

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: RUTAKANGWA, J.A., ORIYO, J.A., And MMILLA, J.A.)**

**DODOMA CRIMINAL APPLICATION NO 1 OF 2011**

**1. BENJAMIN MPILIMI  
2. ALEN CHI WALIGO  
3. JUMANE HASSAN** } .....**APPLICANTS**  
**AND**

**THE REPUBLIC .....RESPONDENT**

(An Application for Review from the Judgment of the Court of Appeal  
of Tanzania at Dodoma)

(Lubuva, J.A., Munuo, J.A., And Kaji, J.A)

dated 18<sup>th</sup> May, 2004

in

Criminal Appeal No. 69 of 2001

**RULING OF THE COURT**

12<sup>th</sup> & 15<sup>th</sup> March, 2013

**MMILLA, J.A.:**

This application has been brought under Notice of Motion under rule 3 (2) (a) of the Court of Appeal Rules, 1979 (the Rules) and Article 13 (3) (6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. The said application is seeking for the orders that the honourable Court be pleased to review its judgment in Criminal Case No. 1 of 2000; that the proceedings and judgments in both courts below be quashed

and set aside; and that the trial Court's conviction and sentence be quashed and an order for their release be made accordingly. The applicants appeared in person and were not represented, while the Republic was represented by Mr. Angaza Mwipopo, learned Senior State Attorney assisted by Mr. Godfrey Wambali, learned State Attorney.

The application was set for hearing on 12.3.2013. A day before the hearing however, Mr. Godfrey Wambali lodged a notice of preliminary objection on points of law consisting of two grounds as follows:-

- (1) That the notice of motion is not supported by affidavit;
- (2) That the notice of motion before the court is incompetent for failure to disclose the decision against which the application is preferred.

Submitting on the first ground, Mr. Wambali told this Court that contrary to the dictates of rule 46 (1) of the Court of Appeal Rules, 1979 which applies in the circumstances of this case given that it was instituted before the coming into being of the Court of Appeal Rules, 2009, the applicants' application is incompetent because it was not supported by affidavit. He was quick to point out that the requirement is mandatory.

As regards the second ground, the learned State Attorney submitted that the application unveils serious confusion in that it does not specify the actual decision which is the subject of review. He elucidated that the application for review refers to three kinds of decisions; firstly that of the High Court (T) at Dodoma before Hon. Masanche, J. delivered on 10.8.2006; secondly Misc. Criminal Appeal No. 17 of 2006 which they alleged originated from D/C Criminal Case No. 17 of 1999; and thirdly Criminal Case No. 1 of 2000 reflected in their grounds of review. It is on this basis that he said the application was defective.

The third ground concerning limitation period was raised by the Court *suo motu*, it being a legal point. In his submission, Mr. Wambali stated that because the judgment supposed to be the subject matter of review was delivered on 14.7.2004, and because the present application was lodged on 20.8.2007, and since case law had set time limit to be 60 days from the date of the decision sought to be reviewed was handed down, then it was beyond controversy that it was hopelessly brought out of time. For these reasons, he prayed this Court to dismiss the application.

On their part, the applicants submitted in common that they had appended their affidavits to the Notice of Motion at the time they filed their application. In other words, they were saying something beyond their control happened which resulted in that snag. Given that situation, they prayed to withdraw their application to pave way for them to re-file it so that justice may be done in the case.

We will start with the first ground which has queried that the notice of motion is not supported by affidavit. We agree, and Mr. Wambali, learned State Attorney cannot be faulted, in his submission that in term of rule 46 (1) of the Court of Appeal Rules, 1979 the applicants' application for review ought to have been accompanied by their respective affidavits. That rule provides that:-

“Every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other persons or persons having the knowledge of the facts.”

Appreciably, this provision is couched in mandatory terms, signifying strict compliance, failure of which entitles the court to strike out the application. See the case of **Dominic Nkya and another v. Cecilia Mvungi and 2 others**,

**Civil Application No.3 “A” of 2006, CAT, Tanga Registry (unreported).**

Since there was no affidavit appended in the present application, we hold that this was a serious defect entitling this Court to strike out this application.

Next for consideration is the complaint that the notice of motion before the Court is incompetent for failure to disclose the decision against which the application is preferred. We hasten to say that there is substance in the submission of the learned State Attorney that the application unveils serious confusion in that it does not specify the actual decision which is the subject of review. We have confirmed that the application for review refers to three kinds of decisions; firstly that of the High Court (T) at Dodoma before Hon. Masanche, J. delivered on 10.8.2006, secondly Misc. Criminal Appeal No. 17 of 2006 which they alleged originated from D/C Criminal Case No. 17 of 1999, and thirdly Criminal Case No. 1 of 2000 reflected in their grounds of review. Their application ought to have targeted Criminal Application No. 69 of 2001. We agree with Mr. Wambali that the application was defective.

As regards the third ground concerning limitation period, we once again agree with Mr. Wambali that the application was hopelessly brought out of time. We have satisfied ourselves that the judgment of this Court, that is Criminal Appeal No. 69 of 2001 which dismissed their appeal against the judgment of the High Court was handed down on 14.7.2004 and that the instant application was lodged on 20.8.2007 which was almost after three (3) years had elapsed. Admittedly though that no period of limitation was stipulated in the Court of Appeal Rules, 1979 in which a party could apply for review, similarly that the Law of Limitation Act Cap. 89 of the Revised Edition, 2002

does not apply to the Court of Appeal on account that this Court is guided by the above stated Rules, the legal position in this regard as far as criminal matters are concerned was expressed in the case of **The D.P.P. v. Prosper Mwalukasa, Criminal Application No. 6 of 2000 (unreported)**. In that case, the Court imposed a time limit of sixty (60) days for applying for review. This point arose again in the case of **Benson Kibaso Nyakonda @ Olembe Patroba Apiyo v. Republic, Criminal Application No. 6 of 1999, CAT (unreported)**. Holding that the period of limitation for review was sixty (60) days, the Court said inter alia that:-

“Regarding the time scale, we took the view that the delay is indeed inordinate. Ordinarily we would not hear the application. In our ruling in Criminal Application No. 6 of 2000, **The D.P.P. v. Prosper Mwalukasa**, we adopted the time limit of sixty days, akin to the one we set in **Halais Pro – Chemie v. Wella A. G. [1996] T.L.R. 269 at 273** in which we borrowed from Law of Limitation Act 1971 and said that applications for revision must be brought within a period of sixty days.”

In view of the fact that the instant application was filed almost after three (3) years had elapsed as afore-pointed out, this application is hopelessly time barred.

In the upshot, for reasons we have given in this ruling, the application is incompetent and is hereby struck out. Of course, the applicants are at liberty, subject to the huddle of the question of limitation period, to still file their application.

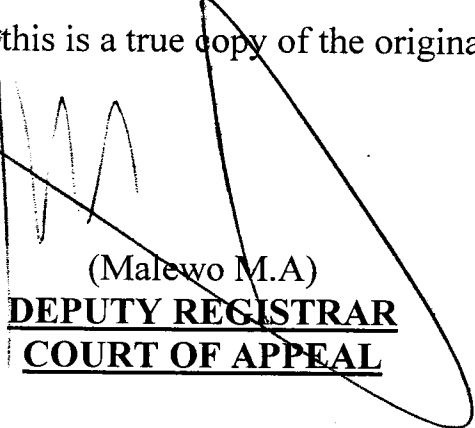
Dated at Dodoma this 13<sup>th</sup> day of March, 2013

**E. M. K. RUTAKANGWA**  
**JUSTICE OF APPEAL**

**K. K. ORIYO**  
**JUSTICE OF APPEAL**

**B. M. K. MMILLA**  
**JUSTICE OF APPEAL**

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

  
(Malewo M.A)  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**