

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CRIMINAL APPLICATION NO. 8 OF 2014

SALUM NHUMBILIAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(Application for extension of time to apply for Review of the Decision
of the Court of Appeal of Tanzania at Mwanza)**

(Bwana, Mjasiri, Mandia, JJJ. A.)

**dated 11th day of September, 2012
in
Criminal Appeal No. 120 of 2009**

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RULING

22 & 28th October, 2014

MMILLA, J. A.:

The applicant was charged with and convicted before the District Court of Sengerema in Sengerema District in the Region of Mwanza of the offence of rape contrary to section 130 (1) (2) (c) and 131 (1) of the Penal Code as amended by the Sexual Offences Special Provisions Act No. 4 of 1998. He unsuccessfully appealed in the High Court at Mwanza. His second appeal to this Court was also dismissed on 11th September, 2012.

Still determined to pursue justice, the applicant filed a notice of motion under Rule 10 and 75 (4) of the Tanzania Court of Appeal Rules of 2009 (**The Rules**) asking this Court to extend a time in which to lodge an application for review against this Court's decision of 11th September, 2012. It is supported by an affidavit sworn by the applicant himself and a supplementary affidavit sworn by ASP Z. M. Tibwakawa. The reasons for the delay are stated in paragraphs 2 and 5 thereof. Briefly, the applicant is saying that he delayed to file the application for review because he was not readily supplied with a copy of a judgment, and that he should not be blamed for such a delay because it was out of his control.

His prayers however, have been strongly challenged by the respondent Republic who, through the service of Mr. Juma Sarige, learned State Attorney, filed an affidavit in reply in which he stated in paragraph 5 thereof that the delay was due the applicant's own negligence.

When this application came up for hearing on 22.10.2014, the applicant appeared in person and was not represented. He elected for the respondent to submit first, undertaking to respond thereafter if need there be.

Mr. Sarige submitted that under Rule 10 of the Rules, the applicant is duty bound to show sufficient cause for failure to file his application for review in time. He said that the applicant has failed to assign good cause to that effect. According to him, the applicant's reason that he was not supplied with a copy of the judgment at the earliest possible opportune does not constitute sufficient cause because that was due to his own negligence on account that the applicant neither mentioned in his notice of motion or in his affidavit that he applied for the copy of judgment nor did he show that he made any effort in getting the said copy in time.

It was also the submission of Mr. Sarige that for the applicant to succeed in an application of this nature, he was required to show either in his notice of motion or in his affidavit that if the Court grants his application, he had chances of succeeding in whichever aspect among those shown under Rule 66 (1) clauses (a) to (e) thereof, which according to him, was not done. He relied on the case of **Nyakua Orondo v. Republic**, Criminal Application No. 2 of 2014, CAT (unreported). He therefore prayed for this application to be dismissed.

On his part, the applicant conceded that it is true he did not apply for that copy of the judgment and also that he did not make any efforts to follow ups. He also conceded that he did not indicate in his notice of motion or in his

affidavit the ground which would have shown that he had a chance of succeeding if the application is to be granted, but was quick to plead that he was resting the matter in the hands of the Court.

I have carefully gone through the submissions of both parties. Rule 10 of the Rules is clear that in order for the Court to exercise its powers to grant an application for extension of time, the applicant must show good cause for the delay. See the cases of **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013, CAT and **William Ndingu @ Ngoso v. Republic**, Criminal Appeal No. 3 of 2014, CAT (both unreported).

In the present application, as correctly submitted by Mr. Sarige, the applicant did not show either in his notice of motion or in his affidavit that he ever applied for the copy of the judgment. As such he cannot be heard to complain that the Court did not promptly supply him with a copy of the same because it was in the first place not moved to supply him with the said copy of the judgment. As aforesaid, he conceded on that. Given such circumstances, I agree with the learned State Attorney that the applicant failed to assign sufficient cause for the Court to exercise its powers under Rule 10 of the Rules.

I similarly agree with Mr. Sarige that on the authority of **Nyakua Orondo v. Republic** and **Eliya Anderson v. Republic** (supra), the applicant ought to have shown in either his notice of motion or in his affidavit that if the Court grants his application, he had chances of succeeding in whichever aspect among those shown under Rule 66 (1) clauses (a) to (e) thereof. In the cases of **Eliya Anderson v. Republic** (supra), the Court stated that:-

"An application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavit evidence, at the state of extension of time, either implicitly or explicitly, that if extension is granted, the review application would be predicated on one or more of the grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66 (1)."

Ipsa facto, it is intended to do so for the purposes of shading light as to why in the first place making such an application.

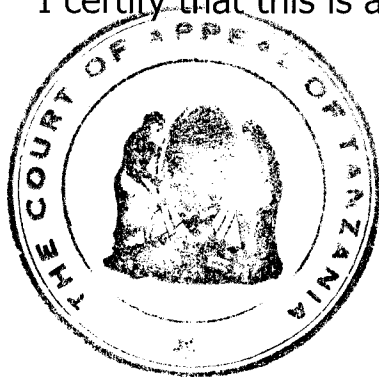
As already stated earlier on, that was not done in the present application. Given the fact that the applicant failed to show good cause as per Rule 10 of the Rules, and because he did not also show in either his notice of motion or in

his affidavit that if the Court grants his application, he had chances of succeeding in whichever aspect among those shown under Rule 66 (1) clauses (a) to (e) thereof, he has utterly failed to convince the Court to exercise its discretion to extend time. In the circumstances, the application is dismissed.

Dated at Mwanza this 27th day of October, 2014.

B. M. MMILLA
JUSTICE OF APPEAL

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




Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL