

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

CRIMINAL APPLICATION NO.1 OF 2015

BENEDICT KILEMBE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Application for Extension of time within which to apply to revise the decision
of the Court of Appeal of Tanzania
At, Mbeya)

(Nsekela,J,A, Msoffe,J,A., and Oriyo.J, A).

dated the 26th day of November , 2010

in

Criminal Appeal No. 170 of 2009

RULING

21st & 24th .August,2015

MUSSA, J.A.:

In the District court of Mbeya, the applicant was convicted for an unnatural offence contrary to section 154(1) of the Penal Code, chapter 16 of the revised Laws. Upon conviction, he was sentenced to life imprisonment. His first appeal to the High Court was dismissed in its entirety (Lukelewa, J.), just as was his second appeal to this court (Nsekela, J.A, Msoffe, J.A, and Oriyo, J. A).

The applicant's present quest is by Notice of Motion of which its relevant portion is couched as hereunder:-

"NOTICE OF MOTION

(Under Rule 10, 47 and 48(1) and (2) of the court of Appeal Rules of 2009)

TAKE NOTICE THAT on the ...day of ...2015 at ...O'clock in the morning/afternoon or soon thereafter as he can be heard the above applicant will move the court/a judge of the court for an order that this honourable court be pleased to extend the time within which the applicant to lodge revision out of time on the ground that my application which I lodged to this honourable court are incompetent..."

The Notice of motion is accompanied by an affidavit, duly sworn by the applicant, into which he replicates his prayer in paragraph 3 follows:-

"3. That I am the applicant in this applicant (sic) applying for the extension of time to lodge an applicant for revision out of time."

Thus, it is beyond question that the applicant presently seeks to move the court to extend time so as to enable him mount revisional proceedings as against the decision of this court dismissing his appeal. As it turns out, the applicant has appended the decision at the foot of his Notice of Motion.

At the hearing before me, the applicant was fending for himself, unrepresented, whereas the respondent Republic had the services of Ms. Catherine Paul, learned State Attorney. As it were, the applicant fully adopted the Notice of Motion as well as its accompanying affidavit.

For her part, Ms. Paul did not mince her words to express, from the very outset, that the application is misconceived much as the same eventually seeks to move the Court to do what it cannot: That is, to revise its own decision. Thus, the learned State Attorney urged that to the extent that the Court does not have jurisdiction to revise its own decision, this application cannot be entertained. To this submission, the appellant was bereft of any rejoinder except for the plea asking the court to sympathize with him.

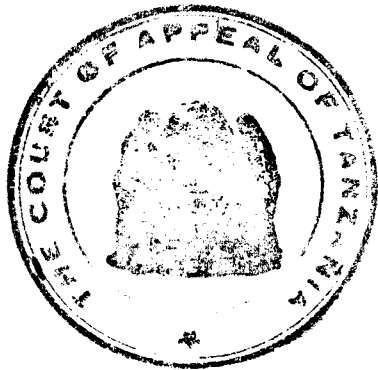
Addressing the rival positions and, as already remarked, the applicant clearly seeks enlargement of time within which to mount revisional proceedings as against the court's own previous decision. I cannot conceive the application to be otherwise such as a quest for review, the more so, as the applicant clearly expresses his desire "*Extension of time to*

lodge an application for revision out of time". To that extent and, in agreement with the learned state Attorney, the application is misconceived and is hereby, accordingly, struck out.

DATED at **MBEYA** this 21st day of August, 2015.

K.M.MUSSA
JUSTICE OF APPEAL

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




P.W. BAMPIKYA

SENIOR DEPUTY REGISTRAR
COURT OF APPEAL