IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

CRIMINAL APPLICATION NO. 5 OF 2012

JOEL SILOMBA ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for extension of Time to apply for Review of the Decision of the Court of Appeal of Tanzania at Mbeya)

(Kimaro, Mandia, and Kaijage JJ.A.)

dated the 5th day of May, 2005
in
Consolidated Criminal Appeal Nos. 18 and 19 of 2000

RULING

12th & 14th June, 2013

RUTAKANGWA, J.A.:

The applicant was convicted by the trial District Court of the offence of Armed Robbery. He was sentenced to thirty (30) years imprisonment. His appeals against the conviction and sentence were dismissed by both the High Court and this Court respectively sitting at Mbeya. This Court's judgment in consolidated Criminal Appeal Nos. 18 and 19 of 2000 was delivered on 5th May, 2005. He appears to have been aggrieved by the judgment. All the same, he lay idle until 23rd June, 2011 (six years later) when, by notice of motion, he filed an

application (Mbeya Criminal Application No. 2 of 2011) for the review of the Court's judgment.

On 23rd November, 2012 the Court struck out the applicant's application for review. It was found to be incompetent for two reasons. One, it had been filed beyond the prescribed period of sixty days. It ought to have been lodged by 4th June, 2005. The applicant was late by slightly over seven (7) clear years. Two, the application was incurably defective for non-citation of the enabling provisions. Still bent on obtaining a review of the judgment, the applicant filed this application on 21st December, 2012.

The application is by notice of motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). Rule 10 vests the Court with powers, in its absolute discretion, "upon good cause shown," to "extend the time limited by these Rules... whether before or after the expiration of that time..." The crucial issue for my determination is whether or not the applicant has shown good cause. The law on the issue is now well established.

It is trite law that in considering whether or not to grant such extension of time, courts take into account these factors:-

(i) the length of the delay;

(ii) the reason for the delay: was the delay caused or contributed by the dilatory conduct of the applicant?;

(iii) whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged; and/or

(iv) the degree of prejudice to the opposite party if the application is granted:-

See, for instance, **Shanti v. Hindocha & Others** [1973] E.A. 207, **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] T.L.R. 185, **VIP Engineering and Marketing LTD & Two Others v. Citibank Tanzania Ltd**, Consolidated Civil References No. 6,7, & 8 of 2006, **Eliya Anderson v.R.,** Criminal Application No. 2 of 2013 and **Tanzania Revenue Authority v. Tango Transport Co. Ltd**, Consolidated Civil Application No. 4 of 2009 (all unreported).

In his notice of motion, the applicant is moving the "Court for an order" of:-

> *"1. Extension of time within which an application for review out of time (sic).*
>
> *2. Any other order the court may deem fit and just to pass."*

The notice of motion is supported by an affidavit sworn to by the applicant himself. The relevant paragraphs are paras 2-6. They read thus:-

> *"2. **That** - I am the applicant in this application for extension of time within which to file an application for review out of time.*
>
> *3. **That** - After the appeal being dismissed by C.A.T on 5th - May - 2005 before Hon. Lubuva J.A., Hon. Munuo J.A. and Hon. Nsekela J.A. on 31st January, 2007. I filed the application for revision to the same court of C.A.T which was dismissed on 21st July, 2010 before Hon. Luanda J.A. (See EXH. 1).*

4. ***That*** *- After an application for revision being dismissed again on 23rd June, 2010 filed an application for review under rule 3(2) (a) of the court of appeal of (T) Rules CAP. 141 R.E. 2002 on the hearing of the said application on 23rd November 2012 the C.A.T. before Hon. Kimaro, J.A., Hon. Mandia, J.A., and Hon. Kaijage, J.A. struck out the application for being with some defects (See Exh. 2).*

5. ***That*** *- The applicant is a layman to the court procedure and laws in general his specific aim is to file an application in order his above mentioned appeal to be review according to the laws. Now in his third an application he rectified all defects he had done in his first two applications so that he pray to this honourable Court to extend the time within which to file his application for review out of time because the delayment to file his an application within 60 days allowed by the law was beyond to the applicant as he is a layman to the court procedure and the law.*

*6. **That** - What is stated from paragraph 1 to 5 is true to the best of my knowledge and belief."*

It is clear from paragraph (5) that the applicant's "specific aim is to file an application" to have his dismissed appeal reviewed according to the laws of the land. These laws of the land are found in case law, as elucidated above read together with Rule 66(1) of the Rules. I have gathered that neither the contents of the notice of motion, nor the material averments in the affidavit meet the tests set by case law as above expounded.

It is not disputed that the delay of seven good years is an inordinate one. It has not been accounted for at all. When the applicant appeared before me in person to prosecute the application, he only adopted his affidavit and had nothing to say in elaboration thereof or in addition. In view of this, I am constrained to hold that this unreasonable and totally unexplained delay should be attributed to his own dilatory conduct. I cannot justifiably countenance such inaction even in the "interests of justice", a plea relied on by Ms. Catherine Gwaltu, learned State Attorney, in her brief submission in support of the

application. To me, the "interests of justice" are not cast in stone in favour of the applicant alone. They must accommodate also public interest. It is undoubted public policy that there must be an end to litigation so that certainty in the law, particularly as articulated by the highest court of the land prevails. The final decisions of the Court cannot be kept in limbo until "Ceasar's wife meets with better dreams." That will be "intorelable and prejudicial to public interest", that is, that would be demonstrably unfair to the interests of the state of which the applicant is a member.

Furthermore, the applicant has indisputably failed to show that he has an arguable case in terms of Rule 66(1) of the Rules. This sub-rule unequivocally provides thus:

> *"(1) the Court may review its judgment or order, but no application for review shall be entertained except on the following grounds:-*
>
> *(a) the decision was based on a manifest error on the face of the*

record resulting in the miscarriage of justice; or

(b) a party was wrongly deprived of an opportunity to be heard;

(c) the court's decision is a nullity; or

(d) the court had no jurisdiction to entertain the case; or

(e) the judgment was procured illegally, or by fraud or perjury."

The Court, therefore, is strictly barred from entertaining an application for review save on the basis of the above grounds. It goes without saying, therefore, that an application for extension of time to apply for a review of the Court's judgment, which is not a statutory right, should not be entertained unless it is shown that the anchor of the review proceedings would be one or more of the grounds enumerated in the Rule. This, I believe, is what the Court had in contemplation in the **T.R.A. v. Tango Transport** case (supra), when dealing with an application for extension of time to lodge a notice of appeal, when it stated one of the factors to be considered to be whether there is an arguable case in the intended appeal, which is, of course, not the same

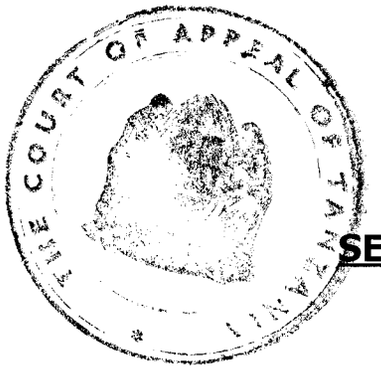
thing as whether the intended appeal has "overwhelming chances of success."

In fine, it is obvious that the appellant has overwhelmingly failed to account for the too inordinate delay of seven years and/or to show that he has an arguable case in terms of Rule 66(1) of the Rules. I accordingly find this application seriously wanting in merit. I dismiss it.

DATED at **MBEYA** this 13th day of June, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

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



P.W. Bampikya
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL