IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(Linked to Tabora Court of Appeal Sub-Registry vide video conference facility)

CRIMINAL APPLICATION NO. 19/11 OF 2017

WILLIAM LUHAGA ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Application for extension of time within which to lodge an application for Review from the Decision of the Court of Appeal of Tanzania at Tabora)

(Mbarouk, Mandia and Mmila, JJ.A)

dated the 11th day of September, 2013
in
Criminal Appeal No. 266 of 2008

RULING

3rd March & 24th April, 2020

MWAMBEGELE, J.A.:

In this application the Court is being asked to extend time within which to file an application for review of its decision in Criminal Appeal No. 266 of 2008 in which the Court (Mbarouk, Mandia and Mmillla, JJ.A) affirmed the conviction on his own plea of guilty and sentence of thirty years in jail and twelve strokes of the cane meted out to the applicant by the Court of the Resident Magistrate of Tabora and upheld by the High Court.

The application has been preferred under the provisions of rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It was placed before me for hearing on 03.03.2020 vide a video conference facility of the Court. The applicant and Mr. Innocent Rweyemamu, learned State Attorney for the respondent Republic were in Tabora while I, the presiding Justice, was in Dar es Salaam.

The applicant did not have anything useful to add at the oral hearing. He adopted and relied on the contents of his six-paragraph affidavit in support of the application in which he, essentially, deposes that after his appeal before this Court failed, he timely prepared an application for review but that he realized upon the prison visit of the Deputy Registrar of the High Court that the same did not reach the Court Registry, consequent upon which he was advised to file this application.

For the respondent Republic, Mr. Innocent Rweyemamu; a State Attorney, who swore an affidavit in reply and appeared for the respondent at the oral hearing, resisted the application with some considerable force. He argued that the applicant has not given good cause why he did not file the application in time. He submitted that the applicant ought to have appended a copy of the application he allegedly timely filed. To buttress

the point that an application of this nature will only be granted upon showing good cause, the learned State Attorney cited and supplied **Anyelwisye Mwakapake v. Republic**, Criminal Application No. 1 of 2014 (unreported); the decision of the Court. Prompted on whether or not the applicant has shown any of grounds in rule 66 (1) on which his application for review will be pegged, the learned State Attorney was of the view that submitting on that point would mean going into the merits of the application intended to be filed should the extension sought is granted. What was important at that stage, he submitted, was only the question whether the applicant has shown good cause for the delay.

The applicant did not have anything useful to add in rejoinder. He just reiterated that he should be allowed to challenge the decision of the Court through a review and thus implored me to allow his application.

I have carefully considered the rival arguments fronted by both sides to the present application. As rightly put by Mr. Rweyemamu, an application for extension of time will only be granted upon showing good cause by an applicant. This is the tenor and import of the provisions of rule 10 of the Rules. For ease of reference, I reproduce the rule as under:

"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."

The term "good cause" has not been defined by the Rules. However, as extension os a matter within the discretion of the Court, it cannot be laid down by any hard and fast rules but will be determined by reference to all the circumstances of each individual case – see **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported).

But that will not be enough for an application for extension of time to file an application for review like the present. In such an application, an applicant is also required to show under which para of rule 66 (1) of the Rules his application be pegged. This is now settled law founded upon prudence in this jurisdiction. The decisions of the Court stressing this stance are innumerable – see: **Miraji Seif v. Republic**, Criminal Appeal

No. 2 of 2009, **Nyakua Orondo v. Republic,** Criminal Appeal No. 2 0f 2014, **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013, **Anyelwisye Mwakapake** (supra), **Juma Said & Another v. Republic**, Criminal Application No. 3 of 2015, **Mela Sango v. Republic**, Criminal Application No. 5 of 2015, **Jumapili Msyete v. Republic**, Criminal Application No. 4/06 of 2017 (all unreported decisions of the Court), to mention but a few. In **Miraji Seif** (supra), for instance, the Court stated:

> *"For an application seeking for enlargement of time to file an application for review to be granted by the Court, it has to be established by affidavit evidence that the intended application for review, will be predicated on one or more of the grounds that have been mention in Rule 66 (1) of the Rules"*

And the Court restated the position in **Nyakua Orondo** (supra):

> *"As restated by the Court in **Eliya Anderson Vs. R.**, Criminal Application No.2 of 2013 (unreported), an application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavit evidence, at the stage of extension of time, either implicitly or explicitly, that if extension is granted,*

the review application would be predicated on one or more of the grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66(1)."

In view of the above, I find very difficult to go along with Mr. Rweyemamu that addressing the Court on whether or not the applicant had established by affidavit on which limb under rule 66 (1) of the Rules will his application for review be pegged would be tantamount to going into the merits of the application. This is the requirement of the settled law and omission of which will not make an application of this nature succeed. The reason behind this somewhat stringent stance was perhaps explained in **Eliya Anderson** (supra) which, like the present, was an application for extension of time to file a review of the decision of the Court. The Court held:

*"It is settled law that a review of a Court judgment is not a routine procedure but a procedure of its own kind (sui generis). That is why the review jurisdiction is exercised "very sparingly and with great circumspection" (**Blueline v. E.A.D.B.** (supra)). That is why also it has been consistently held that "while an appeal may be attempted on the pretext of any error, not every error will justify a*

*review" (**Chandrakant Patel v. R.** (supra)). It is for this very fundamental reason, that Rule 66(1) unequivocally provides that "no application for review shall be entertained except on the" basis of the five grounds mentioned therein."*

Another reason why the stringent stance may be found in the principle sourced from the Latin maxim that it is in the interest of the Republic that litigation must come to an end. The applicant having exhausted his right of appeal up to the apex court of the land, we should be very hesitant to resurrect his quest, unless there are special circumstances to do so.

Adverting to the case at hand, there are two questions which come to the fore. These are: **first**, has the applicant shown good cause for the delay? If yes, **secondly**, has he shown on which para in rule 66 (1) of the Rules will his application be predicated?

I start with the first question. The applicant gives reasons in the affidavit supporting the application why he did not lodge the application for review in time. He deposes that he prepared an application for review in time but that he learnt that the same did not sail through after the Deputy Registrar of the High Court Tabora zone visited the prison in 2015. The

present application was filed on 23.08.2016. I, like Mr. Rweyemamu, do not see good cause for delay. The applicant has not shown a copy of the application allegedly timely filed. He has also not provided the dates on which such application was prepared and forwarded to the prison officers or the Court. Worse more, even if I was to agree that the application existed, the application has not given any explanation on the delay when he learnt that his application was not received by the Court in 2015 to 23.08.2016 when he lodged the application. It is trite law that in an application for extension of time, an applicant must account for each and every day of delay. The Court has pronounced itself so in a number of its decision - see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Bariki Israel v. The Republic,** Criminal Application No.4 of 2011, **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa)** Civil Application NO.4 of 2014, **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015, **Bruno Wenceslaus Nyalifa v. the Permanent Secretary, Ministry of Home Affairs**, Civil Appeal No. 82 of 2017 and **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch &**

Another, Civil Application No. 412/04 of 2018 (all unreported decisions of the Court). In **Bushiri Hassan**, the Court observed:

> *"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".*

In **Sebatian Ndaula** (supra) the Court went even further to state that the need to account for every day of delay becomes even more important when a long time has passed since the decision sought to be challenged was pronounced. In the case at hand, the impugned decision was handed down on 11.09.2013. It is now almost seven years since it was pronounced. The long time that has elapsed, on the authority of **Sebastian Ndaula** (supra), makes even more important that the applicant should have explained away every day of delay.

It may not be irrelevant to state at this stage that I am aware of several applications for applications for extension of time to file review filed in the recent past from the same prison and with similar contents of supporting affidavits; that they had timely filed applications for review and learnt that the same did not reach the Court Registry at Tabora after the

Deputy Registrar of the Court visited the Prison. I am not aware of any which succeeded; all have been found to be without good cause for the delay and were dismissed – see: for instance **Hussein Masoud v. Republic**, Criminal Application No. 2 of 2016 and **Yusuphu Said v. Republic**, Criminal Application No. 2 of 2016 (both unreported). One wonders if this crosscutting reason for delay is genuine.

In view of the above, it is my considered view that the applicant has not shown good cause for the delay to deserve the extension sought. The Court does not have enough material upon which to exercise its discretion to grant the extension prayed for.

The foregoing should have been enough to dispose this application. However, for completeness, I wish to also state that the applicant has not addressed at all the requirement of the second limb of the conditions to exist so that an application for extension of time to file an application for review, explained above, is grant. That is to say, he has not stated at all on which ground under rule 66 (1) of the Rules he will predicate his application for review if the enlargement of time sought is granted. This, as already alluded to above, is a fatal omission.

It follows that the applicant has not only failed to show good cause for the delay, but also has not shown in the affidavit on which ground or grounds in rule 66 (1) of the Rules, he will predicate his application for review if the extension sought is granted.

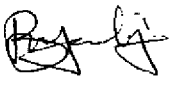
In the upshot of the above, I find and hold that this application was lodged with no scintilla of merit. It is hereby dismissed entirely.

Order accordingly.

DATED at **DAR ES SALAAM** this 17th day of March, 2020.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The Ruling delivered this 24th day of April, 2020 in the presence of Applicant in person, and Ms. Gladness Senya, State Attorney for the Respondent is hereby certified as a true copy of the original.



B. R. NYAKI
DEPUTY REGISTRAR