

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

CRIMINAL APPLICATION NO. 121/07 OF 2018

1. HAMIMU HAMISI TOTORO @ ZUNGU PABLO
2. HASHIMU SELEMANI POLO @ MADUKA
3. MOHAMED ABDALLAH SWALEHE @ BANIWELA }APPLICANTS

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time to file review out of time against the
decision of the Court of Appeal of Tanzania at Mtwara)**

(Munuo, Msoffe, Kileo, JJA.)

dated the 17th day of April, 2017

in

Criminal Appeal No. 170 of 2007

RULING

18th & 28th February, 2020

MWARIJA, J.A.:

In this application, the applicants, Hamimu Hamisi Totoro @ Zungu Pablo, Hashimu Selemani Polo @ Maduka and Mohamed Abdallah Swalehe @ Baniwela (the 1st – 3rd applicants respectively) have moved the Court seeking an order granting them extension of time to institute an application for review. The application which has been brought under *inter alia* Rule 10 of the Tanzania Court of Appeal Rules, 2009 is supported by a joint affidavit deposed by the applicants.

The applicants were the appellants in this Court in Criminal Appeal No. 170 of 2004. They appealed against the decision of the High Court

of Tanzania at Mtwara in Criminal Appeal No. 7 of 2003 which arose from the decision of the District Court of Newala. In that case, the applicants were convicted of the offence of armed robbery and sentenced to thirty years imprisonment. Their second appeal to this Court in the above stated Criminal Appeal No. 170 of 2004 was dismissed for lack of merit.

Dissatisfied further, the applicants instituted an application for review which, according to paragraph 8 of their join affidavit was struck out due to legal defects. Still determined to challenge the Court's decision by way of review, they instituted a fresh application for extension of time. According to paragraph 9 of their affidavit, their application for extension of time was similarly struck out for being incompetent. Undaunted, they have again come to the Court seeking to be granted extension of time to institute the intended application.

At the hearing of the application, the applicants appeared in person, unrepresented whereas the respondent Republic was represented by Mr. Kauli George Makasi, learned Senior State Attorney. All the applicants adopted their notice of motion and the supporting affidavit and opted to let the learned Senior State Attorney make his submission in reply to the application and thereafter make rejoinder, if they would find it necessary.

In his reply submission, Mr. Makasi argued that under Rule 10 of the Rules an application for extension of time may be granted only where the applicant has shown that there was a good cause for doing so. He argued that in this case, the applicants have not given sufficient reason for the delay. He submitted that in their affidavit, the applicant have merely narrated the facts giving rise to the application and not the reasons for the delay in filing the intended application. With regard to paragraphs 10 of the applicant's affidavit in which they have attributed ignorance of law as the cause of legal defects in their previous applications, Mr. Makasi argued that ignorance of law does not constitute sufficient reason for delay.

In their rejoinder, each of the applicants reiterated the contention put forward in the supporting affidavit that the delay was occasioned by their inability to prepare a competent application because of their ignorance in matters of law. They complained that they could not get legal assistance from prison officials and thus their previous applications which were prepared by one of their inmates suffered legal defects, the result of which the same were struck out.

From the contents of the notice of motion and the supporting affidavit as well as the rival submissions of the parties, there is only one issue for determination; whether or not the applicants have established

good cause for grant of their application. In grounds 3, 4 and 5 of the notice of motion, the applicants challenged the decision which is intended to be reviewed contending that the Court wrongly upheld the decision of the High Court which was erroneous in that; first, the Court upheld the appellant's conviction which was based on the evidence of cautioned statements without proof that same were made voluntarily and secondly, that the High Court decision was founded on insufficient evidence. Clearly these grounds are not relevant as far as the cause for the delay in filing the intended application is concerned. The only ground which the applicants have advanced is that they did not have the knowledge of law concerning the filing of an application for review.

As stated by Mr. Makasi, an application for extension of time may be granted where the applicant has shown that good cause exists for doing so. That provision states as follows:

"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 this Rules to any such time shall be construed as a reference to that time as so extended.."

The issue here is whether ignorance of law constitutes a good cause for the extension of time. There is a plethora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time. For instance, in the case of **Hadija Adam v. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported) the Court stated as follows:

*"As regard the applicant's ignorance of law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see for instance, **Charles Machota Salugi v. Republic**, Criminal Application No. 3 of 2011 (unreported)).*

Similar observation was made in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) in which the Court stated that:

*"As has been held times out of number, ignorance of law has never featured as a good cause for extension of time (see, for instance, the unreported ARS. Criminal Application No. 4 of 2011 **Bariki Israel Vs. The Republic**; and MZA, Criminal Application No. 3 of 2011 – **Charles Salugi Vs. the Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always*

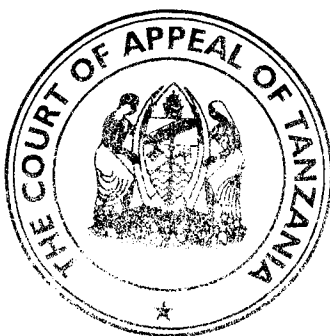
ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness.”

Having found that ignorance of law does not constitute good cause extension of time, this application cannot succeed. The same is accordingly hereby dismissed for want of merit.

DATED at MTWARA this 28th day of February, 2020.

A. G. MWARIJA
JUSTICE OF APPEAL

The Ruling delivered this 28th day of February, 2020 in the presence of the applicant in person and Mr. Kauli George Makasi, learned Senior State Attorney for the respondent / Republic, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL