

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

CRIMINAL APPLICATION NO. 5 OF 2016

YASINI RASHID MAIGE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time to lodge review against the decision
of the Court of Appeal of Tanzania at Tabora)**

(Kimaro, Mandia, And Kaijage, JJ.A.)

**dated the 19th day of April, 2013
in**

Criminal Appeal No. 461 of 2007

RULING

24th & 31st August, 2018

MUSSA, J.A.:

In the District Court of Urambo, the applicant was, arraigned and convicted of armed robbery contrary to section 285 and 286 of the Penal Code, Chapter 16 of the Revised Laws. Upon conviction, he was sentenced to a term of thirty years imprisonment with a corporal punishment of twelve strokes of the cane. In addition, the applicant was ordered to compensate the victim of the offence a sum of Shs. 45,000/= for the unrecovered stolen property. The applicant was aggrieved but his first appeal to the High Court was dismissed in its entirety (Mziray, J., as he then was).

Undaunted, the applicant preferred a second appeal to this Court which was, similarly, dismissed in its entirety (Kimaro, Mandia, Kaijage, JJ.A.) on the 19th April, 2013. The applicant then dawdled along up until the 31st May, 2016 when he preferred the application at hand through which he seeks an extension within which to challenge the April 19th decision of the Court by way of review. The application is by way of a Notice of Motion which has been taken out under Rules 10 and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit which was duly sworn by the applicant on the 2nd May, 2016. In the referred affidavit, the applicant assigns the following reasons for his delay:-

- "1. That, I am a sole application (sic) in this instant application, hence conversant with what I am deposition here below.*
- 2. That, on 19.4.2013 my appeal was dismissed, being dissatisfied with the said decision I dully prepared my application for Review and forwarded it to the Deputy Registrar through letter with reference number 209/TB/I/VII/32 Dated on 11.5.2013. But no any record (sic) which was issued me the result of my Review or*

even the progress of my Review hence this delay occurred.

3. That, the reasons attributed to this delay was due to the Deputy Registrar for failure to inform me the result of my Review or even the progress of my Review hence this delay occurred.

4. That, the very person to answer this question to why my Review was not yet received is of the Deputy Registrar where my Review was misplaced.”

From the adversary side, the respondent Republic has resisted the application through an affidavit in reply which was duly sworn by Mr. Ildephone Mukandara, learned State Attorney, on the 20th August, 2018. In effect, the learned State Attorney faults the applicant for not bringing to the fore material evidence to fortify his claim that he previously filed an application which was misplaced by the office of the Deputy Registrar.

At the hearing before me, the applicant was fending for himself, unrepresented, whereas the respondent had the services of the already named Mr. Mukandara who was being assisted by Ms. Gladness Senya, also learned State Attorney. As it turned out, the applicant fully adopted

the Notice of Motion as well as his affidavit in support. Mr. Mukandara similarly adopted, without more, his affidavit in reply.

If I may express at once, the applicant's claim that he previously filed an application which was misplaced by the officers of the Deputy Registrar, stands unsubstantiated. The applicant could have easily established the fact by prompting the affidavits of the prison officer who prepared and transmitted the alleged application as well as that of the officer of the Deputy Registrar who supposedly received the same. Such details are amiss and, to me, the applicant has not shown any good cause to deserve the requested extension.

All said, I find this application to be bereft of merits and, accordingly, the same is dismissed.

DATED at **TABORA** this 30th day of August, 2018.

K. M. MUSSA
JUSTICE OF APPEAL

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


A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL