

**IN THE COURT OF APPEAL OF TANZANIA**

**AT BUKOBA**

**CRIMINAL APPLICATION NO. 80/04 OF 2019**

**JOHN LAZARO ..... APPLICANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**(Application for extension of time to file an application for Review from the Judgment of the Court of Appeal of Tanzania at Bukoba)**

**(Munuo, Massati, And Mandia, JJ.A.)**

**Dated the 28<sup>th</sup> day of November, 2011**

**in**

**Criminal Appeal No. 230 of 2010**

**.....**

**R U L I N G**

23<sup>rd</sup> & 27<sup>th</sup> August, 2021

**KENTE, J.A.:**

The applicant, John Lazaro appeared before the High Court (sitting at Bukoba) where he was convicted of the offence of murder contrary to section 196 of the Penal Code. He was subsequently sentenced to the mandatory sentence of death by hanging. Aggrieved by the decision of the High Court, he appealed to this Court (Munuo, Massati, and Mandia, JJ.A) but all to no avail. To his dismay, the appeal was dismissed and both the conviction and

sentence by the trial court were sustained. That was way back on 28<sup>th</sup> November, 2011.

It is not clear with regard to what transpired thereafter but the applicant contends that, on being availed with the copy of judgment, he acted swiftly and prepared an application for review, handed it over to the Prison Authority at Butimba Mwanza for onward transmission to the Deputy Registrar of the Court at Mwanza. However, again to his disappointment, the said documents could not reach the Deputy Registrar until almost one year later that is on 20<sup>th</sup> December, 2012. Seeing that the application for review (Criminal Application No. 8 of 2012) was time barred, the applicant withdrew it, and, as a substitute, he lodged another application (No. 34/4 of 2017) which was however, dismissed by the Court on account of the same reason of limitation. For ease of reference, the above factual averments are contained in the affidavit sworn by the applicant in support of the present application in which he is seeking for extension of time to lodge another application for review.

The application is made under Rule 10 of the Court of Appeal Rules, 2019 (hence forth the Court Rules). For the reasons that will become apparent in the course of this ruling, I will not touch on the reasons cited by

the applicant in the Notice of Motion in an endeavor to account for the inordinate delay for almost eight years, to apply for review.

It is common ground that sometimes in 2017, pursuant to Rule 10 of the then Court Rules of 2009, the applicant lodged in this Court an application seeking for enlargement of time within which to lodge another application for review of the same Court's decision in Criminal Appeal No. 230 of 2010. As stated before, the decision of the Court which is sought to be reviewed, was handed down on 28<sup>th</sup> November, 2011. Upon hearing the parties, the Court (Mbarouk, JA, now retired) was of the view and he consequently held that, the applicant had failed to furnish good cause to account for the delay for six years reckoned from 2011 when the impugned decision of the Court was made, to 2017 when the applicant lodged the first application for extension of time which he later on successfully prayed to withdraw. Accordingly, the Court went on to dismiss the application for want of merit. Undeterred, two years thereafter, that is on 23<sup>rd</sup> July, 2019, the applicant lodged the present application citing almost the same reasons to account for the delay and praying for the same reliefs as those contained in the Notice of Motion launching the application which was dismissed by the Court.

At the hearing of this application, the applicant appeared in person while the respondent Republic was represented by Ms. Veronica Moshi and Ms. Naila Chamba both learned State Attorneys. To make the present application look genuine, in his submissions in-chief, the applicant did not touch on the fact that he had earlier on, in 2017, made a similar application before this Court, but in vain. Instead, it is Ms. Chamba who dutifully brought this fact to the attention of the Court. However, the learned State Attorney could not set out to explore what the applicant should have done after being aggrieved by the decision of the single Justice dismissing the application for extension of time. Upon inspiration from the Court, Ms. Chamba realized and she quickly submitted that, the applicant ought to have made a reference from the decision of a single Justice to the full Court in terms of Rule 62 (1) (a) of the Court Rules. In reply, the applicant who had previously portrayed himself as being knowledgeable in the Court Rules changed the tune and told the Court that, it was the first time for him to hear about the said Rule generally and in particular, the word "*reference*". Undaunted however, he was emphatic that he had furnished good cause to explain away the delay for almost eight years to lodge an application for review. He therefore prayed for the application to be allowed so as to pave the way for the filing of the intended application for review.

Ms. Chamba, for her part, was surprised why would the applicant proceed to lodge another application of the same nature with the same prayer after the first application was dismissed for want of merit. Assuming but without accepting that, the application was properly before the Court, she had one question: where would the applicant get the good cause to explain away and account for the inordinate delay which he had failed to account for explain much earlier in August, 2018? The learned State Attorney submitted that, in fact what the applicant did, amounted to an abuse of the process of the Court which is abhorrent to the timely and effective administration of justice. She therefore implored this Court to strike out the present application for being misconceived.

Now, Rule 62 (1) (a) of the Court Rules provides that:

*"Where any person is dissatisfied with the decision of a single Justice exercising the powers conferred by Article 123 of the Constitution, he may apply informally to the Justice at the time when the decision is given or by writing, to the Registrar within seven days after the decision of the Justice –*

*(a) In any criminal matter, to have his application determined by the Court . . ."*

The above-quoted provisions of the law is in line with Article 123 (a) of the Constitution which provides that:

*"Jaji mmoja wa Mahakama ya Rufani aweza kutekeleza madaraka yoyote ya Mahakama ya Rufani ambayo hayahusiki na kutoa uamuzi juu ya Ruffaa, isipokuwa kwamba:*

*(a) Katika mashauri ya jinai, iwapo Jaji wa Mahakama ya Rufani aliyeombwa kutekeleza madaraka hayo atatoa uamuzi ambao mwombaji haridhiki nao, basi mwombaji atakuwa na haki kutaka maombi yake yaamuliwe na Mahakama ya Rufani."*

Unofficially translated, it means:

*"A single Justice of Appeal may exercise any power vested in the Court of Appeal not involving the determination of an appeal; except that:*

*(a) In criminal matters, where a Justice of Appeal on an application for the exercise of those powers makes a decision which the applicant is dissatisfied with, then the applicant shall be entitled to required to have his application determined by the full Court."*

If the above-quoted provisions of the law is anything to go by, it is certainly clear that, the applicant was not entitled to come back to a single Justice of appeal after the dismissal of a similar application by Mbarouk, JA. As it is, the law required him to make a reference under Rule 62 (1) (a) of the Court Rules so as to have his application determined by the full Court. That, he did not do, and it follows in my judgment that, the present application is misconceived and therefore incompetent before the Court. It is for these reasons that I found it unnecessary to go into the merits or demerits of the application.

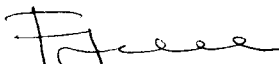
In view of such a glaring and serious procedural irregularity, I strike out this for being misconceived.

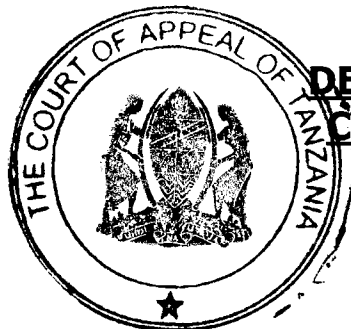
It is so ordered.

**DATED** at **BUKOBA** this 26<sup>th</sup> day of August, 2021.

P. M. KENTE  
**JUSTICE OF APPEAL**

The Ruling delivered this 27<sup>th</sup> day of August, 2021 in the presence of the Applicant in person and Mr. Juma Mahona, learned counsel for the Respondent is hereby certified as a true copy of the original.

  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**



The seal of the Court of Appeal of Tanzania is circular, featuring the national coat of arms of Tanzania in the center. The text 'THE COURT OF APPEAL OF TANZANIA' is written around the perimeter of the seal, and a small star is positioned at the bottom center.