

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

CRIMINAL APPLICATION NO. 3 OF 2016

(CORAM: MBAROUK, J.A., NDIKA, J.A., And MWAMBEGELE, J.A.)

ARMAND GUEHI..... APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for review from the Judgment of the Court
of Appeal of Tanzania, at Arusha)**

(Kimaro, Luanda, Mmilla, JA.)

Dated the 28th day of January, 2014

in

Criminal Appeal No. 242 of 2010

RULING OF THE COURT

11th July, 2018

MWAMBEGELE, JA.:

At the hearing of the application for review today, the applicant appeared in person, unrepresented. Ms. Tarsila Gervas and Mr. Charles Kagirwa learned State Attorneys joined forces to represent the respondent Republic. The respondent Republic had, earlier on, on 04.02.2018 to be particular, lodged a three point Notice of Preliminary Objection (the PO).

When we called upon the respondent Republic to argue the PO, Ms. Gervas sought to withdraw the second and their points. She argued the first point only whose gist was to the effect that this application for review was hopelessly out of time. She argued that the judgment sought to be challenged was delivered on 28.02.2014 while the Notice of Motion in the present application was lodged on 18.07.2016 which was hopelessly out time. This offended Rule 66(3) of that of Tanzania Court of Appeal Rules, 2009 (the Rules)

which sets 60 days as limitation. The learned State Attorney thus beckoned upon the Court to strike out the incompetent application.

For his part, the applicant responded that the Ruling of this Court which was delivered on 20.05.2016 granted him permission to forbear with the law on limitation. That is the Court allowed him to file the present application without seeking and obtaining enlargement of time. In view of the fact that he lodged the application on 18.07.2016, and in further view of the fact that the Ruling of the Court was delivered on 20.05.2016, that was well within 60 days prescribed by Rule 66(3) of the Rules, he argued. The application was therefore filed timeously, he stated.

In a short rejoinder, Ms. Gervas submitted that the Ruling of the Court delivered on 20.05.2016 did not exempt the applicant from complying with the law of limitation. She thus reiterated the prayer to have the incompetent application struck out.

We have considered the rival arguments by both parties. We hasten to remark that we are in agreement with the learned State Attorney that the present application was not filed timely. We have read our Ruling of 20.05.2016. In the last paragraph of that Ruling, we plainly stated that the appellant was at liberty to file a fresh application for review subject to the prevailing law on limitation. We have seen nowhere in that Ruling exempting the applicant from complying with the law on limitation. We are of the considered view that the applicant misconceived our Ruling delivered on 20.05.2016.

In the upshot, we find and hold that the Preliminary Objection is meritorious. We sustain it. Consequently, we strike out the incompetent

application. We add a remark that the applicant is at liberty to lodge a fresh application for review, subject, of course, to the prevailing law on limitation.

It is so ordered.

DATED at **ARUSHA** this 10th day of July, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL