

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

**CRIMINAL APPLICATION NO. 18/01 OF 2018**

**KARLOS S/O PETER @ CHAMARAMBA ..... APPLICANT**

**VERSUS**

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

**(Application for extension of time within which to file review out of time  
from the Court of Appeal of Tanzania, at Dar es Salaam)**

**(Msoffe, Mbarouk, Oriyo, JJ.A.)**

**dated the 23<sup>rd</sup> day of June, 2009  
in  
Criminal Appeal No. 43 of 2008**

.....

**RULING**

11<sup>th</sup> & 21<sup>st</sup> June, 2019

**KITUSI, J.A.:**

On 17<sup>th</sup> June, 2009 the Court (Msoffe, Mbarouk and Oriyo, JJ.A.) dismissed Criminal Appeal No. 43 of 2008 which the present applicant had preferred in a bid to challenge his conviction and sentence for Rape the same having been sustained by the High Court. The applicant intends to apply for a review of the decision of the Court but, being out of time, he applies for extension of time under Rules 10 and 66 (1) (a), (b), (c), (d) and 66 (3) of the Tanzania Court of Appeal Rules, 2009, the Rules.

The Notice of Motion cites two grounds on which the application rests, and these are:-

1. That decision was based on manifest errors on the face of the records as the judgment of the Court was procured by fraud as it did not contain factual and legal point or points for determination.
2. The judgment was obtained on the defective charge.

When the application came up for hearing the applicant entered appearance in person while the respondent Republic was represented by Ms. Gloria Mwenda, learned State Attorney. After adopting his supporting affidavit, the applicant made a very brief submission mainly blaming the delay on the prison authorities who are responsible for giving inmates Court related information and sending out applications such as the present. He further submitted that he had expressed his intention to apply for a review only twenty (20) days after the Court's decision but the prison administration of the day could not admit his papers. He had to wait for the change of the administration to try his luck and finally he got it admitted, that is, the present application for extension of time.

The supporting affidavit and the oral submissions indicate that the applicant's intention is to assail the decision of the Court for not faulting the Courts below on their evaluation of the evidence insisting that this case against him has been concocted.

Ms. Mwenda submitted in opposition that an application for review must be made within 60 days from the date of the judgment intended to be reviewed, according to Rule 66 (3) of the Rules. This application, she submitted, is being made after almost 10 years. The learned State Attorney moved me to conclude that no good cause has been shown because even the alleged errors in the decision are not substantiated in the affidavit.

Indeed it is about ten years since the decision intended to be reviewed was rendered of 17<sup>th</sup> June, 2009. No period can be more inordinate, and the applicant's task to explain such delay is obviously an uphill one.

However, there is more to it than merely accounting for the delay. In an application for extension of time to apply for review, the applicant must, in addition to explaining the delay, establish that his intended application for review is predicated on any of the grounds for review under

Rule 66 (1) of the Rules. There is a string of decisions of the Court on this and the law is settled. Some of the decisions are in **Nyakua Orondo V. Republic**, Criminal Application No. 2 of 2014; **Azizi Mohamed & Another V. Republic**, Criminal Application No. 4 of 2015; **Anyelwise Mwakapake V. Republic**, Criminal Application No. 1 of 2014 and; **Elia Anderson V. Republic**, Criminal Application No. 2 of 2013 (all unreported). All of these cases were cited in **Tanzania Fish Processors Limited V. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018, recently decided.

The application at hand suffers from two serious ailments. **One**, the applicant's account on the reasons for the delay is far from satisfactory, given the inordinate length of the delay. His explanation that the processing of his application depended on the mood of the prison administration cannot hold true for the whole span of ten years. **Two**, from the supporting affidavit and the applicant's oral submissions, the intended application for review seeks to raise evidential matters in total contravention of Rule 66 (1) of the Rules.

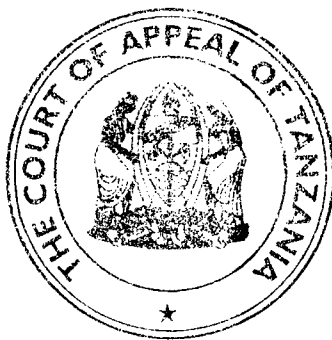
In the circumstances and for the foregoing reasons, this application has no merits. It is dismissed.

It is so ordered.

**DATED at DAR ES SALAAM** this 18<sup>th</sup> day of June, 2019

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

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



*S. J. Kainda*  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**