

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

CRIMINAL APPLICATION NO. 43/06 OF 2018

JIMMY ANDERSON MWAMPASHI APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

**(Application for extension of time for filing review from the decision
of the Court of Appeal of Tanzania, at Mbeya)**

(Nsekela, Msoffe, Oriyo, JJ. A.)

dated the 3rd day of March, 2011

in

Criminal Appeal No. 319 of 2007

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RULING

10th & 12th December, 2018

MMILLA, J.A.:

In this application, Jimmy Anderson Mwampashi is applying for extension of time within which he may file an application for review. It is made under Rules 10 and 48 (1) (2) of the Court of Appeal Rules, 2009, and supported by an affidavit sworn by the applicant himself.

The briefly background facts of the applicant are that the appellant was originally charged before the District Court of Mbeya with the offence of armed robbery contrary to sections 285 and 286 of the Penal Code Cap.

16 of the Revised Edition, 2002. Upon conviction, he was sentenced to serve 30 years' imprisonment. He unsuccessfully appealed to both the High Court at Mbeya and this Court. After the dismissal of his second appeal by the Court however, he immediately applied for review. Unfortunately, that application was struck out for being preferred under wrong provisions of law. He lodged another application which was likewise struck out for being out of time. It is on that basis that he is now applying for extension of time enable him to still lodge the application for review.

When the application came before me for hearing on 10.12.2018, the applicant appeared in person and unrepresented; whereas the respondent/Republic was represented by Ms Rhoda Ngole, learned State Attorney.

In his brief submission, the applicant prayed for the Court to adopt his affidavit in support of the application. He urged the Court to take into account the fact that he filed the application for review in time, but he cited the wrong provisions. He asked the Court to hold that he has shown good cause for the delay on account that he has regularly been in its corridors struggling to correct the mistakes he made in the previous applications.

On her part, Ms Ngole hastened to inform the Court that she was not contesting the application.

The pertinent issue in this matter is whether or not the applicant has shown good cause for the delay. This is in terms of Rule 10 of the Rules which provide that:-

"10. 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."

See also the case of **Benedict Mumello v. Bank of Tanzania**, E.A.I.R [2006] Vol. I, in which the Court of Appeal held at page 227 as follows:-

"It is trite law 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 reason advanced by the applicant in the present matter that he has all through been trying to lodge the intended application but his efforts were thwarted because of certain mistakes he made during of those previous applications preparations, leading to their being struck out for being incompetent, in my view constitutes sufficient cause for the delay. I think this may be the reason why Ms Ngole did not contest it. In the circumstances, I grant the application, and it should be filed within a period of 21 days from the date of this ruling.

DATED at **MBEYA** this 11th day of December, 2018.

B. M. MMILLA
JUSTICE OF APPEAL

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



A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL