

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

CRIMINAL APPLICATION NO. 14/05 OF 2019

CHRISTIAN ORGENES NKYAAPPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application for extension of time to lodge an application for review of the
decision of the Court of Appeal of Tanzania
at Arusha)

(Msoffe, Kileo And Oriyo, JJA)

dated on 6th day of September, 2010

in

Criminal Appeal No. 285 of 2007

RULING

16th & 26th March, 2020

SEHEL, J.A.:

This is an application for extension of time within which the applicant herein can lodge an application for review out of time. The application has been preferred under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) through a notice of motion supported by an affidavit sworn by the applicant himself.

The grounds upon which the application hinged are stated in the notice of motion thus:-

a) That Immediately after dismissal of appeal by the Court, the applicant filed an application for review of

the judgment of the Court as he noticed it was based on a manifest error on the face of the record, even though it had been filed on time it was struck out for it had been filed under inapplicable provisions of the law.

b) The applicant through prison authority who is entrusted to take care of all his legal issues refilled an application for review of the decision of the Court, but before the hearing and upon enquiring from different people he noticed that after his first application to the Court was struck out he ought to have sought leave of the Court to extend time in order to refile an application for review out of time. Hence he prayed to withdraw it before it was heard and the prayer was granted by the Court.

c) The decision of the Court is nullity as the applicant's enhance sentence was not in supportive of the charge preferred against him.

d) The Court wrongly upheld and enhance the sentence of the applicant despite the charge preferred against him being uncategorized and defective, hence the decision of the Court was based on the manifest error on the face of the record resulting to a miscarriage of justice.

e) For the sake of justice this Court be pleased to grant the applicant leave to refile an application for review

out of time in Criminal Appeal No. 285 of 2007 via judgment dated 6th September 2010.

At the hearing of the application, the applicant appeared in person, unrepresented, while Mr. Kassim Nassir, learned State Attorney, appeared for the respondent Republic.

The applicant after adopting his notice of motion and affidavit in support of the application, he briefly submitted that the reasons for his delay are expressly stated in his application and that he intends to file review against the decision of this Court on ground that there was a manifest error on the intended impugned decision of this Court that occasioned injustice to him as shown in his notice of motion. With that submission, he prayed for the application to be allowed.

Mr. Nassir forcefully objected to the application. He argued that the applicant failed to meet the set legal requirement for the grant of an extension of time as propounded in the case of **Yahya Shariff v. The Republic**, Criminal Appeal No. 1 of 2015 (unreported) where it was held apart from showing good cause, the applicant must also show genuine reasons for review stipulated under Rule 66 (1). It was the submission of Mr. Nassir that although the applicant managed to account for his delay but he had failed to explain the kind of error that is

manifest on the face of record and as to how he was prejudiced by such an error. He contended that it was not enough by simply showing in the notice of motion that there was a manifest error on the face of record resulting to a miscarriage of justice. He argued, the applicant ought to have justified that error in his affidavit in support of the application. In the absence of such explanation, Mr. Nassir submitted that the applicant has miserably failed to advance good cause for me to exercise my discretionary power in granting the requested extension of time. He thus prayed for the application to be dismissed.

In reply, the applicant reiterated his earlier submission and added that he is a prisoner thus he is limited with updated precedents like the one cited by the learned State Attorney.

I have given due consideration to the rival arguments made by the parties on whether or not good cause has been shown by the applicant to warrant the extension of time. The law governing an extension of time is Rule 10 of the Rules that require a party seeking an extension of time to show good cause for the Court to exercise its discretionary power to grant or refuse such an extension. The Rule provides:

"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]

What amounts to good cause depends on the circumstances of each case. There are no hard or fast rules to what can constitute a good cause. However, certain factors may be taken into account by the Court in determining whether the applicant had advanced good cause. In the case of **Joel Silomba v. Republic**, Criminal Application No. 5 of 2012 (unreported) the Court set out the following factors:

- i) "the length of the delay;*
- ii) the reason for the delay, was the delay caused or contributed by dilatory conduct of the applicant?;*
- iii) whether there is an arguable case, such as, whether there is point of law or the illegality or otherwise of the decision sought to be challenged; and/or*
- iv) the degree of prejudice to the opposite party if the application is granted.”*

As I said the applicant, in the present application, intends to apply for review against the decision of this Court delivered on 6th September,

2010. Pursuant to Rule 66 (3) of the Rules, an application for review has to be lodged within sixty days from the date of the judgment sought to be reviewed.

It is deposed by the applicant under Paragraph 7 of his affidavit that immediately after pronouncement of the judgment, he lodged his application for review in time vide Miscellaneous Criminal Application No. 1 of 2010. He deposed further that that application was struck out on 17th May 2017 for being filed under wrong provision of the law. The applicant thereafter filed another application for review, Miscellaneous Criminal Application No. 43/5 of 2017 which was also struck out for being time barred. As the applicant still has an interest to pursue his application for review on the ground of manifest error on the face of record resulting to a miscarriage of justice, he filed the present application for extension of time.

The learned State Attorney acknowledged that the applicant aptly accounted for each day of delay. He however argued that in application for extension of time for the purposes of filing an application for review, the applicant ought to have given an explanation on the ground for review in the supporting affidavit for the Court to ascertain whether the applicant had advanced good cause for the grant of the extension of

time. With due respect, I am not persuaded by the submission made by Mr. Nassir because an elucidation of the grounds for review would not have served any purpose for me. In considering an application for extension of time, I am invited to determine whether the applicant has advanced good cause or not. At this juncture, my jurisdiction is limited in scope and I am not required to venture into ascertaining whether there is merit or demerit for review. As a Single Justice, I am not required to sit and hear substantive issues which are to be heard and determined by the Court. Of course, I am alive that in considering an application for an extension of time for filing a review, a party seeking such extension has to indicate, either explicitly or implicitly, that the review would be predicated on one of the grounds mentioned under Rule 66 (1) of the Rules. Hence, to require the applicant to give explanation of the grounds is to place unnecessary burden on part of the applicant.

In the case of **Exim Bank (Tanzania) Limited v. Johan Harald Christer Abrahamsson and 3 Others**, Civil Reference No. 11 of 2018 (unreported) it was reiterated at page 10 thus:

"...The Single Justice who entertains an application for extension of time is normally guided by 'good

cause' in reaching his/her decision whether to grant or refuse extension of time (see Rule 10 of the Rules)."

Further in the case of **Tanzania Portland Cement Company Limited v. Khadija Kuziwa**, Civil Application No. 437/01 of 2017 (unreported) it was stated in clear terms at page 6 of that ruling that:

"...in application for extension of time, the Court is primarily concerned with ascertaining whether or not good cause has been shown to support a grant. The Court, more so, a Single Justice, may not venture so far as to speculate the merits of the desired application for revision before granting an extension of time."

The reason behind that is aptly stated in the case of the **Regional Manager- TANROADS Lindi v. D.B Shapriya and Company Limited**, Civil Application No. 29 of 2012 (unreported) that:

"...it is now settled that a Court hearing an application should restrain from considering substantive issues that are to be dealt with by the appellate Court. This is so in order to avoid making decisions on the substantive issue before the appeal itself is heard. Further to prevent a single judge of the Court from hearing an application by sitting or examining issues which are not his/her purviews."

It follows then that the argument put forward by the learned State Attorney is superfluous as it would not serve any purpose in an application for an extension. It is my considered view that the mentioning of the ground for review upon which the applicant intends to put forward in his/her intended application for review suffices for me to ascertain whether there is good cause or not. In the instant application, the applicant had impliedly indicated under Paragraph (4) of the notice of motion that the intended review would be predicated on a ground of manifest error on the face of record, to me that indication suffices to be good cause. In that regard, any further details on that ground shall be stated in the intended application for review.

As alluded herein, the applicant has sufficiently explained away the delay and the learned State Attorney acceded that the applicant has accounted for each day of delay. The applicant has also implicitly shown in his notice of motion that the intended application for review would be predicated on ground of manifest error on the face of record resulting to a miscarriage of justice. Consequently, I am satisfied that the applicant acted promptly, diligently and there was no sloppiness on his part in pursuing the intended application for review. In light of that, I find the application to have merit to warrant the applicant an extension of time.

In the end, the applicant is hereby granted an extension of time within which to file his application for review on the ground of manifest error apparent on the face of record. The application is to be filed within sixty days from the date of the delivery of this Ruling.

DATED at ARUSHA this 25th day of March, 2020.

B. M. A. SEHEL
JUSTICE OF APPEAL

This Ruling delivered on 26th day of March, 2020 in the presence of the Applicant in person and Ms. Agnes Hyera, learned Senior State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL (T)