

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

CRIMINAL APPLICATION NO. 6 OF 2016

EMMANUEL MALAHYAAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(An Application for Extension of time to lodge a Review against the
Judgment of the Court of Appeal of Tanzania at Tabora)**

(Ramadhani, CJ. Mroso, J.A, Munuo, J.A.)

dated 30th day of September, 2008
in
Criminal Appeal No. 212 of 2004

RULING

24TH & 29TH August, 2018

LILA, J.A.

By way of a notice of motion, which is predicated under Rule 10 of the Court of Appeal Rule, 2009 (the Rules), the applicant is seeking for extension of time within which to file an application for review against the judgment of the Court (Ramadhani, CJ, Mroso, JA and Munuo, JA. as they then were) dated 30th day of September, 2008 in Criminal Appeal No. 212 of 2004. The application is supported by an affidavit of Emmanuel Malahya, the applicant.

The grounds advanced by the applicant can well be discerned in paragraphs 3 and 4 of the affidavit in support of the application. The paragraphs states as hereunder:-

"3. THAT: I dissatisfied further, and at the result I prepared an application for review which was lodged in the court vide reference No. 209/TB/I/VI/200 dated 26/11/2012 but was revealed that that my application at the court of appeal was incompetent as the grounds were put in the affidavit instead in the notice of motion, this was in a year 2016 (after the visit of the Deputy Registrar, Tabora Registry in prison) then advised me to prepare another one required by law out of time upon extension of time.

4. THAT: Since I am innocence, a prisoner under custody, a stiff sentence, I humbly pray my application for review out of time be allowed by extending time prescribe by law and prepare a fresh application for review as the delay was out of my will."

The respondent Republic filed an affidavit in reply in which they strongly resist the application.

When the application was called on for hearing the applicant appeared in person and was unrepresented whereas the respondent

Republic enjoyed the services of Mr. Rwegira Deusdedit, learned State Attorney.

Following what now seems to be usual, the learned State Attorney was first to argue the application. That was a result of the applicant electing to respond after the State Attorney had argued.

At first, Mr. Rwegira resisted the application on the ground that there was no proof that the applicant had earlier on filed a similar application but was struck out by the Court for being incompetent. However upon seeing a copy of such application he withdrew his objection and conceded that the applicant did not sleep on his rights after his appeal to the Court was dismissed.

In reply, the applicant had it that immediately after his appeal to the Court was dismissed he lodged an application for review but the same was dismissed by the Court for being incompetent. That it was then when he became late hence filed the present application. He availed the Court and the State Attorney with a copy of the Court order which struck out the former application.

As indicated above the present application has been preferred under Rule 10 of the Rules which govern the Court's power to hear and determine applications of this nature. Rule 10 provides:

"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 so extended."

It is crystal clear that the Court has discretion to grant extension of time to a person who shows good cause for failure to do an act required by the Rules to be done within a specified time.

The above, notwithstanding, the Court is required to exercise the discretion judiciously. It is for this reason that the Court had an occasion to state the factors to be considered by the Court in the course of exercising its discretion in the case of **Henry Muyaga v. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011 (unreported) which was cited in **Henry Leonard Maeda and Another v.**

Ms. John Anael Mongi, Civil Application No. 31 of 2013. The Court stated thus:-

"In considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."

In the present application the crucial issue to be determined is whether or not the applicant has given sufficient cause for the delay to warrant this Court to exercise its discretion to extend the time to file an application for review.

The main reason given for the delay is found at paragraphs 3 and 4 of the affidavit. It is evident from the record that the applicant filed the earlier application within time but was struck out by the Court for incompetence. Later, however, it is averred at paragraph 3 that when the Deputy Registrar, Tabora visited prison, he advised the applicant to file another, but proper, application. But as he was already late he filed the present application.

In my view, the reasons given by the applicant at paragraphs 3 and 4 of the affidavit suffice to be *good cause* for the application to be granted.

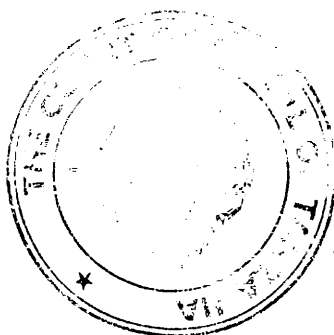
It is beyond doubts that the applicant did not sleep on his rights. His efforts to have the Court sit and reconsider its findings in its earlier decision ended in his former application for review being struck out. A copy of the Court's order to that effect is explicitly clear on that. The application was struck out for incompetence not on account of being time barred. That presupposes that it was lodged within time. Despite the applicant being a prisoner under restraint he was able to make all those efforts. He, therefore, acted promptly after the Court's decision was pronounced.

Given the circumstances, the application is hereby granted. The applicant is given sixty (60) days from the date of delivery of this ruling within which to lodge in Court an application for review.

DATED at TABORA this 27th day of August, 2018.

S. A. Lila
JUSTICE OF APPEAL

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




A. H. Msumi
DEPUTY REGISTRAR
COURT OF APPEAL (T)