

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

(LINKED TO TABORA REGISTRY THROUGH VIDEO CONFERENCING FACILITY)

CRIMINAL APPLICATION NO. 65/11 OF 2017

MASALU MISALABA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Munuo, Kimaro and Mjasiri, JJA.)

dated the 23rd day of May, 2012

in

Criminal Appeal Nos. 322 & 323 of 2009

RULING

4th March 23rd April, 2020

KWARIKO, J.A.:

Sitting at Tabora, the High Court of Tanzania convicted the applicant and another who is not a party to this application of the offence of murder contrary to section 196 of the Penal Code [CAP 16 R.E. 2002]. They were sentenced to a mandatory punishment of death. Upon being aggrieved by that decision, they appealed to this Court in Criminal Appeal Nos. 322 and 323 of 2009 whose decision

was delivered on 23rd May, 2012. The applicant's appeal was dismissed while his co-appellant's appeal was allowed.

Still dissatisfied, the applicant intends to apply for review of the Court's decision. However, as he is out of time to do so, he has filed this application for extension of time within which to apply for review. The application is by way of a notice of motion preferred under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules).

In his affidavit in support of the application, the applicant deposed that following the impugned decision, he filed an application for review vide Criminal Application No. 18 of 2014 which was however struck out by the Court on 21/8/2017 for being incompetent as it was not brought under Rule 66 (1) of the Rules. He has stated further that he has an arguable case deserving review since the Court did not notice that during the trial there was violation of one of the principles of natural justice, namely, the rule against bias.

The respondent Republic has opposed this application by filing an affidavit in reply sworn by Tito A. Mwakalinga, learned State

Attorney. It is averred in the affidavit in reply that ignorance of procedure regarding review is not sufficient cause for extension of time and that the applicant has no arguable case as he has not shown any procedural irregularities in the impugned decision.

It is acknowledged that Rule 10 of the Rules upon which this application has been preferred empowers the Court upon good cause shown to extend time for the doing of any act authorized or required by these Rules whether before or after the doing of the act.

I have considered the notice of motion, the supporting affidavit, the affidavit in reply and the opposing submissions of the parties and I am of the opinion that the only issue arising therefrom is whether the applicant has shown good cause for the grant of the application.

The applicant's sole reason for the delay is that his previous application for review stated above which was timely filed was struck out on 21/8/2017. Following the striking out of that application, the applicant lodged this present application on 18/11/2017 which was almost after three months. I am of the considered view that the

applicant being a prisoner, his movements are very limited and solely dependent on prison officials for everything. Certainly, he had to urge those who helped him to prepare the requisite documents. This notwithstanding, he has been diligent to pursue his right after the delivery of the impugned decision. His earlier application was not struck out on account of being time barred but it was found to have been brought under inapplicable provision of the Rules. This is the ignorance of the procedure the applicant is talking about. It would have been a different thing had the applicant been late to file the previous application on account of the ignorance of the legal procedure as argued by the learned State Attorney. In my view, the applicant's reasons for the delay may constitute good cause for the grant of this application. This Court was faced with similar situation in the case of **Jimmy Anderson Mwampashi v. R**, Criminal Application No. 43/06 of 2018 (unreported) where it was stated thus:-

"The reason advanced by the applicant in the present matter that he has all through been

trying to lodge the intended application but his efforts were thwarted because of certain mistakes he made during those previous applications preparations, leading to their being struck out for being incompetent, in my view constitutes sufficient cause for the delay."

It follows that, since the applicant's previous application was struck out for technical reasons, he cannot be punished again by denying him extension of time.

The respondent has also argued that the applicant has not shown that he has an arguable case and has not shown procedural irregularities in the impugned decision. It is my considered view that those are matters to be considered in the application for review. Rule 10 of the Rules only empowers the Court to extend time for doing any act whose time is limited by the Rules upon good cause being shown. I do not therefore respectively agree with the learned State Attorney that at this stage the applicant has to seriously demonstrate that he has an arguable case before the application is granted.

In the event, I am settled in my mind that the applicant has shown sufficient cause for the delay. This application is thus meritorious and I hereby grant it. The applicant should file his application for review within sixty days from the date of delivery of this ruling.

DATED at **DAR ES SALAAM** this 10th day of March, 2020.

M. A. KWARIKO
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