

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 1 OF 2015

YAHAYA SHARIF APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application for Extension of time to file an Application for Review

from the decision of the Court of Appeal of

Tanzania at Tanga

(J.A. Mrosso, N.P. Kimaro and B.M. Luanda, J.J.J.A)

Dated 25th day of June, 2008

In

Criminal Appeal No. 51 of 2007

RULING OF THE COURT

Date 1st & 16th. December, 2015

MZIRAY, J.A.:

By notice of motion under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant YAHAYA SHARIF, is seeking extension of time to apply for review of the judgment of this Court in Criminal Appeal No. 51 of 2007, at Tanga, delivered on 30/6/2008. In that judgment the sentence of fifteen years imprisonment imposed by the High Court was enhanced by this Court to thirty years imprisonment. The notice of motion has stated the grounds for the relief sought and accompanied by

an affidavit deposed by the applicant in compliance with Rule 48(1) of the Rules.

When the application was called on for hearing, the applicant appeared in person unrepresented. He adopted the grounds set out in the notice of motion together with the depositions in his accompanied affidavit. He had nothing more to add.

On his part, Mr. Aloyce Mbunito, learned Senior State Attorney who represented the respondent/Republic did not support the application. He submitted that the applicant's unawareness of the Court's procedures could not amount to good cause to warrant the grant of the application. He brought to the attention of the Court that the decision challenged was delivered on 25/6/2008 while the visit to the prison by the District Registrar of which provided the applicant awareness of the review procedures was made on 30/5/2014 but still he failed to file this application in time until on 30/8/2015, which is a period of 15 months from the Registrar's visit. On the above fact he submitted that the applicant was slack in action on which his application for extension of time cannot be entertained. The learned Senior State Attorney referred to unreported case of **Gibson Madenge v.**

R. Criminal Application No. 3 of 2012 (CAT), Mbeya, which has facts almost similar to the instant matter.

The learned Senior State Attorney went on to submit that apart from showing good cause, the applicant ought to have stated one or more grounds of review listed under Rule 66(1) of the Rules, and that mere personal dissatisfaction with the outcome of the appeal is not a valid ground for the application. He listed authorities to back up the above position. These cases are:-

1. African Airlines International Ltd v. Eastern and Southern African Trade and Development Bank (2003) 1 EA (CAK).
2. **Amiri Athumani v. Republic**, Criminal Application No. 6/2011 (CAT) at Arusha (unreported).
3. **Gibson Madege v. R.** (supra).

In the case of **African Airlines International Ltd** (supra) it was held that the Court has discretion either to grant or refuse the application but in exercising this discretion it has to consider these factors: length of the delay, reasons for the delay, whether there is an arguable case on appeal and the degree of prejudice to the defendant if time is extended.

The learned Senior State Attorney invited the Court to observe these conditions in determining this application.

In the rejoinder submission the applicant shifted blame to the Prison Authority on the alleged 15 months delay and stated that he expressed his intention to lodge review proceedings immediately upon receiving the advice from the Court Registrar but the Prison Authority did not act promptly. He kept reminding them but there was nothing forthcoming to speed up the process. He stated that the fault was not of his own hence he should not be punished for the inaction of the Prison Authority.

The main thrust of the application is to seek extension of time to file a review on ground that the applicant did not get access to legal advice in time to enable him process the application. He is convinced that the enhanced sentence by the Court breached the fundamental constitutional right under article 13(6) of the Constitution of United Republic of Tanzania, 1977 which reads,

"No person shall be punished for any act which at the time of the commission was not an offence under the law, and also no penalty shall be imposed

which is heavier than the penalty in force at the time the offence was committed."

In terms of Rule 10 of the Rules, in order for an application of the nature to succeed, the applicant has to show that he was prevented by sufficient /good cause to file the application for review in time. Apart from showing good cause, the applicant ought to state one or more grounds of review listed under Rule 66 (1) of the Rules. At this juncture I must make it clear that the mere fact that one is aggrieved with any decision of any Court is not a valid ground to seek review of the said decision. At least there must reach a point when litigation has to come to an end. In **Deogratias Nicholaus @ Jeshi and Another v. R, Criminal Application No. 1 of 2014** (unrepresented), which was an application for extension of time within to file Application for Review, this Court has this to say:-

" It is universally settled law that mere dissatisfaction with any Courts 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 Courts decision is not one of them."

From the above quoted passage, it is clear that an application seeking an extension of time to file a review must have good cause as stated in Rule 10 and in addition the applicant should have genuine reasons based on Rule 66(1). Failure to comply with the provisions of the above Rules then such applicant must not be entertained by this court simply because he was dissatisfied with the Court's decision.

In the instant matter, the decision sought to be reviewed was delivered on 25/6/2008. From that time to the period when the application was brought to court is almost seven years. In his deponed

affidavit the applicant has stated that he had intention to file the application in time but he failed to get legal assistance to pursue the review. That to me is not convincing because even after he had been advised of the pertaining procedures by the District Registrar of the High Court at Tanga when he visited the prison on 30/5/2015, still he sat on his rights for 15 months more without filing any application in Court. He shifted the blame for the delay to the prison Authority but I think the accusation is not genuine. At least there should have been an affidavit from the Prison Authority to support his averments.

In one of the grounds for the application the applicant has stated that the enhanced sentence is in violation of his constitutional right under article 13(6) of the constitution of the United Republic of Tanzania, 1977. As rightly decide by this Court in **Deogratias Nicholaus @ Jeshi** (supra), in this country there is neither a constitutional nor statutory right for seeking review of this Court's decisions. The applicant cannot therefore bring this application under the umbrella of the Constitution. It is understandable that the grant of application of the nature purely rest on the discretion of the Court but in exercising such discretion the Court ought to consider these factor; the length of the delay, whether there is an

arguable case on appeal and the degree of prejudice to the defendant if time is extended.(See **African Airlines International Ltd** – Supra). Admittedly there was a lengthy unexplained delay and on the facts presented, I see that there is no arguable case in appeal. On the contrary, I find that the respondent will be prejudiced both in terms of human and financial resources.


With the above observations, I am of settled view that no good cause has been shown to warrant the exercise of the discretion conferred upon me under Rule 10 to grant the relief sought by the applicant.

In the circumstances, I dismiss the application in its entirety.

DATED at DAR ES SALAAM this 7th day of December, 2015.

R.E.S. MZIRAY
JUSTICE OF APPEAL

I certify that is a true copy of the original.


E.Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL