 years imprisonment it omitted to deduct the 04 years remand period spent by the applicants which rendered the sentence unlawful.*

iv. *THAT notwithstanding paragraph (iii) above, failure to deduct the remand period of 04 years from the final sentences of 30 and 40 years imprisonment discriminated the Applicant as Court in its own motion ought to have intervened even if the parties to the appeal case had failed to raise that Constitutional matter.*

v. *THAT this Court has inherent jurisdiction to set aside its own judgment even after it has been passed provided there are special and good reasons for so doing the justice of the case.*

vi. *THAT the Constitution imposes on this Court a duty to administer justice without much inclination to ensuring technicalities arising from any matter equitably brought before it.*

vii. *THAT the Applicants have provided substantial grounds and safeguards so as to overcome any concerns this Honourable Court may have in regard to entertaining this application.*

viii. *THAT it is just, equitable and in the interest of justice if the Applicants would be heard on this application for criminal review.*

ix. *THAT this application would do justice to the applicants if, allowed and orders sought granted'.*

We should add that the notice of motion is supported by an affidavit deponed by the second applicant, Jjumba Tamale Musa.

Background

The two applicants were jointly indicted and eventually tried and convicted by the High Court in Kampala of the offences of aggravated robbery, contrary to sections 285 and 286 (2) of the Penal Code Act in the first count and murder, contrary to sections 188 and 189 of the same Act in the other count. The trial court sentenced each of them to 30 years and 40 years imprisonment on the respective counts. They were to serve the sentences consecutively. Upon their appeal to the Court of Appeal the Court altered the sentences in order that the terms of imprisonment already handed down were to run concurrently instead. The final appeal was to this Court, which notably upheld the findings of the Court of Appeal.

Representation

Ms. Wakabala Suzan Sylvia represented both applicants while Mr. Badru Mulindwa, Senior Principal State Attorney appeared for the respondent.

Counsel on both sides related to the written submissions they had earlier filed saying that they adopted them and relied on them. Both counsel also gave short oral highlights to aspects of their written submissions.

Submissions

Counsel for the applicants sought for the applicants to be heard on criminal review against the convictions and sentences this Court had upheld, contending that this Court had overlooked grave omissions and material facts in its judgment. In particular mention was made of an instance where the judgment of the trial court in this case had been made reference to by a judge in another case namely **Uganda vs Lomanio Paul Darlington and 3 others, Criminal Session Case No. 019 of 2011** as an authority, prior to the actual delivery

being cited. Counsel stated that consequently the right of the applicants to a fair trial provided for under Article 28 of the Constitution was contravened. On that score this Court was asked to review its decision and help correct the circumstances of the trial complained of. The other prayer is that the period spent on remand by the two applicants was not considered when their custodial sentences were handed down as is required by the Constitution. This Court is asked to have the position rectified.

In reply Counsel for the respondent submitted that this application lacks merit and should be dismissed. He stated that the issue of the judgment of this case in the High Court being cited in another court before delivery has not been properly brought to the notice of this Court and that the application does not fall under the law being cited; that is rule 2(2) and 35(1) and (2) of the Rules of this Court. Regarding the alleged failure by Court to take into account the period the applicants spent on remand before deciding on their custodial sentences counsel contended that this matter was not referred to on appeal either in the Court of Appeal or eventually in this Court.

Consideration

We have checked on the law under which this application was initiated. We have also looked at the application itself and we have appraised the submissions. Article 126(2) (e) of the Constitution states that in adjudicating cases of both a civil and criminal nature the courts shall, subject to the law, apply principles inclusive of the tenet that substantive justice shall be administered without undue regard to technicalities. We observe however that there is nowhere it has been shown by the applicants that there was failure to adhere to the ideal at any stage. Suffice it to say that citing of this Constitutional provision is, in the circumstances of this application, unavailing.

Rule 2(2) of the cited rules provides:

(2). Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay'.

In its turn Rule 35 reads:

(1) A clerical or arithmetical instance in any judgment of the Court or any error arising in it from an accidental ship or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the court, either of its own motion or in the application of any interested person so as to give effect to what was the intention of the court when judgment was given.

(2) An order of the court may at any time be corrected by the court, either of its own motion or on the application of any interested person, if it does not correspond with the order or judgment it purports to embody or, where the judgment has been corrected under sub rule(1) of this rule, into the judgment as so corrected'.

The rules laid out above show that this court has the mandate in appropriate cases to exercise its inherent jurisdiction of review in order to give the intended effect to its decisions. Be that as it may we are mindful of the status of this court as the final court of appeal and the imperative to have its decisions regarded with a modicum of permanence.

First and foremost the applicants seek a review of this court's judgment because of the allegation that this case while still being heard in the High Court was cited in another matter. Evidently this concern was fully addressed by this court in Supreme Court Criminal Appeal No. 56 of 2015 and no imperative for review exists. Court observed then:

> **'We are not privy to the circumstances under which the prepared draft of the Court of Appeal was accessed by the High Court Judge who referred to it in her/his decision. However, an opinion only qualifies as a judgment or decision of the Court after it has been pronounced/delivered. It is only then that such opinion has legal value. Before pronouncement, the opinion is but a mere draft. It was therefore irregular for the judge in Uganda vs Lomanio (supra) to cite such a document as legal authority.**
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> **Be that as it may, we do not see how, by any stretch of imagination, the mishap could be interpreted as a violation of the appellants' right to a fair trial. If anybody were to justifiably complain, it perhaps would be the appellants in Uganda vs Lomanio Paul Darlington and 3 others (supra) and this is if it could be argued that the decision of the Court in that case was arrived at as a result of reliance on the said undelivered opinion – an opinion which had no legal validity.'**

The other instance advanced for review relates to failure of the courts to take into account the period the appellants spent on remand, pursuant to Article 23(8) of the Constitution. Respectfully, there is nowhere the applicants have pointed to evidence that indeed in that case the period spent on remand was not considered. The court record itself dispels any doubt. Needless to say the onus is on the applicants to show evidence of their assertions. We do not find merit in this application. It is accordingly dismissed.

Before we take leave of this matter we are constrained to comment on the growing trend, clearly given succour at the Bar, of attempting in a roundabout way to appeal this court's decisions by initiating fancy applications for review. The trend is unavailing and a waste of time and resources. It should be discouraged. Disposal of an appeal by this court should see an end to the matter in contest because it is in the interest of all that there should be conclusion to litigation.

Dated at Kampala this ....6th.....day of ....September.....2018.

HON. LADY JUSTICE STELLA ARACH –AMOKO
JUSTICE OF THE SUPREME COURT

HON. JUSTICE ELDAD MWANGUSYA
JUSTICE OF THE SUPREME COURT

HON. JUSTICE RUBBY OPIO-AWERI
JUSTICE OF THE SUPREME COURT

HON. JUSTICE PAUL K. MUGAMBA
JUSTICE OF THE SUPREME COURT

HON. JUSTICE RICHARD BUTEERA
JUSTICE OF THE SUPREME COURT