

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

(LINKED TO TABORA REGISTRY THROUGH VIDEO CONFERENCING FACILITY)

CRIMINAL APPLICATION NO. 22/11 OF 2017

JINTA LUSAGULAAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(Application for extension of time to file an Application for
Review of the decision of the Court of Appeal of Tanzania
at Tabora)**

(Msoffe, Kimaro, and Mjasiri. JJ.A.)

**dated the 15th day of March, 2014
in**

Criminal Appeal No. 426 of 2013

RULING

3rd March & 23rd April, 2020

MZIRAY, J.A.:

This is an application for extension of time to file review out of time against the decision of this Court passed on 15/3/2014 in Criminal Appeal No. 426 of 2014. It was filed in this Court on 30/6/2016 under Rule 10 of the Court of Appeal Rules, 2009 as amended and the same was supported with applicant's affidavit and the affidavit of Norbert Dotto Ntacho, the officer in charge of Uyui Central Prison at Tabora.

The grounds for this application can be paraphrased that the applicant was late in filing review for reasons beyond his control. In his affidavit, he deponed at paragraphs 3, 4 and 5 as follows;

- "3. That, aggrieved again then prepared [sic] an application for review early after the appeal dismissed and was lodged at the court for further legal necessary procedures.*
- 4. That, from 2014 up to 2016 nothing happened i.e to be summoned for hearing my application for review fortunately the deputy registrar (Tabora registry) visited the prison it was there [sic] she advised me to prepare another one as the afore lodged one was made under bad jurat.*
- 5. That, since the delayment [sic] was/ is out of my capacity as a prisoner under custody..."*

The application was on the other hand vehemently resisted by the respondent Republic in the affidavit in reply sworn and deponed to by John Mkony, learned State Attorney.

With the introduction of video conferencing system in our country in conducting case proceeding whilst prisoners are not physically in Court, hearing of the application was placed before me linked to Tabora

Registry through video conferencing facility where the applicant appeared in person, unrepresented. The respondent Republic had the services of Mr. John Mkony, learned State Attorney.

The applicant adopted the notice of motion together with the averments deponed in both of the affidavits filed in support of the same. On the basis and strength of the contents in the supporting affidavits, he urged the Court to grant the application sought.

On the other hand, Mr. John Mkony, learned State Attorney for the respondent Republic resisted the application. His submission was basically that no sufficient grounds have been advanced to warrant the Court grant the application sought. To substantiate his argument the learned State Attorney cited the unreported cases of **Sayi Gamaya Mwanapili V. R**, Criminal Application No. 17/11 of 2017 and **Anyelwisye Mwakapake V. R**, Criminal Application No. 1 of 2014 as authorities.

In rejoinder submission, the applicant reiterated his position that the grounds he had shown in his affidavit are good cause for extension of time.

I have given due consideration to all the material on the record in the light of the oral and written submissions of the parties. The question

that I have to determine is whether there is a good cause for the delay. After carefully reviewing the record and the submissions made by both parties, Rule 10 of the Rules under which this application is brought requires the applicant to show good cause, it reads:

"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 so extended."

Black's Law Dictionary (9th Edition) defines good cause as legally sufficient reason. The term good cause is a relative one and is dependent upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause. (see **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010).

What are the factors to be considered by the Court in the course of exercising its discretion? In the case of **Henry Muyaga v. Tanzania**

Telecommunication Company Ltd, Civil Application No. 8 of 2011 (unreported) which was cited in **Henry Leonard Maeda and Another v. John Anael Mongi**, Civil Application No. 31 of 2013 at page 19, it was stated thus:

"In considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."

See also - **The Attorney General v. Twiga Products Limited**, Civil Application No. 28 of 2008 (unreported).

In the instant case, it was deposed that the applicant's failure to lodge the application for review within time was out of his control. It was stated that the applicant being a prisoner he prepared the application for review and handed the same to the prison authority for onward transmission to the Court but the application went missing in the Court registry. As the application could not be traced, the applicant was advised by deputy registrar to prepare a fresh one.

I have followed the argument. All the same, I am fortified in my view that the applicant's ground for the delay to lodge review application is justified, taking into consideration that he is a prisoner, who depends

solely on the prison authority in preparation and lodging of pleadings in Court. Since the applicant prepared his application for review and handed the same to prison authority as substantiated by Norbert Dotto Ntacho, the officer in charge of Uyui Central Prison at Tabora in his affidavit, then, the applicant cannot be blamed for the inaction.

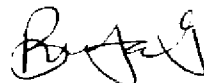
In the result, extension of time is hereby granted to the applicant to file his application for Review. The application should be filed within a period of thirty (30) days from the date of the delivery of this Ruling.

Order accordingly.

DATED at DAR ES SALAAM this 11th day of March, 2020.

R. E. S. MZIRAY
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