

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

**CRIMINAL APPLICATION NO. 3 OF 2013**

**1. EMMANUEL LOHAY }  
2. UDAGENE YATOSHA } .....APPLICANTS**

**VERSUS**

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

**(Application for Extension of Time from the Judgment of the Court of Appeal  
of Tanzania at Arusha)**

**(Msoffe, J.A., Mjasiri, J.A. And Juma, J.A.)**

**dated the 1<sup>st</sup> day of March, 2013  
in  
Criminal Appeal No. 278 of 2010**

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**RULING**

10<sup>th</sup> & 11<sup>th</sup> September 2014

**KILEO, J. A.:**

The application by Emmanuel Lohay and Udagene Yatosha who were convicted by the Court of Appeal of Murder on 01/03/2013 is for extension of time to apply for Review of the decision of the Court.

The application was filed under Rule 10 and 48 (1) of the Court of Appeal Rules, 2009 by way of Notice of Motion and is supported by the affidavits, of the applicants.

The grounds for seeking extension of time as stipulated on the Notice of Motion are three as follows:

- (i) The applicants were not adequately informed about Review limitation of period of 60 days as a result failed to file a Review in Conformity with Rule 66 (3) of the Court of Appeal Rules, 2009.*
- (ii) The applicants intend to rely on some of the grounds stipulated in Rule 66 (1) of the Court of Appeal Rules, 2009 in their intended Review.*
- (iii) The delay to file Review within time was also contributed by matters that were beyond the applicants' control as they totally depended on prison authority as per the provisions of 363 of the CPA Cap. 20, RE. 2002.*

The applicants who appeared in person with no legal representation at the hearing of the application did not have much to say. They merely asked the Court to adopt the Notice of Motion and their affidavits and allow this application on the ground that they were not made aware of the availability of Review when the appeal was determined.

Ms. Elizabeth Swai appeared for the respondent Republic at the hearing of the application. In resistance to the same she contended that ignorance of the law which was pleaded by the applicants was no excuse and that for this reason no sufficient cause had been advanced for the

delay in filing the application for Review. The learned State Attorney made reference to **Kalunga and Company, Advocates vs. National Bank of Commerce Limited** [2006] TLR 235.

In this case it was held:

- (i) Under Rule 8 of the Court of Appeal Rules 1979, the Court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given;*
- (ii) Since the point at issue is one alleging illegality of the decision being challenged i.e. the validity of the High Court's decision in interpreting a statutory provision and the propriety of a judge rising an issue suo motu and making a decision without the parties concerned being heard upon it, sufficient reason has been shown for granting an extension of time to file an application for leave to appeal to the Court of Appeal.*

The application in the **Kalunga** case was made under Rule 8 of the 1979 Court of Appeal Rules which is similar to Rule 10 of the current Rules. In the present case the question is, have the appellants given sufficient cause for the delay to warrant this Court to exercise its discretion to extend the time to file the intended application for Review? The main reason given for the delay is ignorance of the law. I respectfully share Ms. Swai's view that

ignorance of the law is no excuse and cannot amount to sufficient cause for extending time to take a certain step.

The Court in **Godgrey Antony and Ifunda Kisite v. Republic** – Criminal Application No. 6 of 2008 had occasion to deal with a similar application containing a similar ground of ignorance of the law. It was stated in that case as follows:

*".....After becoming aware of the decision, both of them did not take any action. What is the explanation for this delay. They were not aware of the law. In as much as there are no standard sufficient reasons, the applicants have failed to explain away the delay.*

*In the event I have no option but to dismiss the application."*

I associate myself with the reasoning in the above case.

It should be noted moreover, that Review of a decision of the Court of Appeal is not an automatic right. There must be an end to litigation and Review is only available under exceptional circumstances. This takes me to

ground (ii) in the Notice of Motion where it is stated that the applicants intend to rely on some of the grounds stipulated in Rule 66 (1) of the Court of Appeal Rules, 2009 in their intended Review. The applicants did not unfortunately specify in the Notice of Motion or in the affidavit the grounds that they will rely on in their intended review. Had they done so, the application might have come within the ambit of the second holding in **Kalunga and Company v. NBC Ltd.** (supra)

In granting extension of time within which to file an application for leave to appeal to the Court of Appeal the Court in **Kalunga's** case made reference to **Principal Secretary, Ministry of Defence and National Service v. Devram Valambli** [1992] TLR 182 at page 189 where it was stated:

*"In our view, when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record straight."*


As already alluded above, the applicants did not specify any of the grounds they would rely upon in their intended Review.

In view of the considerations above, I find that the applicants have not advanced sufficient cause for extending the time within which to file the application for Review. Consequently the application is dismissed.

**DATED** at **ARUSHA** this 10<sup>th</sup> day of September 2014.

E. A. KILEO  
**JUSTICE OF APPEAL**

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

  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**