

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

CRIMINAL APPLICATION NO. 1 OF 2014

ANYELWISYE MWAKAPAKE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time to file an application for review
from the decision of the Court of Appeal of
Tanzania at Iringa)**

(Mbarouk, Massati And Oriyo, JJJ.A.)

dated the 26th day of March, 2012

in

Criminal Appeal No. 227 of 2011

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RULING

12th & 14th August, 2015

MBAROUK, J.A.:

In this application, the applicant Anyelwisye Mwakapake is moving the Court by way of notice of motion made under Rule 10 and 48 of the Court of Appeal Rules, 2009 (the Rules) seeking for an order of extension of time to file an application for review of the decision of this Court in Criminal Appeal No. 227 of 2011 dated 26th March, 2012. In support of the application, there is an affidavit sworn by Anyelwisye Mwakapake – the applicant.

When the application was called on for hearing, the applicant appeared in person unrepresented. He had nothing to elaborate from what he has stated in his affidavit. He opted to allow the learned State Attorney to submit first and prayed to respond later if the need arises.

On his part, Mr. Renutus Mkude, learned Senior State Attorney who represented the respondent/Republic from the outset indicated to support the application for a general reason that the applicant has always made a follow up of his application while he was in prison custody. For that general reason, he prayed for the application to be granted as prayed.

Rule 10 of the Rules requires an applicant seeking for extension of time to show **good cause** before the Court uses its discretion to grant extension of time. The applicant has to state reasons and account for every day of the delay caused by him in his affidavit. See the decision of this Court in the case of **Alluminium Africa Ltd v. Adil Abdallah Dhijabi**, Civil Appeal No. 6 of 1990 (unreported). Apart from showing a **"good cause,"** as I will show later in this ruling it is now settled that in an application for extension of time to file review

application, the applicant ought to state one or more grounds of review listed under Rule 66 (1) of the Rules. Furthermore, it has to borne in mind that review of the decisions of this Court is not another stage or step in the appeal or step in the appeal process or structure in our legal system. It is neither another appeal nor a second bite. However, it seems most of the applicants in review applications think that once aggrieved by the outcome of an appeal there is always an automatic right of a review. See **Efficient International Freight Ltd. and Another vs. Office Du The Du Burundi**, Civil Application No. 23 of 2005 (unreported).

This Court in the case of **Yusuph Simon v. Republic**, Criminal Application No. 7 of 2013 (unreported) stated as follows:-

*"Admittedly, the Court is strictly enjoined under Rule 66 (1) of the Rules, not to entertain an application for review except on the basis of the five grounds prescribed thereunder. **Indeed, law is settled that an applicant who filed an application under Rule 10 of the Rules for extension of time in which to file an application for review should not only state in***

his notice of motion or in the affidavit filed in support thereof, the grounds for delay, but should also show that his application is predicated upon one or more grounds of review listed under Rule 66 (1) of the Rules.”
(Emphasis added).

Also see, **Miraji Seif v. R.**, Criminal Application No. 2 of 2009, **Festo John Kimati v. R.**, Criminal Application No. 11 of 2009 and **Gibson Madenge v. R.**, Criminal Application No. 3 of 2012. (All unreported).

In the instant application, the applicant's affidavit essentially contain the following reason as stated in paragraphs 4,5 and 6 as paraphrased hereunder:-

1. That soon after the appeal was dismissed, the applicant prepared his application for review and forwarded it to the Court of Appeal at Iringa but District Registrar of High Court Iringa rejected it since 2013 as per his letter with Ref. No. JY/A.100/7/vol.1/1 dated 5th December, 2013.

I am of the considered opinion that, the above stated ground has not shown **good cause** as it has not accounted for every day of the delay caused by him. This is because, the

decision sought to be reviewed was delivered on 26th March, 2012 but it was two years and two months later on 20th May, 2014 when the applicant filed this application and no reasons were given to account for the delay. Also, the applicant's affidavit is neither accompanied by a copy of the said letter from the District Registrar nor an affidavit from Prison Authorities to support his averment. In addition to that, the applicant's affidavit is silent on the grounds to be relied upon in his intended application for review as stated in Rule 66 (1) of the Rules. To emphasize the importance of the inclusion of those grounds in the affidavit, this Court in the case of **Gibson Madenge** (supra) stated as follows:-

"It would be futile, in my opinion, to grant extension of time to apply for review when the Court is not certain of whether the intended application would be based on those grounds, and all will not be a disguised attempt to re-open the appeal to suit the needs and convenience of the applicant."

It has to be borne in mind that after coming into force of the Court of Appeal Rules, 2009, it is now settled that an application for extension of time to file review has to canvass

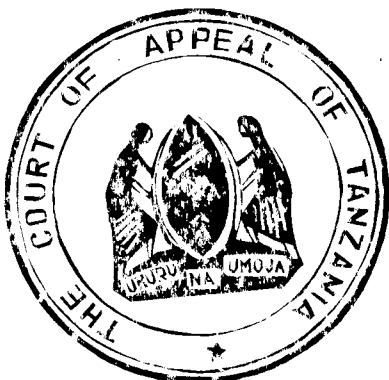
Rules.

In this application, neither in the notice of motion nor in the affidavit those grounds of review were canvassed. In addition to that no **"good cause"** was shown. For that reason I decline to agree with the learned Senior State Attorney when he supported this application, instead I am constrained to find this application devoid of merit. I am of the considered opinion that, the applicant has failed to show a **"good cause"** to warrant me exercise the discretion conferred upon me under Rule 10 of the Rules to grant him extension of time to apply for review. In the event, I hereby accordingly dismiss the application.

DATED at IRINGA this 13th day of August, 2015.

M.S. MBAROUK
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL