

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

CRIMINAL APPLICATION NO. 34/4 OF 2017

JOHN LAZARO.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Application for an extension of time to file an application for
Review of the decision of the Court of Appeal of
Tanzania at Bukoba)**

(Munuo, J.A., Massati, J.A. And Mandia, J.A.)

dated the 28th day of November, 2011

in

Criminal Appeal No. 230 of 2011

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RULING**

23rd & 27th August, 2018

MBAROUK, J.A.:

In terms of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant, John Lazaro has moved the Court by filling a notice of motion seeking for an extension of time for lodging an application for review of its decision in Criminal Appeal No. 230 of 2010 dated 28th day of November,

2011 before Munuo, J.A. Massati, J.A and Mandia, J.A. In support of the notice of motion, an affidavit of John Lazaro was appended.

Earlier on 6th day of August, 2010 the High Court of Tanzania at Bukoba (Mjemas, J.) in Criminal Session Case No. 88 of 2004 convicted the appellant for the charge of murder and sentenced him to suffer death by hanging. Aggrieved by such conviction and sentence, the applicant preferred his appeal to this Court in Criminal Appeal No. 230 of 2010. The applicant then in terms of Rule 66 of the Rules lodged an application for review in Criminal Application No. 8 of 2012 to this Court. However, as it appears in the order of the Court in that Review application dated 1st day of March, 2017, at the commencement of the hearing, the Court raised *suo motu* the issue that the application was time barred. In his response, the applicant conceded that it was time barred and it was for that reason, he prayed to withdraw his application

and the Court invoked Rule 58(3) of the Rules and marked it as withdrawn.

In this application, the applicant appeared in person unrepresented, whereas Ms. Chema Maswi, learned State Attorney represented the respondent / Republic.

At the hearing, being a lay person opted to allow the learned State Attorney to submit first and if the need arises, he will give his rejoinder later.

On her part, the learned State Attorney from the outset indicated not to support the application for the reason that no good cause was shown, neither in the notice of motion nor in the affidavit appended to it. Ms. Chema submitted that among the grounds stated in the notice of motion, it is only ground No. 4 which might be sensible, but the same is vague. She said, all the remaining grounds are not relevant for the purpose of granting the applicant an extension of time. She thereafter submitted that as the requirement of showing good

cause under Rule 10 of the Rules has not been complied with, the application ought to be dismissed.

In his rejoinder submission, the applicant wanted to convince the Court that in his earlier application for Review marked withdrawn, the same was not found time barred, but he forgot that we are guided by the records in the file. As pointed out herein above, it was the Court which raised that issue *suo motu* that the application was time barred, hence that fact cannot now be refuted.

In this application, basically five grounds were stated in the applicant's notice of motion as follows:-

- "1. That after received the copy of judgment supplied to me I observed some misdirection and apparent errors there in.*
- 2. That I decided to write application for review within reasonable time as rule*

66(3) of Tanzania Court of Appeal Rules, 2009.

- 3. That after went for hearing my application for review the time was barred so, I did withdrawn it according to rule 58;(1) of (T) Court of Appeal rule 2009.*
- 4. That what caused my application to be out of time was the date of deputy registrar at the lodged (sic) in the sub-registry at Bukoba not our part I mean I (sic) and prison officer in charge our signatures or dates.*
- 5. That I attached the NOTICE OF MOTION's last page with the order of the court. So, the disparity of date occurred was as beyond or my capacity, I pray my application be granted."*

Whereas in his affidavit in support of the application, only two grounds were given as follows:-

"1. That due to the grounds narrated in the notice of motion as from grounds all I am convenient with all ingredient state there in.

2. That this court is required in the interest of justice allow this application to entirety. Since the inconsistency occurred is as beyond of my capacity."

As submitted by the learned State Attorney earlier, I too see no cogent reason given to be termed as good cause in terms of the requirement under Rule 10 of the Rules. In the case of **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's**

Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported). The following guidelines were formulated in considering what amounts to good cause:-

- " (a) The applicant must account for all days of the 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.*
- (d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

None of the guidelines stated herein above were justified by the grounds given by the applicant neither in his notice of motion nor in his affidavit. Even the said paragraph 4 stated earlier does not suffice to be taken as a good cause to grant the applicant an extension of time to file his review.

It is now a trite law that the applicant has to account for each of the delayed days. See the case of **Mohamed Athumani V. Republic**, Criminal Application No. 13 of 2015 (unreported).

In the absence of cogent reasons as to why the applicant has failed to file his application for review within time prescribed by Rule 66(3) of the Rules, there cannot be any other better language other than holding that there has been negligence or sloppiness on the part of the applicant which dis-entitles him from benefiting the discretion of the Court conferred upon it under Rule 10 of the Rules to be exercised in his favour. As the record shows, the applicant


waited for six years from 2011 when the decision sought to be reviewed was delivered to 2017 when he attempted to file his application for review to which he later prayed to be marked withdrawn.

For the reason of the applicant's failure to show good cause, I am constrained not to exercise my discretion conferred upon me under Rule 10 of the Rules to grant him extension of time to file review application. I therefore find the application devoid of merit and hereby dismiss it.

DATED at **BUKOBA** this 24th day of August, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

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


E. Y. MKWIZU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

