IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

CRIMINAL APPLICATION NO. 1 OF 2014

1. DEOGRATIAS NICHOLAUS @ JESHI
2. JOSEPH MKWANO .....APPLICANTS

VERSUS

THE REPUBLIC .....RESPONDENT

(Application for extension of time within to file Application for Review from the Judgment of the Court of Appeal of Tanzania at Bukoba)

(Bwana, Massati, Mussa, JJJ.)

dated the 8th day of March, 2012
in
Criminal Appeal No. 211 of 2010
.....

RULING OF THE COURT

11th & 16th February, 2015.

RUTAKANGWA, J.A.:

The applicants' appeal against conviction by the High Court sitting at Bukoba, of the murder of one Prof. Israel Katoke, was dismissed by this Court on 8th March, 2013. Sometimes later that year, ***vide*** Criminal Application No. 6 of 2013, they sought a review of the said judgment. As

the application had been lodged out of time, it was struck out on 28th February, 2014. In striking out the application the Court observed that the applicants were at liberty to apply afresh after seeking and obtaining an extension of time, hence this application.

Through this application by notice of motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicants are seeking extension of time to apply for review of the above mentioned judgment. The notice of motion, contrary to the mandatory requirements of Rule 48 (1) of the Rules, does not state the grounds for the relief sought. However, it is now settled jurisprudence that such an omission/irregularity is not necessarily fatal if such grounds can be gleaned from the supporting affidavit.

The applicants' notice of motion is supported by a joint affidavit sworn to by them and another one by one Lwamba a Superintendent of Prison stationed at Butimba prison. The material part of the applicants' affidavit contains these averments:-

"We Deogratias Nicholaus @ Jeshi and Joseph Mukwano do hereby swear and state as follows.

1. *THAT, we are the original appellants in the above mentioned appeal of the court of appeal (T) at Mwanza as well as in criminal application No. 6'2013 of the same court at Bukoba.*
2. *THAT, delayed to receive a copy of judgment which influenced the delay to prepare the particular application.*
3. *THAT, once we receive a copy of judgment mean while we prepared the particular application but we were under custody of the prisons and the prisons office was to print and transfer our application to the court of appeal so the amount of delay was caused by the prisons office and not our fault.*
4. *THAT, our application has overwarming chance to succeed*

5. *THAT, in the interest of fair and justice we pray before your honourable court be pleased grant the relief our review application be lodged out of time."*

The affidavit of Lwamba supports these averments.

The respondent Republic, for reasons which are now obvious, did not file any affidavit in reply.

The two applicants appeared before me in person to prosecute their application. They adopted the contents of the affidavits in support of the notice motion and rested their case. In response to the Court's questions, the 2nd applicant stated that after the Court's judgment they did not apply to supplied with a copy of the same so as to be able to apply review. Without mentioning the specific date when they received the copy of judgment, he told me that they "resolved to apply for review after receiving a copy of the judgment."

The 1st applicant was more forthcoming when answering the Court's question. He said:-

> *"We were informed by the visiting judges while in prison, that if one is not satisfied with any decision of the Court he can apply for review and that is what we intend to do."*

Mr. Athumani Matuma, learned State Attorney, who represented the respondent Republic, did not resist the application. He said he would wait for the opportune moment once the substantive application is lodged.

From my reading of the applicants' affidavit, it is evidence that they are trying to blame the prison authorities for the delay in applying for review. But it is also clear from their responses to the Court's questions that they were at first not keen on seeking a review immediately the

judgment was delivered. They belatedly decided to seek a review after learning that any one dissatisfied with the Court's decision can apply for its review.

There is no gainsaying here that the applicants were naturally not satisfied with this apex Court's judgment finally sealing their fate after being condemned to suffer death by hanging. But it is universally settled law that mere dissatisfaction with any court's judgment, let alone the country's final court, cannot be a formidable basis for seeking its review. Better and compelling grounds are needed for the sole reason of averting a miscarriage of justice. This is all because as we have persistently and consistently held that in this country there is neither a constitutional nor statutory right for seeking review of this Court's decisions. This inherent power of review is exercised in the rarest of cases and for restricted grounds mentioned in Rule 66 of the Rules, among which mere dissatisfaction with the Court's decision is not one of them.

On the basis of the above discourse, the Court's emerging jurisprudence since the coming into force of the Rules in 2010, is to the effect that an application for extension time to apply for review in this Court "must disclose sufficient cause or good ground as per rule 66 (1) of the 2009 Court of Appeal Rules": (**KOMBO OMARY v. THE REPUBLIC).** No such good cause predicated on Rule 66 (1) of the Rules has been shown here.

Consistent with the above stance, in order to minimize abuse of the Court process, and spare the Court's meagre resources in terms of finance and man-hours unnecessarily wasted on entertaining trivial and legally undeserving proceedings, the Court in **LAURENO MSEYA v. REPUBLIC,** Criminal Application No. 8 of 2013 (unreported) categorically held that:-

> *"An application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay but has also established by affidavital evidence, at that stage*

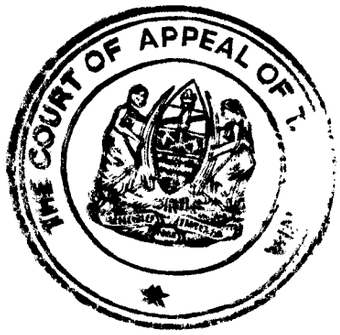
either explicitly or implicitly, that the review application would be predicated on one or more of the grounds mentioned in Rule 66 (1) and not on mere personal dissatisfaction with the outcome of the appeal..."

It is my conviction that it is in the public interest that these Court's unarguably exhaustible resources should be invested in deserving cases only in order to deliver equal and timely justice to all.

Once it is obvious that an applicant is seeking an extension of time to apply for review not on genuine reasons based on Rule 66 (1) but as a disguised way to move the Court to sit on appeal over its own final judgment, as is the case here, such an application should be rejected outright. For this reason, as the applicants have failed to cross the legal threshold set by the prevailing jurisprudence, but are seeking an extension of time because they were only dissatisfied with the Court's decision, I reject this application and dismiss it in its entirety.

It is so ordered.

DATED at BUKOBA this 13th day of February, 2015.



E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

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

E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL