

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

CRIMINAL APPLICATION NO. 5 OF 2013

**1. CHARLES BAKARI
2. JOHN SAMWEL @ KABAKA } APPLICANTS**

VERSUS

THE REPUBLICRESPONDENT

**(Application for extension of time to file Review out of
time from the Judgment of the Court Appeal of Tanzania
at Mwanza)**

(Lubuwa J.A, Mroso J.A, And Rutakangwa J.A.)

**Dated 16th day of March, 2007
in
Criminal Appeal No. 58 of 2005**

RULING

4th & 8th September, 2014

MBAROUK, J.A.:

There is before me an application by way of notice of motion filed on 8/4/2013. The applicants are seeking for extension of time to file review of this Court's judgment in Criminal Appeal No. 58 of 2005 dated 16th March, 2007. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). According to the ruling of a single Justice (Massati, J.A) dated 9th May, 2014 the applicants joint affidavit was expunged for being defective,

hence the notice of motion remained with the support of an affidavit of a prison officer. According to the said ruling of Massati, J.A. under Rule 49(1) of the Rules, a notice of motion may be supported by more than one affidavit and not necessarily from the applicants, and since the affidavit of the prison officer in this case is not defective the notice of motion can still stand on that affidavit. For that reason, the applicants notice of motion is now only supported with an affidavit of one SP. MO. LWAMBA, a superintendent of prisons of Butimba Central Prisons, Mwanza.

In order to appreciate the essence of the application, I have found it prudent to reproduce the prison officer's affidavit which reads as follows:-

"1. **THAT,** I am a superintendent of prisons currently stationed at Butimba C. Prison, Mwanza, wherein the two above named Applicants are/ had been confirmed following the custodial sentence imposed upon them by the District Court of Mwanza (Now Nyamagana)

2. **THAT,** in as much as the relief sought by the Applicants is concerned, and my awareness of the facts concerned herein I am authorized to swear/depose this affidavit to represent the officer in charge of Butimba C. Prison (Mwanza), the custodian of the Applicants; and the administration in general moreover I have personally perused the Applicants joint Affidavit and fully concur adopt and subscribe to all the contents therein.
3. **THAT,** truly on 20th March, 2007 the Applicants did submit their manuscripts intended to be written as notice of appeal (review) to the Court of Appeal to the prison officer-incharge. Which drafts were subsequently forwarded to the typing pool, purposely, for typing and forward transmission. However, the said review and could not be typed on time due to the prevailing scarcity of typing material (stationery) along with a sole and insufficient typewriting machine available them and wholly relied by the entire prison.

4. **THAT**, given the preceding ground, as we could not meet the timely filing of the applicants intended review, on the 3rd April 2007, we informed the Applicants of such fiasco and accordingly advised them of the alternative remedy to enable their intention to appeal (review) to be put into effect namely applying for extension of time, after securing a copy of judgment to that effect.
5. **THAT**, admittedly the applicants spent about four years applying for a copy of the court of appeals judgment with which to accompany the would be application(s) for enlargement of time, which same had been supplied to them on 11th September, 2012.

At the hearing of the application, the applicants prayed for their application to be allowed for the reasons stated in the affidavit of the prison officer in support of the notice of motion.

On her part, Ms. Mwamini Yoram Fyeregete, learned State Attorney for the respondent/Republic had no objection to the application. She submitted that after having gone

through the affidavit of the prison officer in support of the application, she has opted to withdrawn her affidavit in reply. She contended that the grounds for the delay stated in the affidavit of the prison officer constitute "**good cause**" for extension of time to be granted. She added that, as far as the applicants are prisoners, they could not have done anything without the assistance of the prison authorities. She said, as the problem which caused the delay was beyond the applicants capacity, hence that is sufficient/good cause to grant extension of time. For that reason, she had no objection for the prayer made for extension of time.

Rule 10 of the Rules requires an applicant seeking for extension of time to show **good cause** before the court grant him extension of time. In the case of **Haidar Thabit Kombo and 10 other vs Abbas Khatib Haji and two others**, Civil Application No 2 of 2006 (unreported), this Court stated as follows:-

"Before this Court was an application for extension of time. What was needed

were reasons to explain away the delay satisfactorily. Such reasons would be evidential and would have to appear in the supporting affidavit”.

In the instant application, the affidavit of the prison officer in support of the application has extensively explained the reasons which made the applicants delay in filing their application for review.

The main requirement stated under Rule 10 of the Rules is to show “**good cause**”. Basically, what amounts to “**good cause**” is upon the discretion of the Court and it varies from one case to another. However, various decisions of this Court has defined “**good cause**” to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time.

I fully agree with the learned State Attorney that the reasons advanced in the affidavit of the prison officer in support of this application are sufficient enough to have

shown **"good cause"** which prevented the applicants from filing their application for review within the prescribed time.

For that reason, I am convinced that **"good cause"** has been shown to warrant me exercise my discretion conferred upon me under Rule 10 of the Rules to grant extension of time. Hence, the application is hereby granted. The applicants are hereby ordered to file their review application within sixty days from the date of the delivery of this ruling. It is so ordered.

DATED at **MWANZA** this 4th day of September, 2014.

M. S. MBAROUK
JUSTICE OF APPEAL

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



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL