

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

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

**CRIMINAL APPLICATION NO. 26/11 OF 2017**

**LUSAGULA MACHIA ..... APPLICANT**

**VERSUS**

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

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

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

**dated the 15<sup>th</sup> day of March, 2014**

**in**

**Criminal Appeal Nos. 426 of 2013**

.....

**RULING**

3<sup>rd</sup> March, & 23<sup>rd</sup> April, 2020

**MWARIJA, J.A.:**

In the High Court of Tanzania sitting at Shinyanga, the applicant, Lusagula Machia and another person, Jinta Lusagula were convicted of murder of one Njile Gamu. They were consequently sentenced to suffer death by hanging. Their appeal in Criminal Appeal No. 426 of 2013 was dismissed by the Court in its judgment dated 15/3/2014 delivered on 17/3/2014. The applicant was further aggrieved by the Court's decision

and thus intended to challenge it by way of review. However, because he could not institute an application to that effect within time, he filed this application seeking an order granting him extension of time to lodge it out of time. The application which was brought under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by two affidavits sworn by the applicant and Dotto Ntacho, the Officer In-charge of Uyui Central Prison, Tabora (hereinafter "the Officer In-charge").

On its part, the respondent Republic opposed the application through an affidavit in reply sworn by Rwegira Deusdedit, State Attorney.

At the hearing of the application which was conducted through 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 did not have much to submit in support of his application other than adopting the contents of his notice of motion and the two supporting affidavits.

According to the two supporting affidavits, immediately after the decision of the Court, the applicant prepared his application for review and the same was allegedly transmitted to the Court's sub-registry at Tabora by

the Officer In-charge. According to the applicant, he thereafter awaited for a date of hearing of the application but despite a lapse of time, he was not served with a notice of hearing. Later however, on 13/4/2016, he was informed by the Deputy Registrar of the High Court, Tabora who had visited the prison, that the application had a defective *jurat* of attestation and thus advised the applicant to file a fresh one after obtaining an order granting him extension of time to do so. In paragraphs 3 and 4 of his affidavit, the applicant states as follows:-

- "3. That, aggrieved [by the Court's decision], then prepared an application for REVIEW which was lodged in the court early after the appeal being dismissed (sic).*
- 4. That, I stayed waiting to be summoned by the court for hearing of my application at last was visited by the Hon. Deputy Registrar on 13/4/2016 at then this time (sic) it was revealed that my application was made under wrong jurat then advised me to prepare another one which will be proper according to law hence this application seeking the court to extend the [limitation] time prescribed by law*

*and give me a new chance to lodge the application for review..."*

On his part, the Officer In-charge states as follows in paragraphs 3, 5 and 6 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.*
- 4. ....*
- 5. That, on 23/3/2016, Hon. Utamwa, J. together with the Deputy Registrar of the High Court of Tanzania at Tabora visited Uyui Central Prison (visiting Justice) where upon the Applicant inquired as to the fate of his application for review sent to the Court way back in 2014.*
- 6. That, the Deputy Registrar advised him to restart the review process by applying for extension of time as the previous one could not be traced."*

In his reply submission, Mr. Deusdedit argued that the applicant has failed to substantiate the allegation that he had previously filed an

application for review within the prescribed time. In paragraph 3 of his affidavit in reply he states as follows:-

*"3. That the contents of paragraph 3 of the Affidavit are disputed. The respondent further states that there is no evidence whatsoever to suggest that the applicant filed an application for review upon the dismissal of his appeal before the Court of Appeal."*

Indeed, the contention by the learned Senior State Attorney is correct because in their affidavits, both the applicant and the Officer In-charge did not attach any document showing that the alleged application was received by the Court's sub-registry at Tabora. The only document which was attached to the affidavit of the Officer In-charge is the inspection note signed by Utamwa, J. showing that he visited the Prison on 23/3/2016. Worse still, the date on which the application was allegedly received by the Court was not stated by either the applicant or the Officer In-charge.

Under Rule 10 of the Rules, an application for extension of time can only be granted upon establishment by the applicant, of a good cause for condonation of the delay. That provision 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, the applicant has not given any reason for the delay other than contending that he prepared his application for review within time and transmitted it to the Court through the Officer In-charge but came to be informed later that the same could not be traced at the Court's sub-registry. As stated above, that allegation was not substantiated. Furthermore, although the applicant contended that he filed the alleged application on the advise given by the Deputy Registrar of the High Court on 23/3/2016 when Utamwa, J. visited the prison, the present application for extension of time was filed on 22/6/2016, after about three months from the date when the applicant was so advised.

The position of the law as regards the Court's exercise of its discretion to grant extension of time of the periods of limitation prescribed under the Rules is settled. An applicant must account for every day of the delay. - See for example the cases of **Sebastian Ndaula v. Grace Rwamafu**, Civil Application No. 4 of 2014, **AMI (Tanzania) Limited v. OTTU** on behalf of **P.L. Assenga and 106 Others**, Civil Appeal No. 54 of 2008 and **Herman Ramadhani & 15 Others v. Tanzania Harbours Authority**, Civil Appeal No. 63 of 2001 (all unreported). In the **Sebastian Ndaula case** (supra) the Court had this to say:-

*"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)."*

Putting emphasis on that legal requirement, in the **Tanzania Harbours Authority case** (supra), the Court observed that:-

*"delay of even one day renders a matter incompetent."*

Having found that the applicant has not accounted for the period of the delay, it is obvious that there is no material upon which the Court can exercise its discretion to grant the application. In the event, this application is devoid of merit and is thus hereby dismissed.

**DATED** at **DAR ES SALAAM** this 13<sup>th</sup> day of March, 2020

A. G. MWARIJA  
**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**