

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

CRIMINAL APPLICATION NO. 111/01 OF 2018

PAULO MBOGO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application for extension of time within which to apply for Review of the
judgment of the Court of Appeal)

(Kimaro, Oriyo and Mmilla, JJ.A)

dated the 14th day of November, 2013

in

Criminal Appeal No. 244 of 2012

RULING

16th & 29th May, 2019

MWAMBEGELE, J.A.:

Paulo Mbogo; the applicant herein was convicted on 11.07.2012 by the High Court (Rugazia, J.) sitting at Morogoro for the murder of one Cosmas Martine Mbena and awarded the mandatory death sentence. His conviction and sentence were endorsed by this Court (Kimaro, Oriyo and Mmilla, JJ.A) on 20.11.2013 on appeal. He was not happy with the decision of the Court on appeal and, therefore, wanted to challenge it by way of review. But time within which to challenge that decision by way of review had long expired. He thus lodged the present application by a

notice of motion taken out under rule 10 of the Tanzania Court of Appeal Rules, 2009 – GN No. 368 of 2009 (hereinafter referred to as the Rules) seeking an extension of time to lodge an application for review against the decision. The motion is supported by an affidavit deposed by the applicant himself. The respondent Republic did not file any affidavit in reply to resist the application.

When the application was placed before me for hearing on 16.05.2019 the applicant appeared in person and was advocated for by Mr. Majura Magafu, learned Counsel. On the other hand, the respondent Republic had the services of Ms. Janeth Magoho, learned State Attorney. The applicant had, on 25.01.2019, lodged in the Court written submissions in support of the application whose contents Mr. Magafu sought to adopt without more as part of the oral arguments. The learned counsel just insisted that the main reasons for the delay to file an application for review were to be found at paras 7, 8 and 9 of the affidavit supporting the application. He thus prayed that the application be allowed so as to allow the applicant assail the decision of the Court by way of review.

For her part, Ms. Mogoho, for the respondent Republic, had no qualms if the time for lodging an application for review would be enlarged.

That is perhaps the reason why the respondent neither filed an affidavit in reply nor written submissions.

The Court asked Mr. Magafu for the applicant and Ms. Magoho for the respondent Republic why the application was not predicated upon one or more of the grounds enumerated in rule 66 (1) (a) to (e) of the Rules this being an application for extension of time to file a review. Mr. Magafu responded that that course would be tantamount to encroaching the mandate of the application for review. What was relevant at the stage, he submitted, was to seek an extension of time first, after which, if granted, they would enumerate the grounds for review in the intended application. Ms. Magoho's response to the question dovetailed with that of the applicant's counsel.

The determination of this application will not detain me. To appreciate the determination of this application and the verdict to be arrived at shortly, let me, perhaps, state the settled law on applications of this nature. In an application for extension of time to file an application for a review of the Courts judgment or ruling or order, it is incumbent upon an applicant to prove to the satisfaction of the Court two things. First, that the delay to take action on which an application is pegged was for good

cause. This is the tenure and import of rule 10 of the Rules which for easy reference, I take the liberty to reproduce:

*"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].

Secondly, the applicant must show the ground or grounds among the five grounds under rule 66 (1) on which intended the application will be predicated. This requirement has been developed by case law. The Court has pronounced itself so in a number of decisions to the extent of settling the law – see: **Eliya Anderson v. R.**, Criminal Application No. 2 of 2013, **Lauren Mseya v. R.**, Criminal Application No. 8 of 2013, **Deogratias Nicholas @ Jeshi & Another v. R.**, Criminal Application No. 1 of 2014, **Philmon Zuberi v. R.**, Criminal Application No. 6 of 2014, **Salum Nhumbuli v. R.**, Criminal Application No. 8 of 2014, **Kafuba**

Mwangilindi v. R., Criminal Application No. 15/08 of 2015, **Charles John Mwaniki Njoka v. R.**, Criminal Reference No. 2 of 2014, **Nyakua Orondo v. R.**, Criminal Application No. 2 of 2014 and **African Fish Processors v. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018 (all unreported), to mention but a few. In **Laureno Mseya** (supra) for instance, the Court observed:

"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 that stage either explicitly or implicitly, that the review application would be predicated on one or more of the grounds mentioned in Rule 66 (1) and not on mere personal dissatisfaction with the outcome of the appeal ..."

Likewise, in **Salum Nhumbili** (supra) the Court recited its earlier decision in **Eliya Anderson** (supra) wherein 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 has also established by affidavit evidence, at the stage 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) of (e) of Rule 66 (1)."

Adverting to the case at hand, it is apparent that the applicant has not shown on which ground or grounds under rule 66 (1) of the Rules the intended application will be predicated. Both trained minds for the parties appeared to be totally ignorant that the two conditions - showing good cause for the delay and establishing that the intended application for review would be predicated on one or more of the grounds mentioned in rule 66 (1) of the Rules - must be established cumulatively at the time of seeking an extension. The present application is therefore misconceived. It is for this reason that I find no reason to determine on the question whether the applicant has shown good cause for the delay, for, even though the answer will be in the affirmative, it will not make any difference on the outcome of the application.

I find it irresistible to state at this stage as a postscript the learned State Attorney did not oppose the application. That course of action would not make the application *ipso facto* granted. That is to say, the Court will

not grant an extension of time on the sole reason that the application has not been opposed. Where, like here, an application for extension of time is not opposed, the Court is still under duty to see to it, and to satisfy itself, that the rules governing such an application have been followed to the letter.

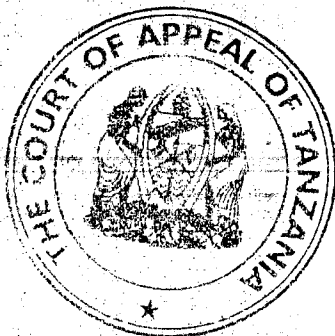
The above said, that is, as the applicant has not shown any grounds under rule 66 (1) paras (a) to (e) on which the intended application for review would be pegged, the present application must fail. It is hereby dismissed.

Order accordingly.

DATED at DAR ES SALAAM this 24th day of May, 2019.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

I certify that this is a true copy of the original




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL