

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CRIMINAL APPLICATION NO. 2 OF 2013

**JOHN PETRO MBUGUNIAPPLICANT
VERSUS
THE REPUBLICRESPONDENT
(Application for Extension of time from the decision of the
Court of Appeal of Tanzania
at Arusha)**

(Othman, CJ, Msoffe, J.A. And Juma, J.A.)

**Dated the 12th day of March, 2013
in
Criminal Appeal No. 172 of 2011**

**.....
RULING**

17th May & 20th 2016

MZIRAY, J.A.:

In the High Court of Tanzania at Arusha, the applicant together with one Boay Amma Surumbu were convicted for the offence of murder and sentenced to death. He unsuccessfully appealed to this Court. He presently applies for extension of time within which to lodge an application for review. The application is by notice of motion, taken out under Rule 10 and 48 (1) of the

Court of Appeal Rules, 2009 (the Rules). The same is supported by the affidavit duly sworn by the applicant himself.

In the affidavit, the applicant assigned two causes for his failure to lodge the application in time.

- i) That he was not informed about his right of review and time limit to lodge the same*
- ii) That the delay to lodge Review within time was not contributed by any dilatory conduct of his own, but reasons beyond his control as he was unrepresented layman.*

At the hearing, the applicant was fending for himself, whereas the respondent Republic had the services of Ms. Eliainenyi Njiro, learned State Attorney. The applicant fully adopted the notice of motion as well as the supporting affidavit, without more. On her part, the learned State Attorney resisted the application arguing that the applicant ought to have established good cause why he failed to file the application in time. The learned State Attorney

submitted that the reason advanced by the applicant in his affidavit that his failure to file the application was contributed by matters beyond his control as he depended solely on the Prison Authority should not be accorded any weight as he did not attach any affidavit from the Prison Authority to substantiate his assertion. In addition, the learned State Attorney submitted that in the applicant's affidavit there is nothing to suggest that if he is granted time his intended application has overwhelming chances of success. On the foregoing reasons the learned State Attorney urged the Court to dismiss the application.

I have dispassionately considered the rival arguments of the parties herein. It is trite law as held in the case of **Benedict Mumello v. Bank of Tanzania** (E.A.L.R. 2006) Vol. 1, that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. The issue in every application for

extension of time under Rule 10 of the Rules, is whether an applicant has shown good cause for the court to extend time within which to apply for review, especially in view of the fact that the remedy sought is neither constitutional nor statutory (See **Blueline Enterprises Ltd v. East African Development Bank**, Civil Application No, 21 of 2012 (unreported)).

The position of the law, as aptly summarized in **Eliya Anderson v. R.**, Criminal application No. 2 of 2013 (unreported) is that under Rule 10, a good cause could be “factual” or “other reasons”, which could include illegality of the decision sought to be impugned. In cases of intended review, the only permissible points of law that may be taken are those shown in Rule 66(1) which are:-

A manifest error on the face of the record, a party wrongly deprived of an opportunity to be heard, the court’s decision is a nullity, the court lacks of jurisdiction, and that the judgement was procured illegally, by fraud or perjury. (Emphasize supplied)

An applicant for extension of time to apply for review is therefore expected to show in the grounds in his notice of motion, or affidavit at least one of those ground, in addition to a factual account for the delay. (see also **Deogratias Nicholas @ Jeshi and Joseph Mukwano v. R.**, Criminal Application No. 1 of 2014 (unreported).

In the present case, the applicant averred that his failure to file the application was contributed by matters beyond his control as he depended solely on the Prison Authority. This was a sole reason for the delay. As observed earlier, since in application for review the applicant must show that the decision sought to be impugned has wronged at least one of the five principles set out in Rule 66(1) of the Rules and this not being the case in the case at hand, I agree with the learned State Attorney that the application lacks merit.

Apart from that, in application of this nature, the applicant as rightly submitted by the learned State Attorney ought to have shown in either the notice of motion or supporting affidavit that if the Court grants his application, he has chances of succeeding in

whichever aspect among those shown under Rule 66 (1) (a) to (e) of the Rules. (See **Salumu Mhumbili v. R.**, Criminal Application No. 8 of 2014 (unreported). It is unfortunate that not a single aspect among those shown in the above Rule has been shown by the applicant.

To this end, the application is hereby dismissed.

DATED at ARUSHA this 19th day of May, 2016.

R.E.S. MZIRAY
JUSTICE OF APPEAL

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




P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL