

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

CRIMINAL APPLICATION NO. 20 OF 2015

SAID ALLY ISMAIL.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

(Application for extension of time within which to lodge an application

for review of the Judgment of the Court)

(Ramadhani, Munuo, Mjasiri, JJJ)

dated 27th November, 2009

In

Criminal Appeal No. 241 of 2008.

RULING

11th & 12th July, 2017

MUGASHA, J.A.:

The applicant, **SAID ALLY ISMAIL** was appellant in Criminal Appeal No. 241 of 2008 which was dismissed by the Court on 27th November, 2009. His initial application for extension of time to apply for a review was for reason of incompetency struck out by Court on 2nd October, 2015. 62 days later, he brought the instant application seeking extension of time to

apply for the review of the decision of the Court by notice of motion brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The grounds advanced by the applicant in the notice of motion are to the effect that: **One**, the striking out of the initial application made him continue to be out of time to apply for the review. **Two**, being a layman he is incapable of understanding matters of application for review. **Three**, the intended review is to be based on Rule 66(1) (a) and (b), because the impugned decision was based on manifest error on the face or record and that judgment was procured by perjury which resulting into a miscarriage of justice.

The application is accompanied by the applicant's affidavit which basically echoes the grounds stated in the notice of motion.

On the other hand, the application is contested through the affidavit in reply of **WILBROAD NDUNGURU**, learned State Attorney for the respondent Republic on ground that, the applicant has not demonstrated good cause to be granted extension of time to apply for review.

At the hearing of the application, the applicant who appeared in person opted to initially hear the submission of the learned State Attorney.

The learned State Attorney submitted that, the applicant has not furnished good cause as required by Rule 10 of the Rules to warrant the grant of the application sought. He pointed out that, being a layman is not a defence to constitute sufficient cause for the delay. Besides, he argued that, the applicant could as well, obtained advice from the prison authorities from the date of dismissal of his appeal in November, 2009. He added that, the applicant has no arguable case for review because his complaint that the decision was obtained by perjury is not supported by his own affidavit. To back his propositions, the learned counsel relied on the case of **MOHAMED RASHID SIMBA VS REPUBLIC**, Criminal Appeal No. 3 of 2015(unreported)

The applicant had nothing useful in reply apart from blaming the prison authorities who assisted him in drawing the present application. Against this background, I will proceed to consider and determine this application.

The pertinent issue is whether the applicant has demonstrated good cause to warrant the Court to exercise its judicial discretion under rule 10 which states:-

"The court may, upon good cause shown, extend time limited by these rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time so extended."

Under Rule 10 of the Rules, time may be enlarged upon good cause being shown. The term "good cause" is not defined, but in **SHANTI vs. HINDOCHE & OTHERS [1973] E.A. 207**, the defunct Eastern African Court of Appeal attempted to consider the term "sufficient reason" that was in use under Rule 8 of the rules of the Court of Appeal for Eastern Africa, which

was carried over in Rule 8 of the old Tanzania Court of Appeal Rules, 1979.

The defunct Court said:

"the more persuasive reason.... that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason".

(See also **VERONICA FUBILE vs. NATIONAL INSURANCE CORPORATION & 3 OTHERS**, Civil Application No. 168/2008 (unreported).

It is not in dispute that, the applicant filed the present application 62 days after the initial application for review was struck out by the Court. According to the applicant's affidavit, apart from narrating a sequence of events of what transpired from the trial, the dismissal of his first and second appeals, the applicant's major grounds for the delay are: **one**, his initial application for review was struck out for being incompetent and **two**, he delayed to file the present application for reason of being layman on matters relating to review process.

In the circumstances, from what the applicant has deposed, there is no explanation for the delay except perhaps, for ignorance of the law. In my considered view, ignorance of the law has never been accepted as sufficient reason or good cause for extension of time. (See **CHARLES MACHOTA SALUGI VS REPUBLIC**, Criminal Application No. 3 of 2011 (unreported)).

Furthermore, the applicant's affidavit neither clarified nor expounded the complaint appearing in the notice of motion to the effect that, the decision was based on manifest error as the impugned decision was procured by perjury. In this regard, the question to be addressed is if the applicant has an arguable case in terms of Rule 66(1) of the Rules? In the case of **YUSUPH SIMON VS REPUBLIC**, Criminal Application No. 7 of 2013 (unreported) we said as follows:

*"Admittedly, the Court is strictly enjoined under rule 66(1) of the Rules, not entertain an application for review except on the basis of five grounds prescribed there under. Indeed, law is settled that an applicant who files an application under Rule 10 of the Rules for extension of time **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."

[Emphasis supplied]

The rationale behind is that, the Court is strictly enjoined to entertain a review on the basis of five grounds prescribed in Rule 66(1) of the Rules. As such, it would be futile, to grant extension of time to apply for review when the Court is not certain if the intended application would be based on those grounds, and it will not be a disguised attempt to re-open the appeal to suit the needs and convenience of the applicant. (See the case of **GIBSON MADENGE VS REPUBLIC**, Criminal Application No. 3 of 2012 (unreported)).

In the present application, it is evident that, the applicant has not at all deposed in his affidavit if the present application is predicated upon Rule 66 (1) (a) and (b) of the Rules. Therefore, mere assertion in the notice of motion that, the impugned decision was obtained by perjury solely is not sufficient to establish that the applicant has an arguable case for review in terms of Rule 66(1) of the Rules.

In view of the aforesaid, I am in agreement with the learned Attorney that, the applicant has not established good cause warranting the grant of the extension of time to apply for review. The application is not merited and it is accordingly, dismissed.

DATED at **MTWARA** this 11th day of July, 2017.

S.E.A. MUGASHA
JUSTICE OF APPEAL

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



A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL