

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MTWARA**

**CRIMINAL APPLICATION NO. 4 OF 2015**

**1. AZIZI MOHAMED  
2. HAMZA AHMADI MADAI @ MUNJA } ..... APPLICANT  
VERSUS**

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

**(Application for extension of time to file for review of the decision of the  
Court of Appeal of Tanzania at Mtwara)**

**(Mbarouk, Bwana, Massati, JJJ.A.)**

**Dated the 4<sup>th</sup> day of October, 2010**

**in**

**Criminal Appeal No. 15 of 2006**

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**RULING**

**9<sup>th</sup> & 12<sup>th</sup> October, 2015**

**MJASIRI, J.A.:**

By a notice of motion dated June 10, 2014, the applicants Azizi Mohamed and Hamza Hamadi are seeking extension of time to file an application for review of the judgment of this court dated October 4, 2010, under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Court Rules). The application is supported by the applicants' affidavit setting out the reasons for the delay in filing their application for review.

The reasons for the delay are set out in paragraphs 8 and 9 of the affidavit which are reproduced as under:-

*"That since under section 363 of the CPA, 1985 a prisoner has to prepare / his appeal through the incharge of the prison where he is serving sentence, so it was for the prison officer incharge to state the cause of non-compliance with those mandatory provisions of Rules 48(1) and (4) of the Rules.*

*9. That, we pray to the honourable court to take into consideration that cause of the non-compliance of those provisions was caused by the matters beyond our control as we are prisoners and custodial."*

The applicants have also provided three grounds in the notice of motion complaining on the findings of the Court.

The background to the application is that both applicants were charged and convicted of armed robbery. They were sentenced to 30

years imprisonment and twelve (12) strokes of the cane. Their appeals to the High Court and the Court of Appeal were unsuccessful.

The applicants were unrepresented and had to fend for themselves. The respondent Republic had the services of Ms. Nunu Mangu, learned State Attorney.

Ms. Mangu opposed the application. She contended that no substantive reason has been advanced by the applicants for the delay. The reasons provided have no basis and do not establish good cause, which is a requirement under Rule 10 of the Court Rules.

Both applicants submitted that they should not be faulted. The fact that they are in custody prevents them from having access to proper legal counseling and advice. They asked the court to let justice prevail.

Upon a careful review of the notice of motion and affidavit filed in Court and submissions made by parties, I am inclined to agree with the learned State Attorney that the applicants have failed to show good cause.

Since the applicants intend to file an application for review, the grounds for review must also be stated. The applicants need to

demonstrate that they intend to rely on one of the grounds under Rule 66(1) of the Court Rules. There are stringent requirements for filing an application for review and a party can do so only under the following circumstances:-

- (a) The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice ; or*
- (b) A party was wrongly deprived of an opportunity to be heard;*
- (c) The Court's decision is a nullity, or*
- (d) The Court had no jurisdiction to entertain the case; or*
- (e) The judgment was procured illegally, or by fraud or perjury.*

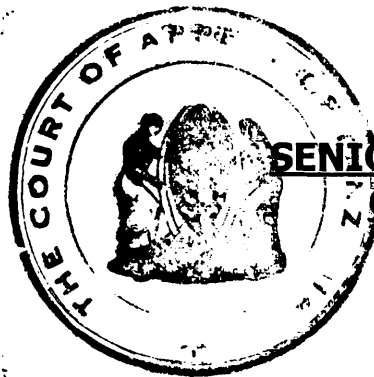
The applicants have failed to account for the inordinate delay of 5 years and to show that they have an arguable case in terms of Rule 66(1) of the Court Rules. See **Joel Silamba v Republic**, Criminal Application No. 5 of 2012 and **Gibson Madege v Republic**, Criminal Application No. 3 of 2012.

In the result I find no merit in the application and I accordingly dismiss the application.

**DATED** at **MTWARA** this 11<sup>th</sup> day of October, 2015.

S. MJASIRI  
**JUSTICE OF APPEAL**

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



P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**