

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 76/01 OF 2018

JOHN WILLIAM MPAI..... APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Application for extension of time within which to lodge Review
Application from the decision of the Court at Dar es Salaam)

(Ramadhani, Munuo, and Nsekela, JJ. A)

dated the 12th day of October, 2006

in

Criminal Appeal No. 210 of 2004

RULING

15th & 22nd May, 2019

LEVIRA, J.A.:

The applicant, John William Mpai applies for extension of time within which to lodge application for review of the judgment of the Court (Ramadhani, Munuo, and Nsekela, JJ.A) dated 12th October, 2006. The Notice of Motion is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit duly deposed by the applicant. The respondent did not file affidavit in reply and thus, the application is uncontested. The applicant advanced three grounds in the Notice of Motion as the base of this application as follows:

- a) That, the applicant had filed the Notice of Motion for a review within sixty (60) days but the same was struck

out due to the defect in the affidavit of the applicant which lacked jurat attestation.

- b) That, the aforesaid defect was not deliberately done, but was due to the fact that the applicant is a lay, incarcerated and indigent person with no legal education or assistance.

- c) That, if granted leave to lodge the application for a review out of time, the applicant intends to canvass the grounds set forth under Rule 66(1)(a) and (b) of the Rules.

A brief background of this application is that, initially, the applicant timely lodged application for review (Civil Application No. 19 of 2006) before the Court (Mussa, Mugasha and Mkuye, JJ.A) with the intention to challenge the decision of the Court subject of the current application. On 15th May, 2018 the said application for review was struck out for being incompetent as it was accompanied by a defective affidavit; hence, the current application for extension of time to lodge another review application out of time.

At the hearing of the application, the applicant appeared in person, unrepresented whereas, the respondent Republic was duly represented by Mr. Yusuf Aboud, learned State Attorney.

The applicant was availed an opportunity to submit on his application, but he had nothing constructive to elaborate on. He only opted to hear first from the State Attorney and he reserved his right to make a rejoinder.

On his part, Mr. Aboud was quick to point out that the respondent does not oppose this application. He went further submitting that, the applicant's application is based on the application similar to the current one which was struck out for being incompetent as it was accompanied by defective affidavit, as indicated above. He said, the only way the applicant could do is to bring this application. Although Mr. Aboud did not oppose the application, he had some reservation as he said, he encounters difficulties in pinpointing the exact base of the intended application for review as the applicant failed to reveal grounds of the intended review application. He concluded by praying that the application be granted. The applicant had nothing to say in rejoinder as his application was not opposed by Mr. Aboud.

I wish to state at the onset that, having gone through the record and the submissions, I have no doubt that the applicant's ground for the delay to lodge review application is justified, taking into consideration that he is a prisoner, who depends solely on the prison authority in preparation

and lodging of pleadings in court. However, the question that remains for determination is whether the applicant has shown good cause to justify extension of time sought. Rule 10 of the Rules under which this application is brought requires the applicant to show good cause, it reads:

*"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 as so extended."* [Emphasis added].

The term 'good cause' has no single definition but it can be interpreted depending on the circumstances of each case. In **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010**, the Court stated that:

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term "**good causes**" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."*

In determining good cause in the application for review, apart from considering the reasons for the delay, I am as well obliged to consider under which provision the applicant intends to peg his application for review among those which are identified under Rule 66 (1)(a)-(e). For easy of reference the said Rule provides:

"The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-

- (a) the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or*
- (b) a party was wrongly deprived of an opportunity to be heard;*
- (c) the court's decision is a nullity; or*
- (d) the court had no jurisdiction to entertain the case; or*
- (e) the judgment was procured illegally, or by fraud or perjury."*

The applicant herein states under the third ground of the motion that, his intended review will base on Rule 66(1) (a) and (b). It is very unfortunate that, the applicant did not elaborate neither orally nor through his affidavit what are the error(s) intended to be cured, or how the said error(s) resulted into miscarriage of justice, or that he was denied the right to be heard. In my view, without such information it becomes

impossible to determine and hold that the applicant has a good cause. With respect, I differ with Mr. Aboud who urged me to grant this application on the basis that, the applicant had initially applied for review to the Court, the application which was struck out and therefore, he deserves extension of time.

It is my considered view that, Mr. Aboud failed to distinguish circumstances of the previous application for review and the current application. These are two different applications in the sense that, the first application was a review application which was made within time. By any means, had it not been for the defect spotted in the accompanying affidavit to that application, the Court would go straight to the points raised by the applicant against the impugned decision to make its decision. Unlike, the current application which is for extension of time to lodge review application out of time. For me to grant or otherwise the application, I need to see good cause advanced by the applicant. I can only be in a position of determining whether there is good cause or not if I know why the applicant prefers review application. Unfortunately, the application at hand lacks such information and even the decision intended to be reviewed is not attached to this application for my perusal. In **Elia Anderson v. Republic**, Criminal Application No.2 of 2013, the Court held 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 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 grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66(1).**" [Emphasis added].

On the strength of the above decision and having considered circumstances of this matter, I find and hold that the applicant has failed to show good cause warranting extension of time to lodge review application out of time. Consequently, I hereby dismiss this application.

DATED at **DAR ES SALAAM** this 17th day of May, 2019.

M.C. LEVIRA
JUSTICE OF APPEAL

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



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL