

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

CRIMINAL APPLICATION NO. 4/06 OF 2017

JUMAPILI MSYETE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time within which to file an application for
review out of time from decision of the Court of Appeal of Tanzania,
at Mbeya)**

(Massati, Oriyo, and Mussa, JJ.A.)

dated the 12th day of August, 2015

in

Criminal Appeal No. 110 of 2014

RULING

11th & 13th December, 2018

MZIRAY, J.A.:

This is an application for extension of time to file review out of time against the decision of this Court handed down on 12/8/2015 in Criminal Appeal No 110 of 2014. It was filed in this Court on 15/11/2016 under Rule 10 and 48(1) of the Court of Appeal Rules, 2009 (the Rules) and the same was supported with applicant's affidavit. The grounds for this application can be put in a nutshell that the applicant was late in filing review for reasons beyond his control. These reasons are deponed in paragraphs 4 and 5 of the supporting affidavit as follow:-

"4. That, soon after the dismissal of my appeal I prepared an application for review on 24/8/2015 and handed it over to the prison authority for onward transmission to the C.A.T at Mbeya within sixty (60) days allowed by the law, under the provision of Rule 66(1) (a) of the Rules.

5. That, after a long wait without summoned by this Court in order to hear the same, I decided to remind the Registrar via the Prison Authority whereby the Registrar notified me that there was no application for review lodged in Court and that even copies of the application for review which were kept in my prisoner's file record were not seen for which I decided to prepare another application for extension of time for review under rule 10 of the Court of Appeal Rules, 2009."

The application was on the other hand vehemently resisted by the respondent Republic in the affidavit in reply sworn by Catherine Gwaltu, learned State Attorney.

When the application was called on for hearing, the applicant who appeared in person fending for himself adopted the notice of motion together with the averments deposed in the affidavit filed in support of the same. On the basis and strength of the contents in the supporting affidavit he urged the Court to grant the application sought.

On the other hand, Ms Annarose Kasambala, learned State Attorney for the respondent Republic resisted the application. Her submission was basically that no sufficient grounds have been advanced to warrant the Court grant the application sought. At best, according to her, citing the unreported case of **Mela Sango V. R**, Criminal Application No. 5 of 2015, the blame to the Prison Authority as the source of the delay does not amount to sufficient cause as there was no affidavit from the Prison authority to support and substantiate his averments.

In rejoinder submission, the applicant reiterated his position that the grounds he had shown in his affidavit are good cause for extension of time.

I have carefully considered the arguments both in support and against the application. This Court faced a similar situation in the case of **Mela Sango** (*supra*) and in determining the same stated;

"...the applicant has attempted to shift the blames for the delay to the prison authority that, they were the ones who misplaced his earlier application by not lodging it in Court. Such an excuse however, could stand to hold water, if it were to be supplemented by an affidavit from the Prison Authority. The absence of such supplementary affidavit leaves the contention by the applicant bald and unsubstantiated and therefore, of little assistance if any."

I fully subscribe the view expressed in that case. As to the case at hand, in the absence of the affidavit from the Prison Authority to substantiate the averments in the affidavit in support of the application, then, the application is apparently with no good cause.

That is not all. In the application for extension of time to file review, the applicant is duty bound to show grounds of review as it was held in the case of **Eliya Anderson versus R**, Criminal Application No 3 of 2011 (unreported) where this Court had this to say:-

"I believe it would not be a monstrous justice to hold that an application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavital evidence, at that stage, either implicitly or explicitly, that the review application would be predicated on one or more of the grounds mentioned in Rule 66(1), and not on mere personal dissatisfaction with the outcome of the appeal, which appears patently to be the case in this application. If we want to remain truly faithful to the much cherished public policy which calls for finality to litigation and certainty of the law as declared by the court of last resort, then we cannot divorce the application of the strict provisions of Rule 66(1) from proceedings of this type."

Since the applicant has not complied with the strict provisions of Rule 66 (1) as expressed in the preceding cited authority herein above, the application in the circumstance lacks merit.

That said and done, this application is devoid of any good cause for purposes of extension of time to apply for review. It is accordingly dismissed.

DATED at **MBEYA** this 12th day of December, 2018.

R. E. S. MZIRAY
JUSTICE OF APPEAL

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



A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL