IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

ARS. CRIMINAL APPLICATION NO. 4 OF 2011

BARIKI ISRAEL .....APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for extension of time within which to file review from the decision of the Court of Appeal of Tanzania, at Arusha)

(Nsekela, Kimaro, Mbarouk, JJJ.A.)

dated the 15th day of February, 2011
in
Criminal Appeal No. 444 of 2007

RULING

19th & 28th September, 2012

MASSATI, J.A.:

By a notice of motion made under Rules 10 and 66 (1) of the Court of Appeal Rules 2009, the applicant is seeking for extension of time within which to file an application for review of the judgment of this Court in Criminal Appeal No. 444 of 2007, which dismissed his appeal.

In support of the notice of motion he has filed his own affidavit and that of ACP G. R. Mushi, the prison officer in charge of Arusha Central Prison. The latter only corroborates the applicant's contention that the

delay in filing the application was not due to his fault, but that it was caused by some document processing equipment falling out of order. But it was also the applicant's contention that the chances of success of his intended review were overwhelming, and that he was also ignorant of the procedural law governing such applications.

At the hearing, the applicant appeared in person, and the respondent/Republic was represented by Ms. Suzan Ndomba, learned State Attorney.

The applicant adopted his affidavit and argued that he had disclosed sufficient reasons for extension of time, and he had an overwhelming chance of success. So he prayed that the application be allowed. Ms. Ndomba submitted that much as the application may have disclosed sufficient facts to justify extension of time, there were slim chances of success because there was no indication on which of the grounds under Rule 66 (1) of the Court of Appeal Rules, the applicant was relying on. She thus urged me to dismiss the application.

Rule 66 (3) of the Court of Appeal Rules 2009, requires that an application for review be filed within sixty days from the date of judgment

or order sought to be reviewed. The impugned judgment was delivered on 15th February, 2011. So, at the latest, an application for its review should have been filed by 16th April, 2011.

But Rule 10 of the Court of Appeal Rules, 2009 gives power to this Court to extend time, upon **good cause** shown, for the doing of any act authorized or required by the Rules. The question in such applications, is always, whether there is good cause for extending time. What is "good cause" is a question of fact, and no hard and fast rules can be laid down as to what constitutes and what does not constitute a good cause. The term "good cause" is defined by Free Legal Dictionary online, as "**a legally adequate or substantial ground or reason to take a certain action.**" I will adopt that definition in the present application.

In this case, one of the grounds advanced by the applicant and supported by the prison officer in charge is that the "typing equipment was out of order". I am not prepared to accept this general statement. It is not accompanied by sufficient particulars. For instance, I am not told for how long the "typing equipment" remained out of order, and what other efforts the prison office did to alleviate the situation. I do not believe that a public

office like the prison was immobilized for a period of 8 months without a type writer, and yet nothing could be done to mitigate the problem.

The second reason that the applicant gave for the delay, was that he was ignorant of the law. I will reject it right away, because ignorance of law has never featured as a good cause for extension of time. But even if it were so, in paragraphs 3 and 4 of the affidavit, the applicant does not specify when did the judicial officer visit to enlighten him on his right of "revision". This is important because, in an application for extension of time, the applicant has to account for every day of the delay. This the applicant has failed to do.

The last reason advanced by the applicant is that his application for review has overwhelming chances of success. Much as I am not at this stage required to look at the merits of the intended application, I would at least be expected to be satisfied that the applicant has an arguable case. In this case, the applicant has shown in his affidavit (paragraph 5 (a)) that he intends to engage the Court on the substance or merits of its judgment. He disclosed that he wanted the Court to review its judgment because:-

"……..the superior Court erred in law and fact when failed to detect that the prosecution witnesses were not credible at all".

This may be a good ground of appeal (if it were possible) but not review. There is no allegation at all of breach of any of the grounds listed under Rule 66 (1) of the Rules. So to allow such an application, would be merely academic. Fortunately the applicant himself has conceded that much, and, in the course of hearing he came close to withdrawing the application. I am of the considered view that to establish an arguable case in an application such as the present one, the applicant must demonstrate that his application is based on at least one of the grounds listed in Rule 66 (1) of the Court of Appeal Rules, which is not the case here.

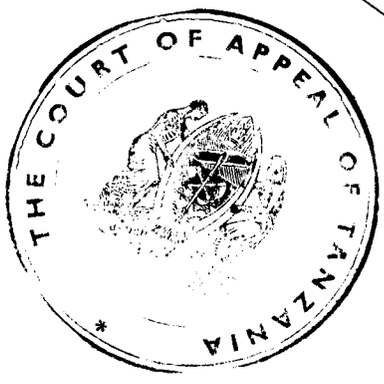
So for all the above reasons, I find that the applicant has not succeeded in showing good cause for extension of time. The application is accordingly dismissed.

Order accordingly.

DATED at ARUSHA this 20th day of September, 2012.

S. A. MASSATI
JUSTICE OF APPEAL

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



M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL