

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

**CRIMINAL APPLICATION NO. 86/11 OF 2019**

(LINKED TO TABORA REGISTRY THROUGH VIDEO CONFERENCING FACILITY)

**JOSEPH LUGATA.....APPLICANT**

**VERSUS**

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

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

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

**dated the 15<sup>th</sup> day of June, 2011  
in  
Criminal Appeal No. 317 of 2009**

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**RULING**

5<sup>TH</sup> March & 23<sup>rd</sup> April, 2020

**MZIRAY, J.A.:**

The applicant filed a notice of motion in this Court under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), as amended, seeking enlargement of time within which to file an application for review against the judgment of this Court (Ramadhani CJ, Rutakangwa, Massati, JJA) handed down on 15/6/2011 in Criminal Appeal No. 317 of 2009. The application is

supported by the applicant's affidavit. Paragraphs 4-6 of the deponed affidavit is the most relevant part in this application.

The respondent Republic filed an affidavit in reply deponed by Mr. Miraji Kajiru, Senior State Attorney where he denied almost all the averments in the applicant's affidavit and contended that the applicant has not advanced sufficient reasons to justify the grant of the application. He prayed for the application to be dismissed for want of merit.

The application was heard by linking Tabora Registry through video conferencing facility. This is a new innovation in our jurisdiction which undoubtedly will expediate the hearing of cases with less expenses.

Upon going through the affidavit of the applicant and the affidavit in reply deponed by the learned Senior State Attorney, the issue for determination is whether the applicant has advanced sufficient reasons to warrant the extension of time sought.

Rule 10 on which the application is pegged 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 as so extended."*

Grasping from the wording of Rule 10, in an application of the nature, in order for the applicant to be granted the extension sought, he has to show good cause why he failed to lodge the application in time. Before the Court decides to grant an application of the nature, several factors have to be taken into consideration. These factors were well articulated in the case of **Tanga Cement Company Limited v. Jumanne Msanga**, Civil Application No. 06 of 2001 (unreported) where this Court stated that:

*"What amounts to sufficient cause has not been defined, from the decided cases several factors has to be taken into account,*

*including whether the Application has been brought promptly; the absence of any valid explanation for the delay, lack of diligence on the part of the applicant."*

In the instant application, the reason for seeking extension of time has been stated in paragraph 4 of the applicant's affidavit where the applicant deponed that he lodged his application for review in time but the Court struck it out on the sole reason of incompetency, as a result he was forced to start afresh. He argued that it is in the process of commencing the matter afresh he came to realize that he was out of time. To him that is a technical delay. I think that he is right. Similar situation occurred in the case of **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 at page 155 where this Court observed that:

*"a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the*

*original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having duly penalized by striking it out, the same cannot be used yet again to determine the timeous ness of applying for filing the fresh appeal...”*

The instant application has almost similar scenario to that in **Fortunatus Masha** (supra). In the case at hand, the applicant had filed his application for review in time but due to some technicalities, it was found by this Court to be incompetent and was struck out. The applicant had to start the process afresh. In this process he depended solely in the prison authority in filing the fresh application. The said authority could not render the required assistance in time hence the delay on which the applicant now seeks extension of time. Under such circumstances one cannot blame the applicant to be negligent. It was a situation which was beyond his control. The delay was a technical one.

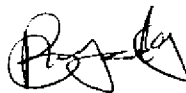
On the above reasoning, I find this application to have merit. I therefore enlarge time for the applicant to lodge his application for review and the same should be filed within a period of thirty (30) days from the date of this Ruling.

Order accordingly.

**DATED** at **DAR ES SALAAM** this 6<sup>th</sup> day of March, 2020.

R. E. S. MZIRAY  
**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**