

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

ARUSHA CRIMINAL APPLICATION NO. 5 OF 2011

**JUMA SWALEHE.....APPLICANT
VERSUS**

THE REPUBLIC..... RESPONDENT

**(Application for extension of time to lodge Review from the
Decision of the Court of Appeal of Tanzania
at Arusha)**

(Kaji, J.A., Kileo, J.A, And Kimaro, J.A.)

**dated the 21st day of September, 2011
in
Criminal Application No. 4 of 2010**

RULING

19th & 20th September, 2012

MBAROUK, J.A.:

The record shows that, this is a second attempt the applicant applies to this Court seeking for an enlargement of time to file an application for review of this Court's decision (Kaji, J.A., Kileo, J.A. and Kimaro, J.A.) dated 18th April, 2008 in Criminal appeal No. 173 of 2005. Earlier on, this Court in Criminal

Application No. 4 of 2010 dismissed the application in its ruling dated 21st September, 2011 for the following reasons:-

1. The applicant's failure to show in his affidavit what he intends to challenge by way of review has a likelihood of success. He should have shown by one or more grounds stipulated under Rule 66 (1) of the Rules was or were violated or exist in the judgment intended to be reviewed.
2. The affidavit was not supported by an affidavit from the prison officer stating that the prisons typing equipment was out of order at the material time.

In his second attempt, the applicant has filed this application by way of notice of motion under Rules 10 and 66 (1) of Tanzania Court of Appeal Rules, 2009 (the Rules) mainly seeking for an extension of time to file his review out of time. The application was supported by the affidavit of Juma Swalehe, the applicant.

In this application, the applicant appeared in person unrepresented, while Mr. Halidi Nuda, learned State Attorney appeared for the Respondent/Republic.

At the hearing, the applicant had nothing to add apart from what he has stated in his affidavit.

On his part, Mr. Nuda objected to this application, for the main reason that the same is misconceived. The learned State Attorney submitted that, as far as initially the applicant applied for extension of time before a single Justice of Appeal and his application was dismissed. He further submitted that, it was wrong for the applicant to come before a single Justice again, he should have filed a reference before three justices in terms of Rule 62 (1) of the Court of Appeal Rules, 2009. In support of his argument, he cited the case of **Amir Athuman vs Republic**, Criminal Application No. 5 of 2011 (unreported). Finally, the

learned State Attorney said the matter had to be referred to a panel of three justices and not before a single Justice.

I am aware that the applicant in this application is a lay person not knowledgeable in the technicalities of the law. However, it is event that initially the matter was before a single Justice. As pointed out by the learned State Attorney as per the requirements of Rule 62 (1) of the Rules, the applicant should have filed a reference before three Justices and not before a single Justice again for the same application. Rule 62 (1) states as follows:-

"62.- (1) Where any person is dissatisfied with the decision of a single Justice exercising the powers conferred by Article 123 of the Constitution, he may apply informally to the Justice at the time when the decision is given or by-writing, to the

*Registrar within seven days after the
decision of the Justice-*

*(a) in any criminal matter, to have his
application determined by the Court; or”*

There is no doubt that, according to the facts in this matter a single Justice dismissed the application for extension of time earlier on. This application is having a similar nature like the one before. Being dissatisfied, the applicant ought to have filed a reference in compliance with Rule 62 (1) of the Rules.

In the circumstance, I am forced to strike out the application, because I have no jurisdiction as a single Justice to hear and determine the application. The same has to be heard by three Justices. In the event, the application is hereby struck out, and the applicant may file a reference as per the requirements of Rule 62 (1) of the Rules.

DATED at ARUSHA this 19th day of September, 2012.

M. S. MBAROUK
JUSTICE OF APPEAL

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



M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL