

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

**CRIMINAL APPLICATION NO. 101/01 OF 2019**

**SEVERINI LUSIJI ..... APPLICANT  
VERSUS**

**THE REPUBLIC ..... RESPONDENT  
[Application for leave to lodge review out of time from the decision of the  
Court of Appeal of Tanzania at Dar es Salaam]**

**(Mwarija, Mkuye, And Wambali, JJ.A.)**

**Dated the 12<sup>th</sup> day of June, 2019  
in**

**Civil Appeal No. 501 of 2016**

-----

**RULING**

8<sup>th</sup> & 19<sup>th</sup> May, 2020

**KITUSI, J.A.:**

Severini Lusiji's second appeal was dismissed by the Court on 4<sup>th</sup> June 2019 and he intends to have that decision reviewed. He had earlier been convicted of Unnatural Offence under section 154 (1) (a) of the Penal Code Cap 16, by the District Court of Kibaha. His appeal to the High Court was unsuccessful, and so was his second appeal as already stated above.

The governing law, Rule 66 of the Tanzania Court of Appeal Rules, 2009 as amended requires an application for review to be made within sixty days of the decision sought to be reviewed. Severini Lusiji failed to

make the application for review within that time hence this application for extension of time.

There is one major reason for the delay according to the applicant's affidavit and oral address at the hearing. This is that he received the copy of the judgment on 23<sup>rd</sup> August 2019, more than two months after its delivery and that only upon reading it he noted manifest error on the face of the record that resulted in miscarriage of justice. When I prevailed on the applicant why then did it take him almost another two months to lodge this application, he blamed it on the prison officers, who he said, he was in their mercy.

For the respondent Republic Ms. Salome Assey, learned State Attorney, entered appearance and contested the application. She had not earlier filed an affidavit in reply as required, but she challenged the applicant for not filing an affidavit by the Prison Officer who, allegedly, was behind the delay.

In a short rejoinder the applicant sought for my indulgence pleading ignorance of law. He clarified on the alleged error apparent on the face of the record by submitting that the questions he put to the complainant were not recorded by the trial Court.

My powers under rule 10 of the Rules is to gauge if the applicant has shown good cause for the delay for me to exercise my discretion in

his favour. Case law has set parameters of what if considered, may amount to good cause. The parameters are such as length of the delay, reason for delay and the degree of prejudice to the respondent if the application is granted. See for instance the decisions in **Henry Muyaga v. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011 cited in, **Henry Leonard Maeda and Another v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 (both unreported).

In this case the application ought to have been filed by 4<sup>th</sup> August 2019 but it was filed on 21 October 2019. The duration of the delay is therefore about 73 days but the applicant has only accounted for the period from 4<sup>th</sup> August 2014 when he was supposed to have lodged the intended application to 23<sup>rd</sup> August 2019 when he was supplied with the copy of our judgment in Criminal Appeal No. 501 of 2016. The period of 57 days from 24<sup>th</sup> August 2019 to 21 October 2019 when he lodged this application is unaccounted for.

The applicant's contention that the delay was caused by inaction from the Prison Officers is not supported by his own affidavit leave alone one from the Prison Officer. The applicant has a duty to account for each day of the delay and there is a large family of decisions to that effect such as; **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011 and **Sebastian Ndaula v. Grace Rwamafa (Legal Personal**

**Representative of Joshua Rwamafa**), Civil Application No. 4 of 2014, both cited in the case of **Yazid Kassim Mbakileki v. CRDB** (1996) **Bukoba Branch and Jackem Auction Mart & Court Brokers Ltd**, Civil Application No. 412/04 of 2018 (all unreported).

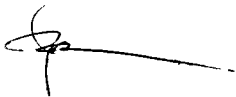
When that requirement is measured against the period of 57 days of the delay in this case, about which the affidavit gives no account, there is left no basis for exercising the discretion under rule 10 of the Rules in favour of the applicant. The applicant's contention pointing an accusing finger to the Prison Officers is not a statement under oath or affirmation. So, it cannot be acted upon.

Consequently, it is my conclusion that this application is devoid of merit and I dismiss it.

**DATED** at **DAR ES SALAAM** this 15<sup>th</sup> day of May, 2020.

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

Ruling delivered this 19<sup>th</sup> day of May, 2020 in the presence of the applicant in person-linked via video conference and Ms Estazia Wilson, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.

  
B.A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

