

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 79/01 OF 2020

WILLIAM KASANGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for Extension of Time to File Review from the Decision of the
Court of Appeal of Tanzania at Dar es Salaam)**

(Mmilla, Mkuye, Wambali, JJ.A)

**dated the 28th day of May, 2020
in**

Criminal Appeal No. 90 of 2017

RULING

19th March & 15th April, 2021

LEVIRA, J.A.:

By way of notice of motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant, WILLIAM KASANGA is moving the Court for an order extending time within which he can file an application for Review out of time against the decision of the Court (Mmilla, Mkuye, Wambali, JJ.A) of 28th May, 2020 in Criminal Appeal No. 90 of 2017. The notice of motion is supported by an affidavit of the applicant. The respondent did not file affidavit in reply.

A brief background and sequence of events leading to the current application is set out in the applicant's affidavit. In the District Court of Morogoro at Morogoro, the applicant was charged, prosecuted and convicted of unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code, [Cap 16 RE 2002] and sentenced to 30 years imprisonment. Aggrieved by that decision, he unsuccessfully appealed to the High Court of Tanzania (Korosso, J.) vide Criminal Appeal No. 58 of 2016 where his Sentence was enhanced to life imprisonment. Still discontented, he further appealed to the Court in Criminal Appeal No. 90 of 2017 where his appeal was dismissed in its entirety.

The applicant is still not satisfied with the decision of the Court and thus he wished to file review against the said decision but time is not in his favour; hence, the current application.

At the hearing of this application the applicant appeared in person, unrepresented via virtual link from Ukonga prison. The respondent was represented by Ms. Violet David, learned State Attorney. The parties submissions will be considered in the cause of determining this application.

As intimated above, the current application is brought under Rule 10 of the Rules which provides 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 these Rules to any such time shall be construed as a reference to that time as so extended".

In the light of the above provision, the issue calling for determination by the Court is whether the applicant has demonstrated good cause for the Court to grant the order sought.

It is common knowledge that there is no single definition of what constitutes good cause. As such, each case has to be determined basing on its own peculiar circumstance. (See **Oswald Masatu Mwizaburi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported)).

The applicant in this application stated under paragraphs 5 and 6 of the supporting affidavit that the delay to file review was caused by the delay to receive a copy of the impugned decision and the effect caused by pandemic virus of corona. In his oral submission, the applicant elaborated that, he applied for the copy of the impugned decision on 11/11/2020 and he was supplied with the same on 12/11/2020.

It is on record of this application that, the impugned decision was delivered on 28/5/2020 and the current application was filed on 12/11/2020 after lapse of more than 5 months. Rule 66 (3) of the Rules requires an application for review to be filed within 60 days from the date of the Judgment or Order sought to be reviewed. Therefore, according to this provision the applicant was supposed to file review on or before 28/7/2020.

Arguing on the reason for delay advance by the applicant, Ms. David stated that, the applicant has failed to advance good cause for the delay because he applied for a copy of the impugned decision on 11/11/2020 while he was already out of time. Besides, she argued, if the applicant applied for the said copy on 11/11/2020 and was supplied with

the same on 12/11/2020, it means that there was no delay of being supplied as he contended.

It has to be noted that the applicant claimed that he was delayed by the prison authority to get the said copy of the impugned decision but there was no affidavit from any prison officer to that effect.

Regarding the ground of pandemic virus of corona as a ground for delay advanced by the applicant, Ms. David opposed it. She submitted that since our country did not lock down during the said pandemic, the ground raised by the applicant to justify his delay is unfounded. Thus, she argued, as paper movement was not restricted, the applicant could have applied in time and got a copy of the impugned decision.

In his oral submission, the applicant stated that he intends to file review because he was not satisfied with the decision of the Court on the following two grounds. **First**, the Court did not consider the fact that the victim of the offence which he was convicted of abusing was examined after lapse of two days from the date of the incident. **Second**, the said victim was examined in the absence of the applicant; so, he does not recognize that examination. However, in the notice of motion the applicant indicated two grounds as follows:

- i) That a party was wrongly deprived of an opportunity to be heard.
- ii) That the decision was based on a manifest error on the face of record.

Ms. David resisted the grounds which were advanced by the applicant as she argued that, they do not deserve to be grounds of review in case the application is granted.

I am mindful of the fact that in this application for extension of time the Court is not required to examine grounds of the intended review. However, since the applicant revealed what he intends to present as his grounds of review, I agree with Ms. David that they do not qualify to be termed so.

Without prejudice, having considered the extent and reasons of delay as stated above, I am not convinced that the applicant has been able to advance good cause for me to exercise the Court's discretionary powers to extend time as sought.

I am also mindful of the fact that in certain circumstances the Court has to consider the fact that the applicant being a prisoner and not a free agent he should not be denied extension of time of doing

some acts limited by the Rules. (see **Sospeter Lulenga v. Republic**, Criminal Appeal No. 107 of 2006 and **Prosper Baltazar Kileo and Another v. Republic**, Criminal Application No. 1 of 2010 (both unreported)). However, circumstances of the present application are distinguishable because there is no proof from the prison Authority that they contributed to the applicant's delay (See **Jumapili Msyete v. Republic**, Criminal Application No. 4/06 of 2017 (unreported)). What is on record is that, the applicant was supplied with a copy of the impugned decision in a day after making his application to be supplied with the same. This may imply that, the intention to file review against the decision of the Court is an afterthought.

It is settled position that in an application for extension of time, the applicant must account for every day of delay (see **Yazid Kassim Mbakileki v. CRDB (1996) LTD Bukoba Branch and Another**, Civil Application No. 412/04 of 2018).

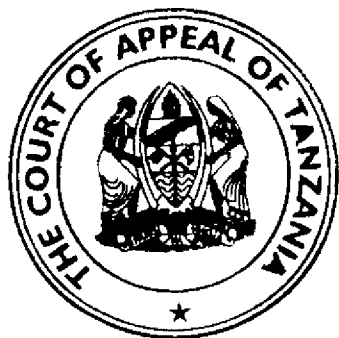
In the current application the applicant has failed to account for a period of more than three months which in my view cannot just be ignored.

In the upshot, I find that the applicant has failed to disclose good cause for the Court to exercise its jurisdiction to enlarge time. Accordingly, I dismiss this application in its entirety.

DATED at DAR ES SALAAM this 25th day of March, 2021.

M. C. LEVIRA
JUSTICE OF APPEAL

The Ruling delivered this 15th day of April, 2021 in the presence of Applicant appeared in person and Miss Debora Mushi, learned State Attorney for the Respondent / Republic is hereby certified as a true copy of the original.




G. H. Herbert
DEPUTY REGISTRAR
COURT OF APPEAL