

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

**(LINKED TO SEGEEA REMAND PRISON VIA VIDEO
CONFERENCING FACILITY)**

CRIMINAL APPLICATION NO. 72/01 OF 2019

ANASTAZIA SAMSON APPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(Application for extension of time to file an application for
Review from the Judgment of the Court of Appeal at Dar es Salaam)**

(Mwangesi, Ndika and Mwambegele, JJ.A)

dated the 11th day of June, 2019

in

Criminal Appeal No.332 of 2014

RULING

27th April & 7th May, 2020

LEVIRA, J.A.:

The applicant, Anastazia Samson and two others who are not party to this application were arraigned before the High Court of Tanzania at Dar es Salaam facing murder charge. They were tried and the applicant was convicted alongside with one of the other two accused persons. They were sentenced to suffer death by hanging. Aggrieved, they unsuccessfully appealed to the Court (Mwangesi, Ndika and Mwambegele, JJ.A) in Criminal Appeal No. 332 of 2014 and hence this

application for extension of time to lodge application for review out of time against the decision of the Court preferred by the applicant.

The application is brought by way of Notice of Motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and it is supported by the applicant's affidavit. The Respondent, the Republic did not file affidavit in reply and therefore, the application is uncontested.

At the hearing of this application through video link, the applicant who was at Segerea Remand Prison appeared in person, unrepresented whereas, the respondent had the services of Ms. Haika Temu, learned State Attorney who was in Court.

The applicant adopted her Notice of Motion and the supporting affidavit to form part of her submission. Having done so, she stated that the delay to file her application for review was not deliberate, but being a prisoner she depended solely on prison authority in preparation and filling of her documents in Court and thus, she had no control of the process. However, she informed the prison authority her intention to lodge application for review immediately after the decision of the Court as stated in paragraph five, six and seven of the supporting affidavit.

In paragraph four of the supporting affidavit, the applicant stated further that, she was aggrieved with the decision of the Court and

therefore she intends to lodge application for review under Rule 66 (1) (a) of the Rules against that decision. Finally, the applicant prayed for the application to be granted.

On her part, Ms. Temu had no objection to this application. In her brief submission, she stated that the respondent is not objecting this application that is why she did not file affidavit in reply. Following that response from the learned State Attorney, the applicant had no rejoinder to make.

Having considered submissions by both sides and the record, the main issue calling for my determination is whether or not the applicant has advanced good cause warranting extension of time sought. Rule 10 of the Rules under which this application is brought provides that:

"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 to that time as so extended". [Emphasis added].

It is settled principle that an applicant who applies for extension of time has to show good cause. However, the term 'good cause' has no single definition and therefore its interpretation depends on the circumstances of each case. In **Osward Masatu Mwizarubi v Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (unreported) the Court stated that:

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" 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."

The applicant stated in her submissions that she is a prisoner who depended solely on prison authority. She was aggrieved with the decision of the Court but she did not have a control to ensure that she files her application for review within time. This reason is well stated in paragraphs five, six and seven of the supporting affidavit. In addition she stated in paragraph four of the supporting affidavit that the intended review application will base on Rule 66(1)(a) of the Rules which implies that the decision of the Court was based on a manifest error on the face of the record resulting in the miscarriage of justice.

I am mindful of the position taken by the Court in various decisions where the Court considered the same ground, that prisoners are not free agents and thus granted applications for extension of time. However, it has to be noted that the said ground does not apply in every case. Whether or not it constitutes good cause to warrant extension of time depends on the circumstances of each case. Consideration of measures and/or steps taken by the prisoner is among the factors which are normally taken into consideration. There are various authorities to that effect, for example in **Otieno Obute v. Republic**, MZA. Criminal Application No. 1 of 2011 (unreported) the single Justice of the Court stated as follows:

*"I have considered the averments by both parties and come to the conclusion that this application has merit, the flaws raised by Mr. Karumuna, notwithstanding. **As a prisoner, his rights and responsibilities are restricted. Therefore he did what he could do.** He may have been let down by reasons beyond his means. Failure to secure the prison superintendent's affidavit is therefore, not fatal to this application, given the*

circumstances described herein above. Accordingly, the application is granted."[Emphasis added].

See also **Ngendaimana Piere v. Republic**, Criminal Appeal No. 148 of 2006 (unreported).

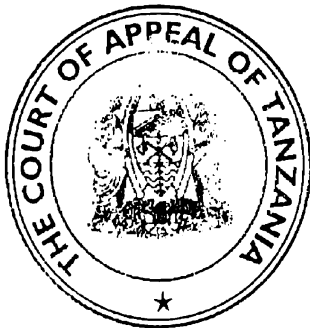
I subscribe to the above decisions. As stated earlier, the main reason for the delay relied upon by the applicant in her oral submission which is also supported by her affidavit is that she is not a free agent, so the delay was not deliberate. Rule 66 (3) of the Rules requires application for review to be lodged within 60 days from the date of judgment or order sought to be reviewed. The Judgment subject of the intended review was delivered on 11th June, 2019 and this application was lodged on 22nd August, 2019. I have considered all the circumstances surrounding this application; in my considered view, the delay is not inordinate. I am thus satisfied that the reason for the delay advanced by the applicant and the fact that the application is not opposed by the respondent constitute good cause in terms of Rule 10 of the Rules.

Therefore, I hereby grant this application and the applicant is given sixty days to lodge the intended application for review.

DATED at DAR ES SALAAM this 5th day of May, 2020.

M.C. LEVIRA
JUSTICE OF APPEAL

The Ruling delivered this 7th day of May, 2020 in the presence of Ms. Anastazia Samson, the Appellant appeared in person through video conferencing and Mr. Gabriel Kamugisha, learned State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.




A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL