

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CRIMINAL APPLICATION NO. 8/08 OF 2017

ABDALLAH SOSPETER @ MABOMBA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Mrosso, Lubuva, Rutakangwa, JJJ.A.)

dated the 19th day of March, 2007

in

Criminal Appeal No. 178 of 2004

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RULING

29th June & 11th July, 2018

MMILLA, J.A.:

The applicant is moving this Court under Rules 10 and 48 of the Tanzania Court of Appeal Rules, 2009 (the Rules), seeking an extension of time to file an application for review focusing on the decision of the Court in Criminal Appeal No. 178 of 2004 dated 19.3.2007. It is supported by an affidavit sworn by the applicant himself.

The reasons for the delay are stated in paragraphs 5 and 6 thereof. Briefly, he has stated that he delayed to file the application for review

because he was not informed of his right for review at the time the judgment of the Court was delivered, and that at the time he became aware of this right, he realized that he was already out of time.

When this application came for hearing before the applicant appeared in person and fended for himself; whereas the respondent/Republic enjoyed the services of Mr. Hemed Halid Halfani, assisted by Ms Dorcas Akyoo, learned State Attorneys. The applicant elected for the respondent to submit first, undertaking to respond thereafter if need would arise.

In paragraph 6 of his affidavit in reply, Mr. Hemed Halid Halfan was forceful that the applicant has failed to assign sufficient cause for the delay to attract the Court to grant the application.

In his oral submission, Mr. Halfani contended that the applicant ought to have indicated either in his notice of motion or in his affidavit that if the Court grants his application, he will rely on whichever aspect among those shown under Rule 66 (1) clauses (a) to (e) thereof. He submitted that that was not done. As such, he went on, if the Court will agree with

him on that aspect, the applicant should be regarded as having failed to show good cause. He urged the Court should dismiss the application.

He submitted further that the reason that he was not informed of his rights for review is baseless. This is because, he said, the Court had no duty to inform the applicant that he had the right to apply for review because review is not as of right, but is optional.

Even, he submitted that the appellant did not say in his affidavit when exactly he became aware of what he termed as his rights for review. Given the fact that the applicant took about 10 years from the date the judgment was delivered, he contended, it was crucial for him to state in his affidavit the exactly date he became aware so that the Court may find out the nature of the delay. Mr. Halfani reiterated that the applicant has failed to show good cause for the application to be granted. He therefore asked the Court to dismiss it.

The applicant conceded that he did not indicate anywhere in his application that he will rely to whichever clause(s) under Rule 66 of the Rules he intended to rely on. He said that he did not do so because he is a

lay person, and a prisoner who normally depend on the assistance prison's lawyers.

Regarding the delay, he submitted that he did not file such an application in time because he was not aware of such a chance and that he became aware sometime in 2016. He therefore prayed for the Court to allow the application.

I have carefully gone through the submissions of both parties. Rule 10 of the Rules is clear that in order for the Court to exercise its powers to extend time, the applicant must show good cause for the delay. See the cases of **Salum Nhumbili v. Republic**, Criminal Application No. 8 of 2014, CAT and **William Ndingu @ Ngoso v. Republic**, Criminal Appeal No. 3 of 2014, CAT (both unreported).

As correctly neither submitted by Mr. Halfani however, neither in the notice of motion nor in the affidavit shown that if the Court grants his application, the applicant intends to rely in whichever aspect among those shown under Rule 66 (1) clauses (a) to (e) thereof. That was a serious anomaly - See the case of **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013, CAT (unreported) in which it was stated that:-

"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 has 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 predicated on one or more of the grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66 (1)."

As already stated, that was not done in the present application.

Again, I agree with Mr. Halfani that the applicant's reason that he was not informed by the Court that he had a right to file for review is baseless. The Court had no such a duty and filing for review is, but optional. Thus, the point raised does not amount to good cause as required under rule 10 of the Rules.

Since I have said that the applicant has not shown good cause as contemplated by Rule 10 of the Rules, and because he did not also show anywhere in his application, which clause under Rule 66 (1) (a) – (e) of the Rules is intending to rely upon if the Court grants his application, it goes without saying that he has failed to convince the Court to exercise its

powers for extension of time. Consequently, I have no other option but to dismiss the application as I accordingly do.

DATED at **MWANZA** this 9th day of July, 2018.

B. M. MMILLA
JUSTICE OF APPEAL

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


B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL