

**IN THE COURT OF APPEAL OF TANZANIA**

**AT IRINGA**

**CRIMINAL APPLICATION NO. 16 OF 2014**

**MUSTAFA SONGAMBELE ..... APPLICANT**

**VERSUS**

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

**(Extension of time to file an application for Review against the Judgment of  
the Court of Appeal of Tanzania  
at Iringa)**

**(Kimaro, Luanda, Oriyo, JJJA.)**

**dated the 15<sup>th</sup> day of September, 2009**

**in**

**Criminal Appeal No. 176 of 2007**

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**RULING**

14<sup>th</sup> & 18<sup>th</sup> August, 2015

**MMILLA, J. A.:**

In this application Mustapha Songambe (the applicant), is by notice of motion made under Rule 47 of the Tanzania Court of Appeal Rules, 2009 (the Rules) moving this Court to extend time in which to file an application for review against this Court's decision dated 15.9.2009 in Criminal Appeal No. 176 of 2007. The notice of motion is supported by an affidavit sworn by him.

While the notice of motion is silent on the reasons for the delay, paragraphs 4 and 5 of his accompanying affidavit stipulate that he delayed to file the application for review because he was confused after his appeal was dismissed by this Court as he thought that that was the end of his struggle to regain his liberty. He asserts that he came to his senses after his fellow prisoners informed him that he still had a chance of review.

At today's hearing, the applicant appeared in person and was unrepresented, while the respondent Republic was represented by Mr. Renatus Mkude, learned Senior State Attorney. Although he at first said he had no objection to the applicant's application, he changed his stand upon the Court's probe on whether or not it was properly moved. It was then that he realised that Rule 47 of the Rules was wrongly relied upon as conferring the Court power to exercise its discretion to extend time in which to file the intended application. He informed the Court that the applicant ought to have anchored his application under Rule 10 of the Rules. I entirely agree with him.

To begin with, Rule 47 of the Rules does not empower the Court to entertain the prayers like the one before the Court. That Rule merely informs that applications for extension of time have to be filed in the High

*"Rule 10 vests the Court with powers, in its absolute discretion, "upon good cause shown," to extend the time limited by these Rules... whether before or after the expiration of that time..."*

In the present case, it is apparent that the Court was not properly moved. The law is clear that wrong citation of the law renders the application incompetent. See the cases of **Edward Bachwa & 3 Others v The Attorney General & Another** Civil Application No. 128 of 2008 and **Chama Cha Walimu Tanzania v. The Attorney General**, Civil Application No. 151 of 2008 (both unreported).

In **Chama Cha Walimu Tanzania vs. The Attorney General** (supra), the arguments were that the Labour Court was wrongly moved under Rule 94 (1) (f) (ii) of the Employment and Labour Relations Act No. 6 of 2004 as the main enabling provision of law in granting the prayer for injunction. The Court was satisfied that such wrong citation of the law rendered the application before it incompetent. In justifying its holding, the Court quoted with approval the case of **China Henan International Co-operation Group v. Salvada K.A. Rwegasira**, Civil Application No. 22 of 2005 (unreported) where it was stated that:-

*"Here the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technicality falling within the scope and purview of Article 107A (2) (e) of the Constitution. **It is a matter which goes to the very root of the matter.**" [Emphasis provided].*

They rejected the contention that the error was technical.

It follows therefore, that since the applicant in our present matter wrongly relied on Rule 47 of the Rules in moving the Court to extend time in which to file for review, the application is incompetent for wrong citation, the consequence of which is to, and I hereby strike out the application. The Court's advice to him however, is that if he still wishes to pursue the intended application for review, he should, subject to the law of limitation, reinitiate the process.

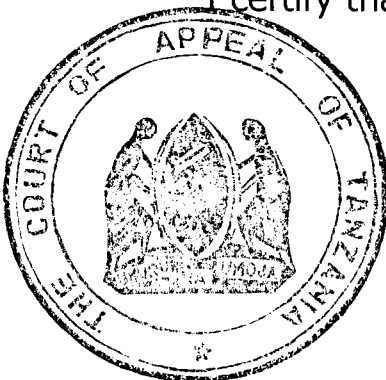
Order accordingly.

**DATED** at **IRINGA** this 17<sup>th</sup> day of August, 2015.

B. M. MMILLA

**JUSTICE OF APPEAL**

I certify that this is a true copy of the original



E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**