

IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

CRIMINAL APPLICATION NO. 2 OF 2011

THOMAS MGIRO.....APPLICANT
VERSUS
THE REPUBLIC..... RESPONDENT

(Application for Extension of time to file application for Review
of the decision of the Court of Appeal of Tanzania
at Mwanza)

(Msoffe, Mbarouk, Bwana, JJJ.A.)

Dated 29th day of April, 2010
in
Criminal Appeal No. 87 of 2005

RULING

13th & 24th September, 2013

ORIYO, J.A.:

On 13th January, 2011, the applicant lodged a Notice of Motion in this Court, supported by his own affidavit, under Rule 10 of the Tanzania Court of Appeal Rules, 2009. The applicant prayed for an order granting him leave to institute an application for review of a judgment of the Court out of time. In compliance with rule 48 (1) of the rules, the grounds for the relief sought are stated in the Notice of Motion as well as in the supporting affidavit deponed to by the applicant. The applicant stated under oath that

he was unable to prepare the application for a review within the prescribed time because he did not have a copy of the record.

The respondent Republic opposed the application for extension of time by way of an Affidavit in Reply deposed to by Ms. Revina Tibilengwa, learned State Attorney. Through the affidavit, the Republic opposed the application on the ground that the reason advanced by the applicant for the delay was not tenable.

At the hearing the applicant appeared in person to prosecute the application. Being a layman, he preferred to have the Republic make its submissions first to which he would subsequently respond to. The respondent Republic was represented by Ms. Tibilengwa, learned State Attorney. Her arguments were in line with the contents of the affidavit in reply above in that the respondent opposed the application for want of merit. In reply, the applicant stated that as prisoner he was not free to do what he wanted to unless permitted by the relevant prison authorities.

He reiterated his prayer that the application be granted.

The only issue before me is whether the application for extension of time has merit or not. I will begin with the enabling provision of law, that is, rule 10 of the Court Rules which provides:-

*"10. The Court may, **upon good cause shown, extend the time limited by these Rules** or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of the time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*

[Emphasis supplied].

Rule 66 of the Rules prescribes the permissible grounds and procedure for reviews in the Court. Sub-rule 3 thereof prescribes the period within which a review ought to be instituted. It states:-

*"(3). **The notice of motion for review shall be filed within sixty days from the date of the***

judgment or order sought to be reviewed. It shall set out clearly the grounds for review."

[Emphasis mine].

The applicant, Thomas Mgiro, ought to have lodged the application in Court latest by 3rd July, 2010 in compliance with the prescribed sixty-days rule. The said Notice of Motion was actually lodged on 13th January, 2011, which was eight (8) months after the Court's judgment. The application was late by a period of six (6) months, hence the application for filling a Review out of time.

The Court's powers under Rule 10 of the Court Rules to extend the time limited by the Rules is predicated upon **good cause shown**. Has the applicant passed the test here by showing **good cause** for the delay? In determining whether to grant or not to grant such extension of time, the following factors have to be taken into account, *inter alia*, and without interfering with the jurisdiction of the court over the merits of the intended Review:-

- a) The length of delay;
- b) The reason for the delay;

- c) Whether there is an arguable case, for example, whether there is a point of law or the illegality or otherwise of the decision complained of;
- d) Whether, if granted, it will prejudice the opposite party.

See, **Joel Silomba vs. R.**, Criminal Application No. 5 of 2012, **Tanzania Revenue Authority vs. Tango Transport Co. Ltd**, Consolidated Application No. 4 of 2009 (both unreported).

In similar circumstances, in the case of **Eliya Anderson vs. The Republic**, (Mbeya) Criminal Application No. 2 of 2013 (unreported), the Court stated the following:-

*"It is settled law that a review of a Court judgment is not a routine procedure but a procedure of its own kind (**sui generis**). That is why the review jurisdiction is exercised 'very sparingly and with great circumspection' (**Blueline vs. E.A.D.B.**). That is why also it has been consistently held that 'while an appeal may be attempted on the pretext of any error, not every error will justify a review' **Chandrakant Patel vs. R.**, [2004] TLR 218."*

The Court further stated:-

"I believe it would not be a monstrous justice to hold that an application for extension of time to apply of review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavital evidence, at that stage either implicitly or explicitly, that the review application would be predicated on one or more of the grounds mentioned in Rule 66 (1), and not on mere personal dissatisfaction with the outcome of the appeal, which appears patently to be the case in this application".

The power of review of the Court's judgments is only inherent and not statutory, having been incorporated, for the first time in the Court of Appeal Rules, 2009, GN No. 368 of 2009. Previous to that the Court exercised its inherent powers to review its decisions in the following circumstances:-

- Where there is manifest error on the face of the record which resulted in miscarriage of justice; or

- Where the impugned decision was obtained by fraud; or
- Where a party was wrongly deprived of the opportunity to be heard;
- See, **Transport Equipment Ltd vs. Devram P. Valambhia** [1998] TLR 89.

Essentially, the grounds of review set out in **Valambhia's** case form the basis of Rule 66 (1) of the Rules which provides:-

"66.-(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; or*
- (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."*

See, **Pius Sangali and Others vs. Tanzania Portland Cement Co. Ltd**, Civil Application No. 52 of 2012 (unreported).

On whether to grant or not to grant the extension of time sought, the applicant has **conspicuously** avoided to make any disclosure on the pertinent subject of whether there is an arguable case or not, whether there is a point of law or illegality of the decision complained of, etc. See, **TRA vs. Tango Transport Co. Ltd.**, (*supra*).

As stated before, Rule 66 (1) restricts applications for review to the five distinct grounds set out above in Rule 66 (1) (a) to (e) only. The applicant did not state in his affidavit which of the five grounds ((a) – (e)) are applicable in the intended review, to justify a grant of an order for extending time for lodging an application for review of the Court's decision delivered on the 4th May, 2010.

As a matter of public policy there should be an end to litigation and certainty of the law as interpreted by the highest court of the land. In **Tanzania Transcontinental Co. Ltd vs. Design Partnership Ltd**, Civil Application No. 62 of 1996, (unreported) the Court stated:-

"The Court will not readily extend the list of circumstances for review, the idea being that the Court's power of review ought to be exercised sparingly and only in the most deserving cases, bearing in mind the demand of public policy for finality of litigation and for certainty of the law as declared by the highest Court of the Land."

Similarly, in **Marcky Mhango and 684 Others vs. Tanzania Shoe Company**, Civil Application No. 90 of 1999, (unreported), the same principle was reiterated by the Court as follows:-

"There can be no certainty where decisions can be varied at any time at the pressure of the losing party and the machinery of justice as an institution would be brought into question."

See also **Eusebio Nyenzi vs. R.**, Criminal Application No. 6 of 2013, (unreported).

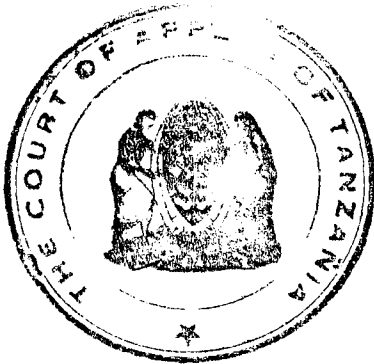
In view of the applicant's failure to disclose good cause for the Court to grant an order extending the time for lodging an application for review

of the Court's judgment which dismissed his appeal in Criminal Appeal No. 87 of 2005, the application is devoid of merit and it is accordingly dismissed.

DATED at **MWANZA** this 19th day of September, 2013.

K. K. ORIYO
JUSTICE OF APPEAL

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




P. W. Bampikya
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL