

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

(LINKED TO TABORA REGISTRY THROUGH VIDEO CONFERENCING FACILITY)

CRIMINAL APPLICATION NO. 64/11 OF 2017

MOSHI PIUS PILLY.....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 30th day of June, 2011

in

Criminal Appeal No. 131 of 2009

RULING

4th March & 23rd April, 2020

KWARIKO, J.A.:

Moshi Pius Pilly, the applicant was among 10 accused persons who were convicted by the Resident Magistrate's Court (Extended Jurisdiction) at Kigoma of the offence of murder and sentenced to suffer death by hanging. Aggrieved, they appealed to this Court but they did not succeed as the appeal was found to be devoid of merit. It was dismissed on 30/6/2011.

Still dissatisfied, the applicant intends to try his luck in this Court by way of review. However, he is late to file review, and has thus come with the application for extension of time to do so. The application has been brought by way of a notice of motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by the applicant's affidavit in which he inter alia deposed that although he had timely lodged his application for review but its receipt was not acknowledged by the Court. He stated that it was not until 14/3/2016 when the Deputy Registrar visited the prison that he informed him that the application did not meet legal requirements, hence he ought to start afresh. He averred further that the intended application has chances of success because the trial Court lacked jurisdiction to try his case.

The application is also supported by the affidavit of Norbert Dotto Ntacho, the Prison Officer in-charge of Uyui Central Prison acknowledging that the applicant's application for review was dispatched to the Court's sub-registry at Tabora on 26/8/2011 as per the annexed copy of a dispatch book. The said officer also averred that on 23/3/2016 when the applicant inquired from the

Registrar about his application for review which he had filed in 2011, he was advised to start his application process afresh.

On the other hand, the respondent Republic has opposed this application through an affidavit in reply sworn by Mercy Ngowi, learned State Attorney. She deposed that the applicant has failed to show how the trial Resident Magistrate with Extended Jurisdiction lacked jurisdiction to try the case and that, the applicant has failed to show sufficient cause for extension of time.

During the hearing of the application, the applicant appeared in person fending for himself while the respondent Republic was represented by Ms. Mercy Ngowi, learned State Attorney. When he took the stage to argue his application, the applicant prayed to adopt the notice of motion and the affidavit and requested for the State Attorney to respond first to his application reserving his right to reply later if the need to do so would arise.

Ms. Ngowi on her part made her stance opposing the application and adopted the affidavit in reply to form part of her oral submissions. She argued that the applicant has not proved that

his application for review was earlier on registered in Court. She contended that the applicant has failed to show the reasons for the delay. To bolster her position, the learned State Attorney referred me to 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). It was Ms. Ngowi's further argument that the applicant has not shown under which sub-rule of Rule 66 of the Rules his application has been pegged. She urged me to dismiss the application for lack of merit.

In his rejoinder, the applicant submitted that the Registrar informed him that the application was not registered. He added that only Rule 10 of the Rules is relevant in the present application as he is applying for extension of time to file review hence Rule 66 is inapplicable. In support of his argument he cited the Court's decision in the case of **Emmanuel Malahya v. R**, Criminal Application No. 6 of 2016 (unreported). On the authorities cited by the respondent, he argued that the same are distinguishable.

Rule 10 of the Rules gives this Court powers to extend time for doing an act authorized or required by the Rules whether before or after the expiration of that time and whether before or after the doing of that act. This Rule provides that in order to succeed in an application for extension of time, the applicant should show good cause for the delay. However, what constitutes good cause has not been codified although this Court has in various instances stated a number of factors to be considered. These are; whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; the lack of diligence on the part of the applicant. (See for instance the case **Tanga Cement Company Limited v. Jumanne D. Masangwa & Amos A. Mwalwanda**, Civil Application no. 6 of 2001 and **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil Application no. 146 of 2016 (both unreported).

Having considered the opposing submissions by the parties, the question to be asked now is, whether the applicant has shown good cause for this Court to exercise its discretion to grant the sought order. The applicant has attributed the delay to Court's

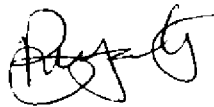
inaction after he had allegedly sent his application for review to the Court's sub-registry. In his affidavit, the Prison officer in-charge of Uyui Central Prison supported the application. He stated that the applicant's application vide Ref. No. 209/TB/I/VI/21 (annexure A), was received in the Court's sub-registry on 26/8/2011. I have inspected this annexure and found two lingering doubts. First, it does not bear the name of the registry officer who received it in the Court's sub-registry as there is only a signature appended thereto. Secondly, the content of the letter is not shown, so one would ask as to whether it was the application for review or anything else. It is my considered view that, had the application been received in the sub-registry it must have been registered as it is the normal practice. Otherwise, there ought to have been proof from the Court's sub-registry to explain what happened to the application after it was received. See for instance, the case of **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported). The applicant has thus failed to prove that he had earlier on filed an application for review.

For the foregoing, I find that the applicant has failed to show good cause for the delay to apply for review for more than six years. The application is without merit and it is accordingly dismissed.

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