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

**CRIMINAL APPLICATION NO. 8 OF 2013**

**LAURENO MSEYA ..... 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)**

**(Kileo, Bwana, Mjasiri, JJJ.A.)**

**dated the 16th day of September, 2009**

**in**

**Criminal Appeal No. 430 of 2007**

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**RULING OF THE COURT**

7th & 9th May, 2014

**RUTAKANGWA, J.A:**

The applicant was convicted by the trial District court of Iringa of the offence of Rape and sentenced to thirty (30) years imprisonment. His appeals against conviction and sentence to the High Court and this Court

were unsuccessful. His appeal to this Court (**vide** Criminal Appeal No. 430 of 2007) was dismissed on 16th September, 2009.

Following the dismissal of his appeal by this Court, the applicant instituted Criminal Application No. 2 of 2009 seeking a review of the Court's judgment. This application was struck out on 27th June, 2013 on account of being incompetent, hence this application for extension of time to apply for review out of time.

This application is brought by notice of motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by an affidavit sworn to by the applicant.

When the matter came before me for hearing, the applicant appeared in person, fending for himself. The respondent Republic was represented by Ms. Catherine Paul, learned State Attorney. The applicant opted to adopt the contents of the notice of motion and its supporting affidavit. He had nothing to say in elaboration thereof. On her part, Ms. Paul whole-heartedly supported the application for one simple reason. As the applicant had lodged the struck out application in time, she argued, he was entitled to the relief sought.

As already indicated above, the application is brought under Rule 10. The said Rule empowers the court **"upon good cause shown"** to extend the time limited by the Rules "for the doing of any act authorized or required by these Rules, whether before or after the doing of the act". In an application for review, the "act" must be done within sixty days of the decision of the Court.

It is now settled law that this Court has neither a constitutional nor a statutory jurisdiction to review its own final judgment. For this reason, it is trite law that this Court, being the apex court of the land, can only be moved to review its own decision in the rarest of cases. As we unequivocally held in **Blueline Enterprises Ltd. V. East African Development Bank,** Civil Application No. 21 of 2012 (unreported):

> *"a judgment of the final court is final and a review of such judgment is an exception."*

The right of review, therefore, is discretionary and is highly circumscribed as is glaringly clear from Rule 66 of the Rules. No person can come to this Court claiming as a matter of right a review of the Court's judgment, I can safely state without any fear of being contradicted. For

the same strong reason, no person has a right to access the Court seeking an extension of time to apply for review, as Ms. Paul appears to believe. There must be strong reasons advanced by the applicant to move the Court to grant an extension order.

In the case of **CHARLES BARNABAS V. R,** Criminal Application No. 13 of 2007 (unreported), the Court explicitly stated that as a review process is not aimed at challenging the merits of the Court's decision, in an application for extension of time to apply for review, the applicant must show that he or she intends to rely on any of the grounds mentioned in Rule 66 of the Rules. A similar stance had earlier been taken by the Court in **Miraj Seif v. R,** Criminal application No. 2 of 2009 (unreported). In **CHARLES BARNABAS V. R.,** it was thus succinctly stated:-

> *"In fact, in my reading and understanding of the application it appears that the applicant is of the view that a review is automatic. With respect, a review is not automatic. A review to this Court is at the discretion of the Court and is subject to the existence of any of the grounds set out under* ***Rule 66(1)".***

I entirely agree.

I hope I will not be accused of immodesty if I repeat what I said in **Eliya Anderson v. R.,** Criminal Application No. 2 of 2013 (unreported), I thus held:-

> *"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..." 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"... It is for this very fundamental reason that Rule 66 (1) unequivocally provides that no application for review shall be entertained except on the "basis of the five grounds mentioned therein..."*

Echoing earlier sentiments of the Court (see: **Miraj v. R., and Charles Barnabas v. R.),** I further held:-

> *"By the same parity of reasoning, I believe it would not be a monstrous justice to hold 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 affidavital evidence, at that stage, either explicitly or implicitly, 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..."*

This is now the clear stance of the law on the issue.

I have read the notice of motion and its supporting affidavit and I can confidently say that this application does not meet the above benchmarks. In the notice of motion, the applicant is simply stating that he in moving the Court for the following orders:-

"*1. Extension of the time to lodge application of review out of time from the judgment of C.A.T at Mbeya dated on 16/09/2009 in CRAPP No. 430/2007*

*2. The honourable court to pass any other order it may deem for just (sic) to grant.*

*3. This application has been supported by an affidavit of*

*LAURENO MSEYA applicant attached herewith..."*

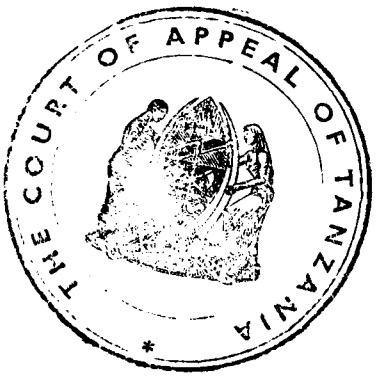
In the said nine-paragraph affidavit, the applicant is only showing the chronology of his case from the trial court to the time when his application was struck out on 27/6/2013. It is starkly silent on why he is seeking an extension order to apply for review. As was the case in **CHARLES BARNABAS,** the applicant is working under the misapprehension that he has an automatic right to review, which unfortunately is not the case.

All said and done, I hold without any demur that the applicant has totally failed to show good cause for the grant of an extension order to apply for review under Rule 66(1) of the Rules. I accordingly dismiss this application.

DATED at MBEYA the 8th day of May, 2014.

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

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




F.J. Kabwe
**DEPUTY REGISTRAR**
**COURT OF APPEAL**