IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

CRIMINAL APPLICATION NO. 4/06 OF 2016

LAURENO MSEYA ..... APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Application from the decision of the Court of Appeal of Tanzania, at Mbeya)

(Rutakangwa, J. A.)

dated the 8th day of May, 2014
in
Criminal Application No. 8 of 2013

RULING

3rd & 7th December, 2018

MMILLA, J. A.:

This is an application for extension of time within which to file an application for reference, focus being of the ruling of a single judge of the Court (Rutakangwa, JA (Rtd)). It is made under Rules 10, 4 (1), 48 (1), (2) and 62 (1) (a) of the Court of Appeal Rules, 2009 (the Rules). It is brought by way of Notice of Motion, and is supported by an affidavit sworn by the applicant himself.

The brief background facts of this matter are that in 2014, the applicant filed an application for extension of time within which to file an application for review, the target having been the decision of the Court in Criminal Appeal No. 430 of 2007. On 8.5.2014, a single judge of the Court (Rutakangwa, J.A.) dismissed the application. Dissatisfied, the applicant filed Criminal Application No. 2 of 2014 seeking to review the decision of the said single judge. The Court (Othman, C. J., Kimaro, and Mugasha, JJA.) struck it out for being incompetent. He did not give up and filed the present application.

In the present matter the applicant avers that he delayed to file the application for reference to contest the decision of the single judge on the ground that the Deputy Registrar (F. J. Kabwe) did not inform him that if he was not satisfied with that decision he was at liberty to apply informally to the justice at the time the decision was handed down or by writing to the Registrar within a period of seven (7) days.

Before me, the applicant appeared in person and was not defended. On the other hand, Mr. Ofmedy Mtenga, learned State Attorney, represented the respondent/Republic.

In his brief oral submission, the applicant urged the court to adopt his affidavit in support of the application. He also requested the Court to grant this application so that he could ultimately be heard in the substantive matter for review. He impressed that he has been pursuing this right since 2009, and that though several of his applications have been struck out for one reason or the other, he still believes that this final Court on the land will be persuaded to give him a chance to be heard.

On the other hand, Mr. Mtenga resisted the application. In the first place, he contended that the applicant has not given good cause for the delay. He said under Rule 62 (1) (a) of the Tanzania Court of Appeal Rules, 2009, a party is required to apply for reference from the decision of a single judge within a period of seven (7) days, but that the applicant is attempting to do so after almost a period of two (2) years without any sufficient explanation why he inordinately delayed. He referred the Court to the case of **Philemon Mang'ehe t/a Bukine Traders v. Gesbo Hebron Bajuta**, Civil Application No. 8 of 2016, CAT (unreported), in which factors to be taken into consideration when deliberating whether or not to grant the application for extension of time were revisited that is, the length of

delay, the reason for the delay, among others. Mr. Mtenga added that if the applicant did not know the demands of Rule 62 (1) (a) of the Rules, he ought to have enlisted the assistance of the prison officers. He urged the Court to dismiss this application.

On Court's probing, Mr. Mtenga stated that he was aware that the applicant has been playing in the corridors of the Court since 2009 pursuing justice on this matter, but that he has always been doing it in abrogation of the governing rules. He insisted that every citizen on the land is enjoined to follow the laid down laws, rules and regulations. He reiterated his prayer for the application to be dismissed.

I have carefully considered the competing arguments of the parties in this application. Foremost, I wish to re-emphasize that the decision whether or not to grant the application for extension of time under Rule 10 of the Rules is dependent upon the party seeking such an order assigning sufficient cause for having not done what ought to have been done within the time prescribed by the relevant statute – See **Michael Lessani Kweka v. John Eliafye** [1997] T.L.R. 152. In essence, this entails that there must be material before the Court on the basis of which to exercise

such power – See the case of **Ratnam Cumarasamy** (1965) 1 WLR 8, a case which was adopted by the Court in **Kalunga and Company Advocates v. National Bank of Commerce Ltd** [2006] T.L.R. 235. In **Ratnam Cumarasamy** case, the Supreme Court of Malaya stated that case that:-

> *"The rules of court must, prima facie, be obeyed, and, **in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion.** If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation."*

With this in mind, the begging question in the present case is whether the applicant has advanced sufficient cause for the delay.

As already stated, the main ground advanced by the applicant is that the deputy Registrar (F. J. Kabwe) did not inform him that if he was not satisfied with that decision he was at liberty informally to the single justice at the time the decision was handed down or by writing to the Registrar within a period of seven (7) days.

I think there must be drawn a line between instances where the law casts a duty to the courts to explain certain rights of the parties/accused persons, such as explaining to them the right to appeal and the like. Unfortunately, matters of revision and review are not amongst them. Thus, I agree with Mr. Mtenga that this ground is not plausible because the Registrar had no legal duty to do so.

On the other hand, Criminal Application No. 2 of 2014 in which he sought for review of the decision of the single justice was struck out in 2014. Unfortunately, the applicant remained quiet until on 30.6.2016 when he filed the present application. However, he has not accounted for that period between 2014 and 30.6.2016. Why was he inactive for all that period? – See the case of **Aluminium Africa Limited v. Adil Abdallah Dhiyebi,** Civil Appeal No. 6 of 1990 (unreported) in which the Court emphasized that the applicant has to account for everyday of the delay.

On that basis, I cannot avoid the conclusion that such an inordinate delay constitutes failure to show good cause for the delay. I reiterate the Court's often stand that rules are there to be followed – See the case of **Wankira Benteel v. Kaiku Foya,** Civil Reference No. 4 of 2000, CAT (unreported) in which it was observed that:-

> *"Generally, rules of procedure must be adhered to strictly unless justice clearly indicates that they should be relaxed as was held in EDWARDS v. Edwards (1968) 1 W.L.R. 149, where at page 151 the Court said:-*
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> *"So far as procedural delays are concerned, Parliament has left discretion in the courts to dispense with the time requirements in certain respects. That does not mean however, that the rules are to be regarded as, so to speak, antique timepieces of an ornamental value but of no chronometric, so that lip service only need to be paid to them. On the contrary, in my view, the stipulations which Parliament has laid down or*

sanctioned as to time are to be observed unless justice clearly indicates that they should be relaxed."

In a nutshell, since the applicant has not accounted for the whole period between 2014 and 30.6.2016, this application lacks merit and is accordingly dismiss.

DATED at **MBEYA** this 6th 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