

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

**CRIMINAL APPLICION NO. 14/01 OF 2021**

**SALUM RAJABU ABDUL @ USOWAMBUZI ..... 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)**

**(Mmila, J.A., Mwangesi, J.A. And Sehel, J.A.)**

**dated 27<sup>th</sup> day of February, 2020**

**in**

**Criminal Appeal No. 219/01 of 2017**

.....

**RULING OF THE COURT**

20<sup>th</sup> July & 12<sup>th</sup> August, 2022

**RUMANYIKA, J.A.:**

Salum Rajabu @ Usowambuzi, the applicant intends, by way of review to contest our judgment dated 27/02/2020 out of time. He is therefore before me, by way of the Notice of Motion taken under rules 10, 48(1) and 66(1)(a) and (b) of the Tanzania Court of Appeal Rules (the Rules). It is supported by an affidavit of Salum Rajabu Abdul @ Usowambuzi, whose contents the applicant adopted at the hearing. He appeared in person unrepresented, whereas Ms. Veronica Mtafya, learned State Attorney appeared for the respondent Republic.

The applicant submitted that he desires, by way of review to challenge our judgment but he is late, as he fell seriously sick one month before hearing his appeal. That he was admitted and underwent abdominal surgery at Muhimbili National Hospital and was discharged on 13.01.2020 as shown in the copy of the Discharge Form appended to the application. Further he submitted that, as, by the end of 2021 when he fully recovered, he was time barred and thus filed the present application for extension of time. Additionally, he submitted that the impugned judgment is tainted with apparent error on the record namely, a denial of right to be heard leading to miscarriage of justice on his part.

Ms. Mtafya prayed to adopt the contents of the affidavit in reply and submitted that the application lacks merit as the applicant has not shown sufficient cause for the delay. That the application is liable to be dismissed because it was lodged on 12/04/2021 to challenge the decision of 27/02/2020, if at all having been admitted in hospital on 12/01/2020 the applicant was discharged on 13/01/2020, as shown in the copy of the medical chit appended.

As regards the alleged manifest error in the impugned judgment, Ms. Mtafya urged me to disregard the complaint. Illustrating her

argument, she cited our decision in **Boniface Alistedes v. R.**, Criminal Application No. 6/08 of 2019 and asked me to dismiss the application.

Having heard the parties' submissions carefully and fairly considering the supporting affidavit and the affidavit in reply, the issue for my determination is whether the application warrants grant of extension of time.

At least it is not disputed that counting from 27/02/2020 when we handed down our judgment, the subject of the intended review, the present application was lodged about fourteen months later, out of sixty days prescribed under rule 66(5) of the Rules which reads as follows:

***"The notice of motion for review shall be filed within sixty days from the date of the judgment or order sought to be reviewed and shall set out clearly the grounds for review. (Emphasis added).***

Guided by the above cited mandatory provisions of the rule of the Court, I am settled to pronounce that this application was lodged about twelve months far beyond the period prescribed by the law.

I am aware of the trite law, that there is no fast and hard rule of what constitutes sufficient cause. It depends on the material presented by the parties and the court's discretion, more so from 13/01/2020, the date of his discharge and 12/04/2021 when he filed this application, the

applicant's promptness and diligence in filing the present application is too doubtful to warrant grant of it. See: the unbroken chain of authorities including our decision in **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002, **Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Karibu Textile Mills v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 (all unreported).

Applying the rule in the above cited cases to the present application, I am confident to hold that the applicant may have fallen sick and for that reason remained bed ridden in the hospital for such a period of time, and when was discharged on 13/01/2020 he did not recover fully until on 31/12/2021, nonetheless he filed the instant application about four months later on 12/04/2021 without offering any explanation for the delay. He did not account for each day of that long inordinate delay. Even if it is a single day's delay it is immaterial. See: our decision in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported).

Lastly, as above hinted, the other ground for extension of time is that by striking out ground numbers 5, 7, and 8 of his supplementary

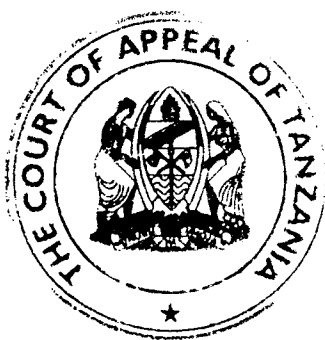
memorandum of appeal for being new and afterthought, we denied him the right of appeal. This ground is not founded as it is demonstrated at page 12 of the impugned judgment we found all the three points to be more of fact and not of law therefore we had no jurisdiction. It follows therefore, none of the three grounds raised establishes illegality of the judgment of this Court to warrant extension of time to apply for review.

Consequently, the application for extension of time falls short of merit. It is hereby dismissed. It is so ordered.

**DATED at DAR ES SALAAM** this 12<sup>th</sup> day of August, 2022.

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The ruling delivered on 12<sup>th</sup> day of August, 2022 in presence of appellant linked via video conference at Ukonga prison, Mr. Tumaini Mafuru, learned State Attorney for the respondent/republic is hereby certified as true copy of the original.



  
R. W. CHAUNGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**