

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CRIMINAL APPLICATION NO. 12/01 OF 2017**

**GRAYSON ZACHARIA MKUMBI @ MAPENDO ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Application for extension of time to lodge application for review from the  
decision of the Court of Appeal of Tanzania, at Dar es Salaam)**

**(Mjasiri, Massati Mugasha, JJ.A.)**

**dated the 12<sup>th</sup> day of March, 2004**

**in**

**Criminal Appeal No. 241 of 2015**

.....

**RULING**

10<sup>th</sup> & 17<sup>th</sup> May, 2019

**KITUSI, J.A.:**

Grayson Zacharia Mkumbi @ Mapendo, the applicant, was convicted for murder contrary to section 196 of the Penal Code, Cap 16, by the High Court, Dar es Salaam District Registry sitting at Morogoro. His appeal to this Court was unsuccessful as it was dismissed on 23<sup>rd</sup> May, 2016. He still has a mission up his sleeve, that is, to have the Court's judgment dismissing his appeal, reviewed. However, he is out of the statutory time.

This therefore, is an application for extension of time to enable the applicant apply for the intended review, made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules). It is supported by the applicant's own affidavit.

The prime ground for the application cited both in the Notice of Motion and the affidavit is that the applicant did not get the copy of judgment of this Court within time to enable him apply for review. According to both (Notice of Motion and affidavit) the copy of judgment is an important document to attach to an application for review. This was supplied to him on 12<sup>th</sup> February, 2017, about 8 months after 10<sup>th</sup> June, 2016 when the judgment was delivered.

The respondent Republic did not file any affidavit in reply and when the application was called on for hearing Mr. Ramadhani Kalinga, learned State Attorney representing the said respondent did not contest the application, initially. The applicant was present in person.

In his brief submissions, the applicant almost repeated what is contained in the affidavit filed in support of his application. He stated that as a prisoner he is at the mercy of Prison Authorities to the extent that

they are the ones who would make follow ups for copies of judgments on behalf of inmates. He prayed, for that reason, that the application be granted and time be extended for him to apply for review.

As I intimated, initially Mr. Kalinga did not wish to contest the application until it was suggested by the Court that an application for extension of time to review must go a step further by showing that the intended review is based on one of the grounds under Rule 66 of the Rules. It was then that the learned State Attorney prayed that the application be dismissed for failure to comply with the requirement suggested by the Court.

In his equally brief rejoinder, the applicant stated that he was unaware of that position of the law and that his intended application for review aims at inviting the Court to reconsider the evidence.

This application stands on very thin grounds, a fact which even the applicant, though a lay person, has come to appreciate. While the general rule is that an application for extension of time places a duty on the applicant to satisfy the court on some key factors, applications for extension of time to file an application for review are, I think, an exception.

The general rule is that while there is no cut and dry definition of what amounts to sufficient cause, the following factors repronounced in the case of **Lyamuya Construction Company Limited V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) provide agreed guidelines:-

*"(a) The applicant must account for all the period of 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 sufficient reasons, such as existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

However, those factors apply to all applications for extension of time to take an action except when the intended action is an application for

review. In the latter situation there is more to be done than mere establishing good cause for the delay. In the case of **Elia Anderson V. Republic**, Criminal Application No. 265/01 of 2016 (unreported), it was held:-

*"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 stage of extension of time, either impliedly 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)."*

The case of **Elia Anderson** (supra) was cited in **Tanzania Fish Processors Limited V. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018 (unreported) which cited many other decisions of the Court on the point.

All said, it is clear that this application has established the reason for the delay as being delay in availing the copy of judgment to the applicant. However, neither in the affidavit nor in the applicant's oral submissions is there suggestion that the intended application for review, if extension is granted, will be based on any of the grounds under Rule 66 (1) (a) – (e) of the Rules.

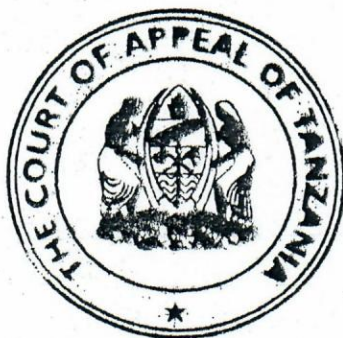
Consequently, this application has no merits, and it is dismissed.


Order accordingly.

**DATED at DAR ES SALAAM this 15<sup>th</sup> day of May, 2019**

I. P. KITUSI  
**JUSTICE OF APPEAL**

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



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**