

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

LINKED TO TABORA SUB-REGISTRY VIA VIDEO CONFERENCING FACILITY

CRIMINAL APPLICATION NO. 106/11 OF 2018

BENJAMIN AMON.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time to lodge an application for review out of time
against the decision of the Court of Appeal of Tanzania at Tabora)**

(Mbarouk, Mandia, Mmilla, JJA.)

dated the 17th day of September, 2013

**in
Criminal Appeal No. 150 of 2009**

RULING

05th March, & 23rd April, 2020

KEREFU, J.A.:

By Notice of Motion the applicant herein has brought this application for extension of time to lodge an application for review under Rule 10 of Tanzania Court of Appeal Rules, 2009, (the Rules). The application is supported by an affidavit deponed by the applicant.

On the other side, the respondent has filed an affidavit in reply opposing the applicant's application. In the notice of motion, the applicant has advanced the following three grounds:-

- (a) *That, the applicant was unaware about review terms and procedures as he was not informed by the obligated parties;*
- (b) *The judgment of the Court has manifest errors on the face of record and has omitted to consider a vital evidence in the defense case of diminished responsibility hence wrongly deprived the applicant an opportunity to be heard; and*
- (c) *That, the delay to file review application on time should not hold against the applicant as he entirely depend on Prison Authority to pursue his application as per section 363 of the Criminal Procedure Act, Cap. 20 R.E. 2002.*

It is, perhaps, important to narrate albeit briefly that, initially the applicant was arraigned before the District Court of Tabora for the offence of armed robbery contrary to section 287A of the Penal Code Cap 16 R.E 2002 vide Criminal Case No. 155 of 2007 and sentenced to 30 years imprisonment. Aggrieved, he unsuccessfully appealed to the High Court

vide Criminal Appeal No. 174 of 2008. Still aggrieved, the applicant unsuccessfully appealed again to this Court in Criminal Appeal No. 150 of 2009 which was dismissed on 17th September, 2013, hence this application that was lodged on 4th October, 2018 after lapse of five years.

At the hearing of the application, the applicant appeared in person, unrepresented, while Ms. Gladness Senya, the learned State Attorney appeared for the respondent, the Republic.

When called to elaborate on the application, the applicant adopted the notice of motion and the supporting affidavit to form part of his oral submission. He also claimed that at some point in 2007 he was admitted in the hospital hence the reason for the delay. He thus prayed for his application to be granted.

On her part, Ms. Senya commenced her submissions by fully adopting the contents of the reply affidavit to form part of her oral submissions. She then from the outset indicated that she is opposing the application, because the applicant has not given sufficient reasons for the delay. She argued further that, even the reason of sickness stated by the

applicant in his oral submission is not indicated in the notice of motion or the supporting affidavit and has not been substantiated with evidence. She specifically referred to paragraph 5 of the supporting affidavit and argued that, the reasons stated by the applicant is that he had insufficient knowledge on the review process, which she said, cannot constitute good cause for the delay. To buttress her position she cited the case of **Ally Kinanda and 2 Others v. Republic**, Criminal Application No. 1 of 2016 (unreported) at pages 6 and 7.

Ms. Senya also referred to paragraph 6 of the supporting affidavit where the applicant had indicated that the intended application for review will rely on Rule 66 (3) of the Rules and argued that, the said averment is misconceived, because that Rule only set a time limit for an application for review to be lodged and the same cannot be a ground for review. She thus prayed for the application to be dismissed.

In his rejoinder, the applicant reiterated what he had submitted earlier and prayed for the application to be granted to allow him to lodge an application for review out of time.

Having heard the parties from either side, the issue for my determination is whether or not the applicant has shown good cause to warrant the Court to exercise its discretion to extend time. Pursuant to Rule 10 of the Rules, for an application of extension of time to be granted, the applicant is required to show good cause for the delay. The said Rule 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 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].

I also wish to underscore here that, under the above cited provisions, what the applicant is required to do is to show good cause for the delay to move the Court to grant the application. This stance has been taken in a number of decisions which include **Kalunga & Company Advocate v. National Bank of Commerce Ltd**, (2006) TLR 235; **Wankira Benteel v. Kaiku Foya**, Civil Reference No. 4 of 2000 and

Attorney General v. Tanzania Ports Authority & Another, Civil

Application No. 87 of 2016 at pg 11 (all unreported) to mention, but a few.

In exercising its discretion of whether or not to grant extension of time the Court is required to consider the following factors which may not be exhaustive, but at the moment they include, that:-

- (a) *the applicant must account for all the period of delay;*
- (b) *the delay should not be inordinate;*
- (c) *the applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take; and*
- (d) *if the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.*

(See **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil**
Application No. 2 of 2010 (unreported).

Therefore, in determining this application, the question that follows is whether the applicant herein has complied with the above legal

requirement. It is on record that, the Judgement of the Court sought to be reviewed was delivered on 17th September, 2013 and the current application was lodged on 4th October, 2018 after lapse of five years. As eloquently submitted by Ms. Senya, the applicant's affidavit in support of the application is silent on what happen in that whole period of delay. However, the first ground found in the notice of motion and paragraph 5 of the supporting affidavit are to the effect that the applicant was not informed on his right to apply for review by the obligated parties. With due respect, review is not a matter of right, which a person needs to be informed. Thus, a claim by the applicant that he was supposed to be informed of his right to apply for review has no merit and I do agree with Ms. Senya that, the same cannot constitute a good cause for the delay to warrant extension of time. It is also clear that the reason of sickness adduced by the applicant during oral submissions has not been included in the notice of motion or even the supporting affidavit as one of the reason for the delay. To succeed on that point, the applicant should have indicated the same in his supporting affidavit and furnish proof of illness and medical chits in relation to the period of the delay. None has been placed before

the Court and the applicant's claim remains to be a bare assertion incapable of having evidential value to persuade the Court to exercise its discretion under Rule 10 of the Rules.

It is also a settled position that, any applicant seeking for extension of time under Rule 10 of the Rules is required to account for the delay of each day. Indeed, the Court has reiterated that position in numerous cases, For instance in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (unreported) the Court emphasized that:-

"...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken." [Emphasis added].

As portrayed above and following the authority in **Bushiri Hassan** (supra), I am constrained to find out that, the applicant herein has completely failed to account for the delay of five years.

It is also on record that the applicant had since indicated that, the intended application for review will be predicated under Rule 66 (3) of the Rules. I do agree with Ms. Senya that, Rule 66 (3) of the Rules cannot be a

basis for the intended review, because the said Rule only prescribes the time limit for one to lodge an application for review.

In the event, it is my finding that the applicant has failed to advance good cause to justify the grant of extension of time. Consequently, this application is without merit and is accordingly dismissed.

DATED at **DAR ES SALAAM** this 6th day of March, 2020.

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of April, 2020 in the presence of Applicant in person and Ms. Gladness Senya, State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



B. R. NYAKI
DEPUTY REGISTRAR