

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

**CRIMINAL APPLICATION NO. 1 'B' OF 2015**

**LEONARD S/O MOSES ..... APPLICANT**

**VERSUS**

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

**(Application for Extension of time to lodge a review against the  
decision of the Court of Appeal of Tanzania at Mwanza)**

**(Samata, CJ, Msofe, J.A. And Kaji, J.A)**

**Dated the 7<sup>th</sup> day of March, 2005  
in  
Criminal Appeal No. 55 of 2002**

.....

**RULING**

19<sup>th</sup> & 25<sup>th</sup> September, 2017

**MBAROUK, J.A.:**

By way of notice of motion, the applicant, Leonard s/o Moses has lodged this application under the provisions of Rule 10 and 48 (1) of the Court of Appeal of Rules 2009 (the Rules) seeking for an extension of time to lodge review against the judgment of the Court of Appeal given in Criminal Appeal No. 55 of 2002 dated 7<sup>th</sup> March, 2005. The notice of motion is supported by an affidavit sworn by Leonard s/o Moses, the applicant.

In the affidavit in support of the notice of motion, the applicant mainly gave his grounds for the delay to file his review in the following paragraphs:-

*"2. That when my appeal has been dismissed by the court I was not informed the right for review hence I failed to understand if there is a fair (sic) to lodge a reviews instead I was (sic) lodged application for revision which is not apply (sic) hence, this application seeking the leave to lodge a review.*

*3. That the cause of delay to lodge review was out of my own knowledge hence I failed to understand the right of review also the lack of an advocate who could take my right of the review caused much to this delay."*

In this application, the applicant appeared in person unrepresented, whereas the respondent/Republic was represented by Mr. Ildephonse Mukandara, learned State Attorney.

At the hearing, the applicant opted not to amplify his reasons found in the affidavit in support of the application, instead, he allowed the learned State Attorney to submit first and opted to respond later in his rejoinder submission if the need arises.

On his part, Mr. Mukandara from the outset submitted that in this application, no cogent reasons were advanced to allow the applicant's prayer for an extension of time. He further submitted that, about ten years have passed since 2005 when the decision of the appeal sought to be reviewed was delivered until the year 2015, when this application was lodged.

Reacting to the reasons for the delay found in paragraph 2 of the applicant's affidavit in support of the notice of motion, Mr. Mukandara further submitted that, even if the applicant claimed to have filed a revision but a copy of it was not annexed with the affidavit in support to this application so as to substantiate his claim. Also, he said, the applicant has failed to show the steps taken on each of the day delayed.

In response to the reason given in paragraph 3 of the affidavit in support of the notice of motion, Mr. Mukandara submitted that after knowing that he lacked a legal assistance from an advocate, he should have resorted to the assistance given by an officer in prison, but he failed to do so.

Mr. Mukandara added that, ten years period is so long to account for the delay in filing review without giving good cause.

He then said, as no good cause was advanced by the applicant to justify him be granted extension of time the application ought to be dismissed.

In his rejoinder submissions, the applicant submitted that he received late a copy of the decision sought to be reviewed, and he wrote to the Court but he got no reply. He therefore, prayed for his application to be granted as prayed.

Let me resume by examining the enabling provision upon which an applicant can move the Court in applying for an extension of time. This is Rule 10 of the Rules which reads as follows:-

*"The Court may, upon good cause shown, extend the 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 the 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 as so extended."*

According to Rule 10 of the Rules, the matter of what exactly constitutes "good cause" has been left to the discretion of the Court and in essence there are no hard and fast rules in establishing them. However, in easing the task to the Court, in the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) some principles have been laid down on the aspect of what constitute "good cause". Those principles are as follows:-

*"(a) The applicant must account for all the period*

*of delay;*

*(b) The delay should not be inordinate;*

*(c) The applicant must show diligence, and not*

*apathy, negligence or sloppiness in the*

*prosecution of the action that he intends to*

*take; and*

*(d) If the court feels that there are other sufficient*

*reasons, such as the existence of a point of law*

*of sufficient importance; such as the illegality*

*of the decision sought to be challenged.”*

(Also See **Zahara Kitindi & Another V. Juma Swalehe & Nine Others**, Civil Application No. 4/05 of 2017 (unreported).

In the instant application, neither of those principles were abided by the applicant in showing “good cause”. As pointed out earlier the delay in filing review application took a very long time of about ten years without accounting for every day of the delay. By any standard ten years period without being accounted for cannot make me exercise my discretion to grant the applicant the

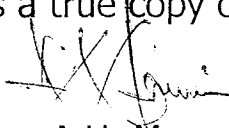
extension of time sought. It is an inordinate delay. See. **Bariki Israel V. The Republic**, Criminal Application No. 4 of 2011 and **Sebastian Ndaula V. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported). I agree with Mr. Mukandara that the two reasons given in paragraphs 2 and 3 of the affidavit in support of the notice of motion does not constitute good cause for the delay of about ten years.

In the circumstances, I am increasingly of the view that, the applicant has failed to advance "good cause" to justify me exercise the discretion conferred upon me under Rule 10 of the Rules to grant him extension of time to file an application for review. I therefore dismiss the application.

**DATED** at **TABORA** this 22<sup>nd</sup> day of September, 2017.

M.S. MBAROUK  
**JUSTICE OF APPEAL**

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

  
A.H. Msumi  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**