

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

(LINKED TO TABORA REGISTRY THROUGH VIDEO CONFERENCING FACILITY)

**CRIMINAL APPLICATION NO. 28/11 OF 2017**

**CHENYENYE MAGANYALE.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Application for extension of time to lodge Review against the  
judgment of the Court of Appeal of Tanzania at Tabora)**

**(Msoffe, Kimaro And Mandia, JJA.)**

**dated the 28<sup>th</sup> day of June, 2011  
in  
Criminal Appeal No. 86 of 2010**

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**RULING**

4<sup>th</sup> March & 23<sup>rd</sup> April, 2020

**KWARIKO, J.A.:**

Initially, Chenyenyé Maganyale and 3 others who are not parties to this application, were convicted by the High Court of Tanzania sitting at Tabora of the offence of murder. They were sentenced to suffer death by hanging. Their appeal to this Court was dismissed on 28/6/2011 for lack of merit.

Dissatisfied with that decision, the applicant intended to file review against it but he was late to do so. He has thus filed this

application for extension of time to apply for review. The application has been made in terms of Rules 10 and 48 of the Tanzania Court of Appeal Rules, 2009 (the Rules) on the ground that there is a manifest error on the face of the record which resulted in a miscarriage of justice to him. The applicant's affidavit supports the notice of motion where under paragraphs 3, 4 and 5 he averred that, following the impugned decision he filed an application for review but the Deputy Registrar who visited the prison told him that the application was time barred. He deposed further that being innocent prisoner had nothing to do than being helped by the Prison Authority to reach the Court.

In opposition, the respondent Republic filed an affidavit in reply sworn by Ms. Mercy Ngowi, learned State Attorney. She deposed that the applicant has not shown sufficient cause for the delay as he has not proved that he once filed an application for review which was found to be out of time. She averred further that being innocent prisoner does not amount to sufficient reason to grant extension of time to file review.

At the hearing of the application, the applicant appeared in person and unrepresented; whilst Ms. Mercy Ngowi, learned State Attorney represented the respondent Republic. When the applicant was called upon to argue his application, he only adopted the notice of motion and the supporting affidavit and let the State Attorney address the Court first and he could rejoin if the need arose.

On her part, Ms. Ngowi prayed to adopt the affidavit in reply to form part of her oral submissions. She argued that the applicant has not shown sufficient cause for the delay and has not given any of the grounds for review as provided under the law upon which the application is pegged. To bolster her position, Ms. Ngowi cited the Court's decisions in **Jumapili Msyete v. R**, Criminal Application No. 4/06 of 2017 and **Inota Gishi v. R**, Criminal Application No. 60/11 of 2017 (both unreported).

In his reply, the applicant argued that being a prisoner he could not process his case as required in law and the prison officials did not take his papers to court in time that is why he is late. He finally argued that he has shown sufficient reasons for the delay.

The Court's powers to extend time for doing any act authorized or required by the Rules whether before or after the expiration of that period are provided under Rule 10 of the Rules. According to this provision, a party seeking the Court's judicial discretion to grant the application for extension of time to do a certain thing, must show good cause for failing to do what he was supposed to do within the prescribed time. See for instance the Court's decisions in **Inota Gishi** (supra) and **Jumapili Msyete** (supra) relied upon by Ms. Ngowi. Others are: **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference no. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

Having considered the opposing submissions from the parties, the issue to decide is whether the applicant has shown good cause for the delay. In his affidavit the applicant stated that he had earlier on filed the application for review within time but he was informed by the Deputy Registrar at Tabora that it was made out of time hence he filed the present application. He also stated that being innocent prisoner he is dependent on the Prison Authority for help.

His submission in Court was that the prison officials did not take his papers to Court. It is clear therefore that the applicant is not sure of the reasons for the delay. As rightly argued by Ms. Ngowi, the applicant has not proved that he had earlier on filed the application for review but was found to be time barred. This proof could have come either from the prison officials or the Court's sub-registry at Tabora. In **Jumapili Msyete** (supra) the Court cited the case of **Mela Mango v. R**, Criminal Application No. 5 of 2015 (unreported) where it was said thus: -

*"...the applicant has attempted to shift the blames for the delay to the Prison Authority that, they were the ones who misplaced his earlier application by not lodging it in Court. Such an excuse however, could stand to hold water, if it were to be supplemented by an affidavit from the Prison Authority. The absence of such supplementary affidavit leaves the contention by the applicant bald and unsubstantiated and therefore, of little assistance if any."*

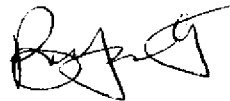
Eventually and for the stated reasons, I am settled in my mind that the applicant has failed to account for the delay of six years to

apply for review. The application is without merit and it is accordingly dismissed.

**DATED** at **DAR ES SALAAM** this 10<sup>th</sup> day of March, 2020.

M. A. KWARIKO  
**JUSTICE OF APPEAL**

The Ruling delivered this 23<sup>rd</sup> 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**