

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

(LINKED TO TABORA SUB-REGISTRY VIA VIDEO CONFERENCING FACILITY)

CRIMINAL APPLICATION NO. 18/11 OF 2017

CHARLES KARAMJI @ CHARLES MASANGWA APPLICANT

VERSUS

THE REPUBLICRESPONDENT

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

(Ramadhani, CJ., Rutakangwa, Massati, JJ. A.)

dated the 11th day of June, 2010

in

Criminal Appeal Nos. 318, 319 and 320 of 2009

.....

RULING

3rd March, & 23rd April, 2020

MWARIJA, J.A.:

The applicant, Charles Karamji @ Charles Masangwa was one of the appellants in Consolidated Criminal Appeals No. 318, 319 and 320 of 2009. That appeal arose from the decision of the High Court of Tanzania at Tabora in Criminal Sessions Case No. 24 of 2009. In that case, the applicant and two others were charged with and convicted of the offence

of murder. They were consequently sentenced to suffer death by hanging. Their appeal to this Court was dismissed on 11/6/2010 for want of merit.

Undaunted, the applicant intended to challenge the Court's decision by way of review. He thus filed Criminal Application No. 5 of 2014 moving the Court to review its decision. Later however, he realized that the application was time barred. He applied to withdraw it but the Court decided to strike it out because of the trite principle that an incompetent matter cannot be withdrawn but rather, deserves to be struck out. It is against that background that the applicant has preferred this application seeking an order granting him extension of time to file a fresh application for review.

The application was brought under Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). It is supported by affidavits of the applicant and Norbert Dotto Ntacho, the Officer in-charge of Uyui Central Prison, Tabora (hereinafter "the Officer In-charge"). In paragraph 4 of his affidavit, the applicant states as follows:-

"4. THAT the delay was out of my capacity as a prisoner under custody, indeed I prepared an application for review out of time upon

extension of time which was lodged in the court vide reference number 209/TB/I/VI/120 dated 3/7/2014 and waited to be summoned for hearing from then to date without success, but it was in the month of March, 2015 the Deputy Registrar visited Uyui Prison, I expressed my problem before her, but it was revealed that my application was not found at the court, then advised me to prepare another application which I now do."

On his part, the Officer In-charge states as follows in paragraphs 3 and 4 of his affidavit:-

- "3. *That, I further aver that I transmitted to the Deputy Registrar of the Court of Appeal of Tanzania at Tabora, the applicant's application for review against the decision of the Court in the aforementioned Criminal Appeal which was registered as Criminal Application No. 5 of 2014, the same was struck out on the instance of his advocate on 26/6/2014.*
4. *That, the Applicant later prepared an application for extension of time which was transmitted to the Deputy Registrar of the*

*Court of Appeal of Tanzania at Tabora vide
Ref. No. 209/TB/I/VI/120 dated 3/7/2014.”*

The respondent Republic opposed the application through an affidavit in reply sworn by one Rwegira Deusdedit, State Attorney.

At the hearing of the application which was conducted by way of video conferencing (Dar es Salaam – Tabora), the applicant appeared in person, unrepresented while Mr. Rwegira Deusdedit, learned Senior State Attorney appeared for the respondent Republic. The applicant adopted the contents of his notice of motion and the supporting affidavits. He then opted to hear the respondent’s reply submission and thereafter make a rejoinder if the need to do so would arise.

In his submission, Mr. Deusdedit argued that the applicant had failed to show a good cause for the delay in filing the application for review (the intended application). According to the learned Senior State Attorney, the allegations stated by both the applicant and the Officer In-charge in their respective affidavits were not substantiated. Relying on the cases of **John Lazaro v. The Republic**, Criminal Application No. 34/4 of 2017 and **Ally Kinanda and 2 Others v. The Republic**, Criminal Application No. 1 of

2016 (both unreported), Mr. Deusdedit prayed for dismissal of the application.

In rejoinder, the applicant maintained that the delay in filing the intended application was due to the reasons stated in the supporting affidavits. He prayed that his application be granted.

Having considered the contents of the notice of motion, the parties' affidavits as well as their respective submissions, the issue which arises for determination is whether or not the applicant has advanced good cause for the Court's exercise of its discretion to grant the sought order. The applicant's contention is that the delay was due to mishandling by the Court's sub-registry at Tabora, of his application. According to the relevant paragraphs of the supporting affidavits quoted above, the applicant filed his application for review in 2014. That application was struck out because it was filed out of time. That fact is evidenced by a Court order dated 26/6/2014 which was submitted by the applicant at the hearing of the application. It was his contention that, after the striking out of that application, he prepared and transmitted to the Court through the Officer In-charge, an application for extension of time to file a fresh application for

review but the Court did not act on his application on account that the same could not be traced in the said sub – registry.

Rule 10 of the Rules, which is an enabling provision for the application states as follows:-

"10. 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 in these Rules to any such time shall be construed as a reference to that time as so extended."

In this application, as can be discerned from the contents of the supporting affidavits, the applicant has not given any reason for the delay in filing the intended application. He merely complained that, after his application for review was struck out for being time barred, he prepared and transmitted to the Court through the Officer In-charge, an application for extension of time but that application was allegedly misplaced by the Court's officials at the sub – registry.

Now, to answer the issue stated above, as stated by the learned Senior State Attorney, in their affidavits, the applicant and the Officer In-charge did not substantiate the contention that the alleged application was transmitted to the Court. Although they have cited a reference number of a document which is said to have been used to transmit that application, a copy thereof was not attached to any of the two affidavits.

But also, even if the allegation that the applicant had filed the said application would have been substantiated, that act would not constitute good cause for grant of the sought order. This is because the applicant is required to account for the period of the delay from the date of the decision sought to be reviewed, that is; on 11/6/2010 to the date of filing this application on 22/6/2016. The authorities to the effect that in an application for extension of time, the applicant must account for every day of the delay are abundant. For instance, in the case of **Sebastian Ndaula v. Grace Rwamafu**, Civil Application No. 4 of 2014 (unreported), the Court aptly stated as follows:-

"The position of this Court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of

*the delay:- See **Bariki Israel v. The Republic**,
Criminal Application No. 4 of 2011 (unreported)."*

Since in the application at hand, the applicant has not accounted for the period of delay of over six years stated above, there is no material upon which the Court can exercise its discretion to grant the application.

For the foregoing reasons, I find that this application is devoid of merit and hereby dismiss it.

DATED at **DAR ES SALAAM** this 12th day of March, 2020

A. G. MWARIJA
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