

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

CRIMINAL APPLICATION NO. 1 OF 2016

**1. ALLY KINANDA
2. SILVANO HENLY
3. ABUBAKAR JAMLA @ JAMBI****APPLICANTS**

VERSUS

THE REPUBLIC..... RESPONDENT

**(Application for Extension of time to Apply for Review from
the Judgment of the Court of Appeal of Tanzania)
at Dodoma**

(Kileo, Bwana, Oriyo, JJA.)

dated the 6th day of April, 2011

in

Criminal Appeal No. 206 of 2007

RULING

4th & 16th July, 2018

MWARIJA, J.A.:

The applicants, Ally Kinanda, Silvano Henry and Abubakari Jambia (hereinafter the 1st, 2nd and 3rd applicants respectively), were the appellants in Criminal Appeal No. 206 of 2007 which was decided by this Court on 6/4/2011. The appeal was against the decision of the High Court of Tanzania sitting at Dodoma in (DC). Criminal Appeal No. 40 of 2006. In that appeal, the High Court upheld the decision of the District Court of Mpwapwa in Criminal case No. 269 of 2003 in which the applicants were

convicted of the offence of armed robbery and sentenced each to thirty years imprisonment. The 1st applicant was in addition convicted of the offence of wearing police uniform without authority and sentenced to three months imprisonment. The said appeal to this court was dismissed.

The applicants sought to challenge the Courts decision and thus filed an application for review, Civil Application No. 5 of 2011. That application was however, struck out because it contravened the provisions of Rule 49(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) in that, the notice of motion was supported by a defective affidavit.

The applicants' quest for challenging the Court's decision did not end up there. They still desire to file an application for review but since after the striking out of their first application, time was not on their side, they have preferred the present application. Although the record does not expressly reveal, the applications were consolidated in Civil Application No. 1 of 2016. In the applications, which were brought under *inter alia*, Rule 10 of the Rules, the applicants are seeking an order granting them extension of time to file an application for review out of time.

At the hearing, the applicants were represented by Mr. Godfrey Wasonga, learned counsel whereas the respondent Republic was represented by Ms Salome Magesa, learned State Attorney.

Initially, before his advocate had appeared, the 1st applicant adopted his notice of motion and his supporting affidavit. He prayed that his application be granted. When Mr. Wasonga appeared, he proceeded to argue the application on behalf of all the applicants. He submitted that, the applicants' common ground is that the delay in filing the intended application for review resulted from the cause which led to the striking out their previous application. He submitted that the application was filed within the prescribe time but the same was struck out because it was supported by a defective affidavit. According to the learned counsel, the defect occurred because the applicants did not have legal assistance. In the circumstances, Mr. Wasonga argued that such factor constitutes a sufficient cause for extension of time. He did not however, cite any authority to support his argument that failure to comply with the

requirements of the law for lack of legal assistance constitutes a sufficient cause for a delay.

On her part, Ms Magesa opposed the arguments put forward by the applicants' counsel. She argued that the applicants had failed to establish a sufficient cause for the delay in filing the intended application for review. It was her submission that neither the reason that the applicants had previously filed their application for review within time nor the fact that they did not have legal assistance leading to the filing of an incompetent application, are not sound reasons for granting the extension of time. She disputed the ground that the defect in the struck out application was due to the applicants' failure to get legal assistance. According to the learned State Attorney, the applicants had such services from the prison officials.

From the applicant's identical notices of motion and the accompanied affidavits as well as the submissions of their learned counsel, the applicants are relying on want of knowledge of law as the cause for their delay in filing the intended application. In their notices of motion, the applicants state as follows:-

- "1. That, the applicant upon being convicted and circumstance of him being in prison, lacked legal assistance to peruse (sic) this remedy as being the only remedy availed by law in the nature of his case.
2. Upon the remiss (sic) and omission, that occurred by matters that the applicant without legal counsel was unable to overcome, wherefore the court its discretion should consider this application on its merits and grant the same."

Supporting these grounds, each of them states as follows in paragraphs 7 and 8 of their respective affidavits:

"7. That, and on 19/4/2016 the application was fixed for hearing and unfortunately enough the [application] was struck out on the ground that I did not follow the requirement of the law.

8. That, **such defect was due to the**

lack of legal assistance." [Emphasis added].

From the ground which has been relied upon by the applicants, the issue is whether ignorance of law constitutes sufficient cause for granting extension of time. The answer is readily in the negative. Authorities to that effect are abundant. For example, in the case of **Ngao Godwin Losero v Julius Mwarabu**, Civil application No. 10 of 2015 (unreported), the Court had this to say:

*" As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salugi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."*

The cause of the delay relied upon by the applicants; that they did not have legal assistance when they filed the struck out application for review is therefore, not acceptable. As submitted by Ms. Magesa, they ought to have sought legal assistance from the prison officials as they apparently did in the present application.

In the result, this application is hereby dismissed for want of merit.

DATED at DODOMA this 16th day of July, 2018.

A.G.MWARIJA
JUSTICE OF APPEAL

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



E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL