

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(Linked to Tabora Court of Appeal Sub-Registry vide video conference facility)

CRIMINAL APPLICATION NO. 24/11 OF 2017

AMOSI KABOTA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time within which to lodge an application
for Review from the Decision of the Court of Appeal of Tanzania
at Tabora)**

(Msoffe, Kimaro and Mjasiri, JJ.A)

dated the 8th day of March, 2014

in

Criminal Appeal No. 33 of 2012

RULING

3rd March & 24th April, 2020

MWAMBEGELE, J.A.:

Before me is an application by a notice of motion which the applicant made under the provisions of rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is supported by an affidavit deposed by Amosi Kabota; the applicant and resisted by an affidavit in reply deposed by Innocent Rweyemamu, a State

Attorney of the respondent Republic. I am being asked to enlarge time within which to file an application for the review of the decision of the Court (Msoffe, Kimaro and Mjasiri, JJ.A) pronounced on 08.03.2014 in Criminal Appeal No. 33 of 2012.

The application was heard before me on 03.03.2020 by video conference; a facility of the Court. The applicant appeared in person, unrepresented and the respondent Republic appeared through Mr. Innocent Rweyemamu, learned State Attorney. Both parties were in Tabora at the Sub-Registry of the Court while I, the presiding Justice, was in Dar es Salaam. The beauty of technology facilitates administration of justice.

The gravamen of the applicant's affidavit is found at para 4 thereof at which he deposes that after his appeal before this Court failed, he prepared an application for review timely but that he realized upon the prison visit by the Deputy Registrar of the Court that his application did not reach the Court Registry. That, the said Deputy Registrar advised him to file this application. He added that

the Officer in charge of Uyui Central Prison; one Norbert Dotto Ntacho, has sworn an affidavit supporting his contention that he filed the first application timely. He added that he complained in writing to the Principal Judge why his application for review was not fixed for hearing. The applicant submitted further that he is a prisoner under custody and therefore the delay was not his own making but the prison officers'. In the premises, he prayed that his application be allowed so that he could assail the decision of the Court through the intended application for review.

For the respondent Republic, Mr. Innocent Rweyemamu, learned State Attorney resisted the application with some considerable force. He submitted that the applicant has not brought forward good cause to warrant the extension sought. He added that the two affidavits supporting the application have not sufficiently explained why he did not file the same timely in that a copy of the application he allegedly timely filed was not appended to both affidavits. The learned State Attorney referred me to the decision of

the Court in **Anyelwisye Mwakapake v. Republic**, Criminal Application No. 1 of 2014 (unreported) in which it was held that an application of this nature will only succeed upon, *inter alia*, showing good cause for the delay. He thus implored me to dismiss the application in its entirety.

In a short rejoinder, the applicant reiterated that the Court should consider that he would not have channeled the application for review without the assistance of the prison officers so the buck should stop with the prison officers who might have misplaced the application.

I have carefully considered the arguments brought to the fore by both sides for and against the present application; the applicant on the one hand and Mr. Rweyemamu on the other. Before I go into the determination of this application in earnest, I wish, first, to state the law pertaining to applications of this nature. In applications for extension of time to file an application for review, an applicant must not only bring to the fore good cause for the delay,

but also must show under which para of rule 66 (1) of the Rules his application will be predicated. There is a chain of authorities in which the Court has pronounced itself so – see: **Miraji Seif v. Republic**, Criminal Appeal No. 2 of 2009, **Nyakua Orondo v. Republic**, Criminal Appeal No. 2 Of 2014, **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013, **Anyelwisye Mwakapake** (supra), **Juma Said & Another v. Republic**, Criminal Application No. 3 of 2015, **Mela Sango v. Republic**, Criminal Application No. 5 of 2015, **Jumapili Msyete v. Republic**, Criminal Application No. 4/06 of 2017 (all unreported decisions of the Court), to mention but a few. In **Miraji Seif** (supra), for instance, the Court stated:

"For an application seeking for enlargement of time to file an application for review to be granted by the Court, it has to be established by affidavit evidence that the intended application for review, will be predicated on one or more of the grounds that have been mention in Rule 66 (1) of the Rules"

And the Court restated the position in **Eliya Anderson** (supra)

as follows:

"I believe it would not be a monstrous justice to hold that an application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavit evidence, at that stage, either implicitly or explicitly, that the review application would be predicated on one or more of the grounds mentioned in Rule 66(1), and not on mere personal dissatisfaction with the outcome of the appeal, which appears patently to be the case in this application. If we want to remain truly faithful to the much cherished public policy which calls for finality to litigation and certainty of the law as declared by the court of last resort, then we cannot divorce the application of the strict provisions of Rule 66(1) from proceedings of this type."

And, still, the Court reiterated in **Nyakua v. Orondo** (supra) the settled stance in the following terms:

*"As restated by the Court in **Eliya Anderson Vs. R.**, Criminal Application No.2 of 2013 (unreported), an application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavit evidence, at the stage of extension of time, either implicitly or explicitly, that if extension is granted, the review application would be predicated on one or more of the grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66(1)."*

The foregoing being the settled law, the questions that I ask myself, at this juncture is: has the applicant, **first**, shown good cause for the delay? And, if the answer is in the affirmative, **secondly**, has he established in the affidavit any ground or grounds

under rule 66 (1) (a), (b), (c), (d) or (e) of the Rules on which, if the extension sought is granted, his application will be pegged ?

First for consideration is the question in the first limb of the question posed above; that is, whether the applicant has shown good cause for the delay. As rightly submitted by Mr. Rweyemamu, in terms of rule 10 of the Rules, an application for extension of time will only succeed if an applicant shows good cause for the delay. The term good cause has not been defined by the Rules but case law has it that each particular case will be decided on its own merits – see for instance **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported) in which the Court held that extension of time being a matter within the discretion of the Court, cannot be laid down by any hard and fast rules but will be determined by reference to all the circumstances of each particular case. In the case at hand the applicant deposes in the affidavit supporting the application that he lodged the application for review in time but that he realized that

the same did not get to the intended destination after the Deputy Registrar of the High Court Tabora Registry visited the prison in early 2016. The present application was filed on 23.08.2016.

Has the applicant established good cause for the delay? I have serious doubts. **First**, the applicant has not appended with the application the application which he alleges was timely filed. It is not uncommon for an applicant prisoner to remain with a copy of the documents he submits to the prison authorities. I expected the respondent to reinforce his deposition that he timely filed the application for review with a copy thereof. **Secondly**, even if I was to believe that the applicant presented to the prison authorities his application for review but he learned at the beginning of the year 2016, he has not explained why the present application was filed on 23.08.2016; about eight months after the discovery. The delay between the time when he allegedly learnt that his application was not received by the Court Registry up to when the present application was filed has not been accounted for. It is trite law in

this jurisdiction, of course founded upon prudence, that in an application for extension of time, an applicant must account for each and every day of delay. The Court has pronounced itself so in a number of its decision - see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Bariki Israel v. The Republic**, Criminal Application No.4 of 2011, **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa)** Civil Application NO.4 of 2014, **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015 **Bruno Wenceslaus Nyalifa v. the Permanent Secretary, Ministry of Home Affairs**, Civil Appeal No. 82 of 2017 and **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 (all unreported decisions of the Court), to mention but a few. In **Bushiri Hassan**, for instance, the Court did not mince words. It observed:

"Delay, of even a single day, has to be accounted for otherwise there would be no

point of having rules prescribing periods within which certain steps have to be taken'.

Undeniably, in **Sebatian Ndaula** (supra) the Court went an extra mile to articulate that the need to account for every day of delay becomes even more important when a long time has elapsed since the impugned decision was decided. In the case at hand, the decision sought to be challenged, if an extension is granted was pronounced on 08.03.2014. It is now almost six years down the line. The time elapsed makes even more important that the applicant must explain every day of delay in terms of what the Court articulated in **Sebastian Ndaula** (supra).

Thirdly, the applicant does not state the dates on which he made that application alleged to have been timely filed. He does not even state the date on which he submitted that application to the prison officers. That leaves a lot of questions than answers whether the applicant indeed presented that application. **Fourthly**, for the avoidance of doubt, I am alive to the fact that the prison officer in

charge of Uyui Prison at which the applicant is an inmate, swore an affidavit in support of the application. I equally am aware that the affidavit was not appended to the application at the time of filing but the same was lodged in Court in the recent past; on 28.02.2020 to be particular and served upon the respondent on the same date. Be that as it may, the affidavit of the prison officer in charge of Uyui Prion has no value addition to what was deposed by the applicant. I say so because, like the applicant's, it simply states that the applicant timely lodged the application but does not go further to explain what happened to it thereafter.

In view of the above, it is my considered opinion that the applicant has not shown good cause for the delay. He cannot be entitled to the extension sought.

The foregoing should have been enough to dispose this application. However, for completeness, I wish to also state that the applicant has not addressed at all the requirement of the second limb of the requirement for extension of time to file an application

for review; that is, to show on which para or paras under rule 66 (1) will the intended application for review be predicated if an enlargement of time applied for is granted. That is to say, he has not stated at all on which ground or grounds under rule 66 (1) of the Rules he will peg his application for review. This, as already alluded to above, is a fatal omission which renders the application unmaintainable – see the holding of the Court in **Eliya Anderson** (supra).

To argue the point a little bit further, the applicant has shifted a lot of blame on the prison officers that they mishandled his application. But as alluded to above, neither the applicant nor the prisons officer in charge of Uyui Prison, in their respective affidavits, has sufficiently established that he indeed prepared the application and submitted to the prison authority which mishandled it. Much as I agree that a blame on the prison authority may in some isolated cases benefit an applicant to grant an extension of time – see: **Prosper Bartazar Kileo & another v. Republic**, Criminal

Application No. 1 of 2010 (unreported), but that is just, as already stated, in isolated cases. The general rule is that an applicant will not rely on that defence and succeed to get an extension sought – see: **Henibo Samwel & Another v. Republic**, Criminal Application No. 7 of 2013 (unreported). In that case, the Court was confronted with an akin situation and observed:

"... the two applicants have not attempted to show good cause. They seem to front the argument that because they are prisoners then have no obligation to show good cause, and that good cause should be shown by those who are holding them in prison. This is not the purport of Rule 10"

In view of the above discussion, I find and hold that the applicant has not only failed to show good cause for the delay to file an application for review, but also has not shown in the affidavit supporting the application on which ground or grounds in rule 66 (1) of the Rules, he will predicate his application if the extension applied

for is granted. This application was lodged with no iota of merit. It is hereby dismissed in its entirety.

Order accordingly.

DATED at **DAR ES SALAAM** this 17th day of March, 2020.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The Ruling delivered this 24th day of April, 2020 in the present of Applicant in person, and Ms. Gladness Senya State Attorney for the Respondent is hereby certified as a true copy of the original.



B. R. NYAKI
DEPUTY REGISTRAR