

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 17 OF 2009

JOSEPH PIUS MUSHI @ JOSE..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time within which to file Review from the
decision of the Court of Appeal of Tanzania at Dar es Salaam)**

(Msoffe, J.A., Mbarouk, J.A., Oriyo, J.A.)

Dated 5th day of June, 2009

In

Criminal Appeal No. 300 of 2007

RULING

15th & 21st July, 2015

KILEO, J.A.:

The application before the Court is for extension of time to file an application for review. The Notice of Motion instituting the application is supported by the affidavit of the applicant, Joseph Mushi @ Jose. Basically, the applicant gives one ground in his the Notice of Motion as to why he failed to lodge the application for review within the time provided. In order to better understand the gist of the application it is instructive to reproduce here both the Notice of Motion and the affidavit in support thereof.

"NOTICE OF MOTION

(Made under Rule 8 of the CAT, 1979 and any other enabling provisions of the law)

TAKE NOTICE that, on.....day of2009 at 9:00 O'clock in the Morning or soon thereafter as he can be heard the applicant will move the Court for the following orders:-

- (i) This Honourable Court be pleased to extend the time within which the applicant can file the application for review of the Judgment in criminal Appeal No 300/2007*
- (ii) That, I failed to file an application for review on the stipulated time because being a prisoner and layman in law so that I am not able to process my application on my own I entirely depend on the prison authority to do all that on my behalf and therefore it will in the interest if justice to grant this application.*
- (iii)"*

The affidavit states as follows:

AFFIDAVIT

*I, **JOSEPH PIUS MUSHI @ JOSE**, adult, Christian and prisoner currently held in Ukonga Prison, do here by swear and states as follows:-*

1. *That, I was convicted of Armed Robbery C/S 285/286 of the penal code cap 16 of the law and sentenced to 30 years imprisonment by the District Court of Morogoro at Morogoro in C/C No. 29/2001.*
2. *That, I appealed to the High Court of (T) at Dar es Salaam but the said appeal was dismissed.*
3. *That, I appealed to the Court of Appeal but the appeal was failed on 5th Day of June, 2009.*

At the hearing the applicant appeared in person and had no legal representation. The respondent Republic was represented by Ms. Dorothy Massawe, learned Senior State Attorney. The appellant did not have much to say apart from reiterating what was in his Notice of Motion that everything was done for him by prison authorities under whom he is incarcerated.

Ms Massawe resisted the application contending that the applicant was obliged to indicate in his affidavit why he needed to apply for review.

The matter need not detain me. Though this is not an application for review itself note must be taken of the fact that review is not an automatic right neither is it an appeal. It is available in very exceptional circumstances.

It will be observed that neither the Notice of Motion, nor the affidavit in support thereof contains any of the irregularities in the decision of the Court that are intended to form the basis of the review itself. The Court stated in **Charles John Mwaniki Njoka v. Republic**, - Criminal Application No. 20 Of 2013 (unreported) that there is no gainsaying that no review lies on the merits of a decision of the Court. And it was observed in **Festo John Kimati v. Republic**, –Criminal Application no. 11 of 2009 and **Charles Barnabas v. Republic**, Criminal Application No 13 of 2009, (both unreported) that review is intended to address irregularities of a decision or proceedings which have caused injustice to a party.

It was observed in **Charles John Mwaniki Njoka**, (supra) the Court stated that the applicant was obliged to state what irregularities he intended to address in his application for review in the event his application for extension of time was granted. The Court there went further and stated:

"His mentioning of the grounds in the application for extension of time does not mean that the Court at this stage will determine the merit of the application. As mentioned above, the court can only make an informed


application for review if it is at least informed of the irregularities that are intended to be addressed at the review level."

The applicant's Notice of Motion and affidavit herein above quoted speak for themselves. They fall far short of entitling this Court to grant the application for extension of time sought. In the event the application is found to be lacking in merit and is accordingly dismissed.

DATED at DAR ES SALAAM this 15th day of July, 2015.

E. A. KILEO
JUSTICE OF APPEAL

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


E. F. Fussi
DEPUTY REGISTRAR
COURT OF APPEAL