

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CRIMINAL APPLICATION NO. 19 OF 2014

SUDI RAMADHANI MBEGU @ CHITAGONI.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Application for extension of time within which apply for review
of Court of Appeal in Dar es Salaam)**

(Mbarouk, Massati, Juma. JJJ.A)

**Dated 14th day of December, 2009
in
Criminal Appeal No. 19 of 2008**

RULING

15th & 21st July, 2015

MBAROUK, J.A.:

There is before me an application by way of notice of motion. It is supported by an affidavit sworn by Sudi Ramadhani Mbegu @ Chitagoni – the applicant. The Court is moved for an order that:-

*"....this Honorable Court be pleased to grant
extension of time as to enable the applicant to*

*apply review of this Court's judgment in
Criminal Appeal No. 105 of 2011 dated 21st
day of March, 2014."*

When the application was called on for hearing, the applicant appeared in person un-presented. He had nothing to elaborate from what he has stated in his notice of motion and affidavit. He then allowed the State Attorney for the respondents/Republic to submit first and opted to respond later.

On her part, Ms. Subira Mwalumuli, learned State Attorney for the respondent/Republic out-rightly indicated to have no objection to the application. According to her, the reasons for the delay stated in the applicant's affidavit were sufficient enough to grant the application. However, no further elaboration was given by her as to which reasons were sufficient to enable this Court grant the application.

In his rejoinder submission, the applicant totally agreed with the submissions made by the learned State Attorney and had nothing to add.

According to the affidavital information, the only reason given for the delay found at paragraph 6 of the applicant's affidavit stated that the applicant obtained the copy of judgment on 2nd day of June, 2014, twelve days after the expiration of sixty (60) days prescribed in law. It is my task to see whether such ground is good cause leading me to grant extension of time under Rule 10 of the Court of Appeal Rules 2007 (the Rules). Whereas, according to Rule 10 of the Rules, in order to grant extension of time, good cause has to be shown by the applicant. However apart from that requirement, this Court in the case of **Yusuph Simon v. Republic**, Criminal Application No. 7 of 2013 (unreported) stated as follows:-

"Admittedly, the Courts 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 files 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.

*(See, for instance, **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)."*

clearly emphasized the necessity of showing one or more grounds of review listed under Rule 66(1) of the Rules and stated as follows:-

"The Court is strictly enjoined in Rule 66(1) of the Rules, not to entertain an application for review except on the basis of the five grounds or conditions prescribed therein. 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..."

[Emphasis added.].

In the instant application, it is evident that, neither in the notice of motion nor in the affidavit, the applicant has shown that his application is predicated upon one or more grounds of review listed under Rule 66(1) of the Rules. I am of the view that, this is a fatal omission.

In addition to that, this Court in a case of **Nyakua Orondo v. Republic**, Criminal Appeal No. 2 of 2004 (unreported) which cited another decision of this Court in the **Efficient International Freight Ltd and Another v. Office Du the Du Burundi**, Civil Application No. 23 of 2005 (unreported) it was stated as follows:-

"A review is not a stage or step in the appeal process or structure, we say so because, yet again, of late it is apparent that some parties appear to think that once aggrieved by the outcome of an appeal there is always an automatic right of a review. As already alluded to, a review is only available in the circumstances shown above. A review is not available as an automatic remedy to an aggrieved appellant."


Taking into account all what have been stated above, with due respect, I decline to agree with the learned State Attorney when she supported the application. In the event

and for the reasons stated above I find this application devoid
of merit, hence I dismiss it. It is so ordered.

DATED at **DAR ES SALAAM** this 16th day of July, 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