

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

CRIMINAL APPLICATION NO. 42/08 OF 2017

DISMAS S/O BUNYERERE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time to file Review out of time, arising
from the decision of the Court of Appeal of Tanzania
at Mwanza)**

(Msoffe, Kimaro And Juma, JJ.A.)

**Dated the 31st day of July, 2013
in
Criminal Appeal No. 102 of 2011**

.....

RULING

20th & 27th April, 2018

MKUYE, J. A.:

The applicant, Dismas Bunyerere, by way of a Notice of Motion filed on 13/4/2017 under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), seeks for an extension of time to lodge an application for review of the decision of the Court (Msoffe, Kimaro And Juma, JJ.A) dated 29/4/2013 in Criminal Appeal No. 102 of 2011. The Notice of Motion is supported by an affidavit deposed by the applicant himself and a supplementary affidavit of E. C. Masinde, the Assistant Superintendent of Prisons stationed at Butimba Central Prison, both sworn on 12/4/2017.

The grounds for the application as can be gleaned from paragraphs 2 and 3 of the Notice of Motion which are a bit mixed up are extracted as follows:-

- "1. There was an application for review of the judgment of the Court, which was struck out for being incompetent because of non-citation of the law.*
- 2. The application will hinge on Rule 66 (1) (a) and (3) of the CAT Rules, 2009 that the decision of the Court was based on a manifest error on the face of the record resulting in the miscarriage of justice"*

The respondent filed an affidavit in reply deposed by Mr. Lameck Merumba in which he did not resist the application.

At the hearing of the application, the applicant appeared in person and unrepresented; and the respondent Republic was represented by Mr. Lameck Merumba, learned Senior State Attorney.

Submitting in support of the application, the applicant, in his endeavor to show the reason for delay contented that he had lodged and prosecuted an application for review he had filed within time limit but the same was struck out by the Court for being incompetent because of non-citation of the law. He also adopted his affidavit in support of his

application, in which under paragraph 2 of the same, he has stated that there is an error apparent in the face of the record in Criminal Appeal No 102 of 2013 which was dismissed on 29/7/2013. For those reasons he prayed for his application to be granted.

On his part, Mr. Merumba did not object the application. He was of the view that, since the applicant's initial application for review which he had filed within time was struck out by the Court, it constituted a good cause of delay. He added that, the applicant has indicated the provisions of Rule 66 (1) (a) and (3) of the Rules on which the intended application would be predicated. He said, the grounds shown by the applicant cannot constitute a good cause. To support his proposition, he cited the case of **Kalunga and Company Advocates v National Bank of Commerce Ltd**, [2006] TLR 235. He, thus, urged the Court to grant the application.

It is now settled law that in an application for extension of time to file an application for review, the applicant has to satisfy not only that there is/are sufficient reason(s) for delay but must also show under which ground under Rule 66 (1) of the Rules, his application for review will be premised if the extension of time being sought is granted. These two requirements must be met conjunctively and not disjunctively in the

applications of this nature. This stance was emphasized in the case of **Hamza Ramadhani @ Burutu Vs. Republic**, Criminal Application No. 2 of 2013 (unreported) when the Court stated:-

*"Rule 10 governing extension of time **upon good cause being shown must for purposes of extension of time to apply for review, relate to the grounds for review set down under Rule 66 (1).**"*

[Emphasis added]

Matters relating to extension of time are governed by Rule 10 of the Rules. Under that Rule, extension of time to do something can be granted only if good cause for the delay is shown. The said Rule provides as follows:-

*"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."*

[Emphasis added].

The applicant's reason for delay as can be gleaned from the 2nd and 3rd grounds of review and paragraphs 2 and 3 of the affidavit is that, he was prosecuting an initial application for review he had filed in time against the decision of the Court which dismissed his Criminal Appeal No. 102 of 2013 on 29/7/2013. Unfortunately, the said application was struck out by the Court for being incompetent because of non-citation of the law. This clearly shows that the applicant was not idle. After being disturbed by the Court's decision he took an action by lodging an application for review in his endeavour to pursue his right.

Certainly, prosecuting another case can in certain circumstances amount to a good cause for the delay. (See **Fortunatus Masha vs. William Shija and Another**, [1997] TLR 154 (CA)). Even in this case, it is my view that, since the applicant's initial application for review which was filed on time was struck out by the Court for being incompetent, it constitutes a sufficient reason for the delay.

But again, as already hinted earlier on, in an application for extension of time to file an application for review, the applicant is also required to indicate that the intended application for review will base on any of the grounds of review as stipulated under Rule 66 (1) (a) to (e) of the Rules. This stance was emphasized in the case of **Charles Barnabas vs.**

Republic, Criminal Application No. 13 of 2009 (unreported) where this Court stated thus:-

*"In an application for extension of time to apply for review, an **applicant must indicate in his notice of motion or supporting affidavit which of the grounds of review under Rule 66 (1) he intends to rely on should the Court grant an extension of time.**"*

[Emphasis added].

Likewise, the same principle was restated in the case of **Nyakia Orondo vs. Republic**, Criminal Application No. 2 of 2014 when the Court stated:-

*"As restated by the Court in **Eiyya Anderson vs. Republic**, Criminal Application No. 2 of 2013 (unreported) 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 also established** by affidavit evidence, at the state of extension of time, either implicitly or explicitly, **that if extension is granted, the review application would be predicted on one or more of the grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66 (1).**"*

[Emphasis added].

The grounds for review referred to in Rule 66 (1) of the Rules are as follows:-

- "1. That the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or*
- 2. that, a party was wrongly deprived of an opportunity to be heard; or*
- 3. that the Court's decision is a nullity; or*
- 4. that the Court had no jurisdiction; or*
- 5. that the judgment was procured illegally, or by fraud or perjury."*

In this case the applicant has shown in the application that the application will base on Rule 66 (1) (a) of the Rules should the extension of time be granted. He also elaborated that the decision sought to be impugned was based on a manifest error on the face of the record which resulted in the miscarriage of justice. This claim which is raised by the applicant, imputes an illegality.

I am alive that in the case of **Principal Secretary, Ministry of Defence v Valambhia**, [1992] TLR 182, this Court extended the time for purpose of ascertaining illegalities in the impugned decision. It stated:


*"When the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record straight. (See also **Kalunga and Company Advocates v National Bank of Commerce (supra)**)"*

From the foregoing, since the applicant has shown a good cause for the delay and has also predicted that the intended application will base of Rule 66 (1) (a) of the Rules which imputes illegality, I agree with both applicants and Mr. Merumba that the application has merit. Hence, the applicant is granted extension of time to file his application for review. The application is to be filed within 30 days from the date when this Ruling is delivered.

DATED at MWANZA this 24th day of April, 2018.

R. K. MKUYE
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL