

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

**CRIMINAL APPLICATION NO. 55/12 OF 2017**

**CHARLES BARNABAS ..... APPLICANT**

**VERSUS**

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

**(Extension of time to file Review out of time from the Judgment of the  
Court of Appeal of Tanzania at Tanga)**

**(Munuo, Msoffe, And Kaji, JJ.A)**

**Dated the 3<sup>rd</sup> day of June, 2005  
in  
Criminal Appeal No. 145 of 2003**

.....

**RULING**

15<sup>th</sup> & 17<sup>th</sup> September, 2020

**LEVIRA, JA.:**

The applicant Charles Barnabas is seeking extension of time to file an application for review of the Judgment of the Court in Criminal Appeal No. 145 of 2003. The notice of motion is supported by the applicant's affidavit. The respondent did not file affidavit in reply to contest this application.

At the hearing, the applicant appeared in person, unrepresented via video conference link to Maweni Central Prison, whereas the respondent was represented by Mr. Winlucky Mangowi, learned State Attorney.

At the onset, the Court engaged parties to submit on the propriety of the application in the light of the applicant's averments under paragraph four of the supporting affidavit. For easy of reference in Paragraph 4 the applicant stated as follows:-

*"4. That, during the hearing of my application on 15<sup>th</sup> March, 2010 the Court asserted that under paragraph 4 of my affidavit in support of the notice of motion the applicant avers that he intends to challenge the merit of the judgment and **no sufficient reason has been advanced to explain the delay, the application was dismissed. (Ruling of the Court is hereby attached)**".* Emphasis added.

It can be noted that according to the record, the attached ruling referred in the above paragraph is the Ruling of the Single Justice of the Court in Criminal Application No. 13 of 2009 which dismissed his application for extension of time.

On his part, the applicant had nothing to say concerning the propriety of the application. However, he insisted that he filed his application for extension of time and urged the Court to give its decision.

Submitting on the propriety of the application, Mr. Mangowi stated that, this application is incompetent and improperly before the Court because the applicant had filed a similar application before the Single

Justice of the Court which was dismissed and therefore he was not entitled to file this application. According to him, the applicant ought to have filed Reference against that decision of the Single Justice if he was aggrieved. Therefore, he urged me to strike out this application for being incompetent.

Having heard both parties, I wish to observe that the issue of propriety or otherwise of this application is a matter of law. Rule 62 (1) (a) of the Tanzania Court of Appeal Rules, 2009 (the Rules) provides that:

*"Where any person is dissatisfied with the decision of a Single Justice exercising the powers conferred by Article 123 of the Constitution, **he may apply informally to the Justice** at the time when the decision is given or by-writing, **to the Registrar within seven days after the decision of the Justice –***

*(a) in any criminal matter, to have his application determined by the Court."* [Emphasis added].

The above quoted provision is very clear, a party to a criminal case who is not satisfied with the decision of a Single Justice of the Court may apply for Reference either informally to the Justice at the time when the decision is given or formally to the Registrar within seven days after the decision of the Single Justice.

However, according to the record of this application, through Criminal Application No. 13 of 2009 the applicant herein applied for extension of time to file an application for review of the Judgment of the Court in Criminal Appeal No. 145 of 2003 instead of Reference. His application was entertained by the Single Justice of the Court and the Ruling dismissing the same was delivered on 15<sup>th</sup> March, 2010. It seems that the applicant was not satisfied with the decision of the Single Justice and has decided to come to the Court for the second time seeking extension of time to file review application.

It is observed that, the Judgment of the Court subject of the current application is the same as in Criminal Application No. 13 of 2009. I wish to state once that, the law does not provide for second bite applications in the circumstances of this application. A single Justice of the Court is not clothed with powers under the law to entertain a similar application on the same subject matter which was dealt with and finally determined by another Single Justice of the Court.

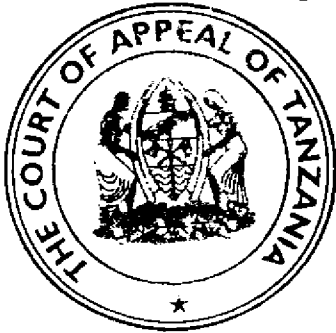
Therefore, the applicant in the current application ought to have informally applied for Reference to the Justice at the time when the decision dismissing his application was delivered or within seven days by writing to the Registrar to have his application determined by the Court.

It is very unfortunate that the applicant did not opt for either route. In the circumstances, I agree with the learned State Attorney that, the application is improperly before me. Consequently, I strike it out.

DATED at TANGA this 16<sup>th</sup> day of September, 2020.

M.C. LEVIRA  
**JUSTICE OF APPEAL.**

The Ruling delivered this 17<sup>th</sup> day of September, 2020 in the presence of the appellant in person via Video link and Mr. Winlucky Mangowi State Attorney for the respondent is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**