

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

CRIMINAL APPLICATION NO. 101/13 OF 2018

NARZIS LUAMBANO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time to lodge Review out of
time from the decision of the Court of
Appeal of Tanzania at Iringa)**

(Mbarouk J.A., Mmilla J.A., And Mwarija J.A.,)

**Dated the 21st day of August, 2015
in
Criminal Appeal No. 198 of 2015**

RULING

30th April, & 8th May 2019

WAMBALI, J.A.:

The appellant, Narzis Luambano was charged and convicted before the Court of Resident Magistrate of Songea Ruvuma Region of the offence of incest by male contrary to section 158(1) (a) of the Penal Code Cap. 16, R.E 2002. His first appeal, through Criminal Appeal No. 06 of 2015 was dismissed by the High Court (Kwariko J.) on 30th March, 2015. The applicant was seriously aggrieved and he preferred a second appeal to this Court which was found to be devoid of merit and was on 20th August, 2012 accordingly dismissed in its entirety. Nevertheless, the applicant was not satisfied with that decision as he lodged Criminal

Application No 4 of 2015 in which he sought the Court to review its judgment. However, that application was struck out for being incompetent after it was confronted by a preliminary objection from the respondent Republic.

Still determined to pursue justice, he has now brought the current application seeking extension of time to apply for review out of time against the decision of the Court. The application is by notice of motion preferred under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is also supported by the applicant's affidavit. Essentially, the affidavit which the applicant deposed contains some reasons explaining the cause of delay which he considers as his good cause to support his prayer for extension of time.

At the hearing, the applicant appeared in person, unrepresented, whereas Ms. Tumaini Ngiruka, learned State Attorney represented the respondent Republic.

When he was invited to submit in support of the application, the applicant reiterated his position that the reasons he has shown in his affidavit demonstrate good cause for extension of time. He also pointed out that he is a prisoner who depends in everything on the prison authorities and that soon after his application for review was struck out by the Court on 9/10/2017, he took all the necessary steps to inform the

responsible prison officer of his intention to file the application for extension of time within which to file review out of time. He thus prayed that the Court be pleased to grant the order sought.

On her part, the learned State Attorney for the respondent Republic resisted the application on account that the applicant has failed to meet the requirements stipulated under the provisions of Rule 10 of the Rules. She argued that in terms of Rule 10 of the Rules, the Court can grant extension of time if the applicant gives a convincing account of each of the delayed days from 9th October, 2017 to 06th August, 2018 when he filed the present application. She emphasized that in the current application and the affidavit sworn by the applicant, the major reason for the delay is that he is a prisoner who depends on everything to the prison authorities. In her view, such ground cannot fall within reasonable cause as envisaged under Rule 10 of the Rules.

It was also the submission of Ms. Ngiruka that for the applicant to succeed in an application of this nature, he was required to show either in his notice of motion or in his affidavit that, if the Court grants his application, he will rely on some grounds of review among those shown under Rule 66 (1) paragraphs (a) to (e) thereof, which he has not done. She therefore prayed that the application be dismissed.

At this juncture, what stands for deliberation and determination by the Court in the light of what has been submitted above by both sides is whether the applicant, has advanced good cause for the Court to grant the application for extension of time within which to file an application for review.

In order to appreciate the reasoning that will follow shortly, I feel compelled to reproduce the provisions of Rule 10 of the Rules thus:

"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 doing of the act: any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

As it can be noted from the wording of the provision that has been quoted above, the Court is crowned with an unfettered discretion to either grant or deny extension. Such discretion of the Court however, has to be exercised judiciously. In this regard, this Court in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania**, Civil Application No. 02 of 2010 (unreported), set some guiding factors which

can be considered as good cause to enable the Court to extend time under Rule 10 as follows:

- "a) The applicant must account for all days of the delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

The question which follows thus, is whether the application by the applicant falls in any of the above named factors. It is my considered view that the reasons that have been advanced by the applicant for the delay as shown in paragraphs 4 and 6 of his affidavit in support of the notice of motion, cannot be taken to be good cause to convince the Court to exercise the discretion envisaged in rule 10 of the Rules.

The applicant has failed to account for delay of almost ten months from 9th October, 2017 when his application for review was struck out by

the Court to 6th August 2018 when the current application was lodged in this Court.

Furthermore, I have also taken into consideration the argument that the applicant is a prisoner under custody and that he depends much on the prisons authority. However, the applicant has not stated in his affidavit what efforts were taken from 9th October 2017 to 20th June, 2018 when he signed his notice of motion and handed the same to the prison officer. Thus even if I exclude the period from 20th June, 2018 in which the prisons authority has to bear responsibility, yet he has not explained why he stayed for long time before he handed the application to the responsible prison officer. This means the applicant did not act diligently. I also wish to note that paragraphs 4 and 6 of the applicant affidavit which he relies do not reflect the reality of the fate of his application for review.

As stated earlier on, his application for review was struck out for being incompetent. However, in those paragraphs apart from apportioning the liability for delay on the prisons authority the applicant states that he withdrew his application under rule 58(3) of the Rules. In the circumstances of this application, I do not think, the applicant can successfully blame the prison authority for not taking immediate action, as according to the record, he signed and handed the application to the

responsible prison officer on 20th June, 2018 and the same was lodged on 6th August, 2018. Certainly the prisons authority delayed to submit the application to the Court from 20th June, 2018 to 6th August 2018. The appellant cannot therefore be required to explain the delay during that period as once he handed the application to the responsible prison officer he had accomplished his duty.

However, the applicant has not accounted for the delay from 9th October, 2017 to 20th June, 2018 which is almost a period of nine months. His affidavit is silent on whether he can still blame the prisons authority for this particular period. He has not even stated that he handed the application to the responsible prison officer before 20th June, 2018. Be that as it may, it is the requirement of law that, in an application for extension of time, the applicant has to account for each of the delayed day, which in the current application he has not done.

Moreover, in order to succeed in an application for extension of time to file an application for review out of time, the applicant is required to show not only the reasons for the delay but also to show in the notice of motion and the affidavit in support of the application, which intending ground (s) of review among those set out in Rule 66(1) (a) to (e) of the Rules, he will be relying in pursuing his application for

review if the application for extension of time is granted. As stated earlier, that has not been done in the present application.

In the circumstances of what I have explained above, I do not entertain doubt that the applicant has not advanced any good cause to enable me to exercise the discretion to grant extension of time within which he can lodge an application for review of the decision of this Court.


In the event, I hereby dismiss the application.

DATED at **IRINGA** this 6th day of May, 2019.

F. L. K. WAMBALI
JUSTICE OF APPEAL

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




A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL