

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT ARUSHA**

**CRIMINAL APPLICATION NO. 02/02 OF 2020**

**MARMO s/o SLAA @ HOFU.....1<sup>ST</sup> APPLICANT**

**MATTLE s/o QWANG.....2<sup>ND</sup> APPLICANT**

**VERSUS**

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

**(Application for extension of time within which to apply for Review against  
the decision of the Court of Appeal of Tanzania at Arusha)**

**(Nsekela, Luanda & Massati, JJA.)**

**dated the 18<sup>th</sup> day of May, 2012**

**in**

**Criminal Appeal No. 212 of 2009**

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**RULING**

30<sup>th</sup> November & 05<sup>th</sup> December, 2022

**KWARIKO, J.A.:**

The applicants were convicted of murder by the High Court of Tanzania at Arusha District Registry and sentenced to suffer death by hanging. Their appeal before this Court was dismissed for being devoid of merit on 18<sup>th</sup> May, 2012. Aggrieved, they intended to apply for review of that decision, but they found themselves out of time to do so. By a notice of motion taken under rule 66 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules), they have now come before the Court with an application for extension of

time to apply for review. The application is supported by the joint affidavit of the applicants.

The grounds for delay to file the application for review both in the notice of motion and the supporting affidavit are as follows. Earlier, the applicants' application for review was struck out on 4<sup>th</sup> August, 2017 for being incompetent. Thereafter, being laypersons, the applicants tried to look for legal assistance from different sources including the Tanganyika Law Society (TLS) for preparation of the application for review. By the time they obtained legal assistance, they found themselves out of time hence this application.

The applicants mentioned two grounds for the intended review as follows. *One*, there is manifest error apparent on the face of the record. *Two*, they were denied opportunity to be heard during the hearing of the case as their counsel did not visit them in prison before the trial.

On the other hand, the respondent opposed the application through an affidavit in reply sworn by Ms. Akisa Mhando, learned Senior State Attorney for the respondent, Republic. Essentially, it is deposed that being laypersons is not good cause for the grant of extension of time to file review

and also the impugned decision was not based on manifest error apparent on the face of the record.

When the application was called on for hearing, the applicants appeared in person, unrepresented while Ms. Mhando, teamed up with Ms. Eunice Makala, learned State Attorney to represent the respondent Republic.

Upon taking the stage to argue the application, the applicants did not have much to say as they only adopted the notice of motion and the supporting affidavit and urged the Court to grant their application. On her part, Ms. Makala reiterated the affidavit in reply and added that the applicants kept quiet for almost two years from 4<sup>th</sup> August, 2017 when their application for review was struck out until 24<sup>th</sup> July, 2019 when this application was lodged which according to her, it is a very long period of time which has not been accounted for. The learned State Attorney urged the Court to dismiss the application for being devoid of merit.

Having considered the notice of motion, the applicant's affidavit in support thereof, the affidavit in reply and the submissions from both parties, the issue which calls for determination in this matter is whether the applicants have shown good cause for the grant of the orders sought in this

application. The law is well settled that in an application for extension of time to apply for review, the applicant is required not only to show good cause for the delay as per Rule 10 of the Rules, but also to show one or more grounds for review as shown under rule 66 (1) of the Rules. See for instance the decisions of the Court in; **Mwita Mhere v. Republic**, Criminal Application No. 7 of 2011; **Grayson Zacharia Mkumbi @ Mapendo v. Republic**, Criminal Application No. 12/01 of 2017 and **Elinazani Matiko Ng'eng'e v. Republic**, Criminal Application No. 29/01 of 2015 (all unreported). For example, in the first case it was stated thus:

*"But in applications of this nature, the law demands that the applicant should do more than account for the delay. To succeed in showing that he has a good cause under Rule 10 of the Rules, it must be shown further that the applicant has an arguable case. An arguable case is one that demonstrates that the intended grounds of review is at least one of those listed in Rule 66(1) of the Rules."*

If that is the case, the question that follows is whether the applicants have complied with the conditions for the grant of the extension of time to apply for review. As regards the first condition, the applicants ought to account for the delay from 4<sup>th</sup> August, 2017 when the first application of this

nature was struck out for being incompetent to 24<sup>th</sup> July, 2019 when this application was lodged. This is a period of almost two years. The applicants' sole reason for this delay is that, being laypersons, they were looking for legal assistance from different persons including the TLS to prepare the application for review. In essence, the applicants have pleaded ignorance of the law. Is ignorance of law a good cause for extension of time to lodge a given proceeding in court? The answer to this question is in the negative as it has been pronounced by the Court in its various instances. Some of these instances are in the cases of **Godfrey Antony & Another v. Republic**, Criminal Application No. 6 of 2008, **Emilio Mpelembe @ Songambe v. Republic**, Criminal Application No. 18 of 2013 and **Emmanuel Lohay & Another v. Republic**, Criminal Application No. 3 of 2013 (all unreported). For example, in the last case, it was stated thus:

*"Ignorance of law is no excuse and cannot amount to sufficient cause for extending time to take a certain step."*

Even if the Court was to believe that the applicants needed legal assistance, by any standard, two years is a very long period of time for one to have been looking for a lawyer. It is therefore clear that the applicants have failed to

account for the delay to file the application for review and thus the first precondition for the grant of such application fails.

Having found as above, I find it to be fruitless exercise to discuss the second precondition because the two conditions ought to be met conjunctively for the application for extension of time to apply for review to succeed.

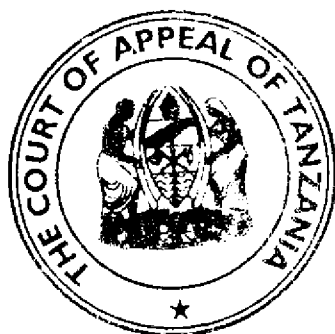
Finally, for the foregoing discussion, it is clear that the applicants have failed to satisfy the conditions for the grant of the extension of time to apply for review. The application is thus non meritorious and it is accordingly dismissed.

It is so ordered.

**DATED at ARUSHA** this 05<sup>th</sup> day of December, 2022.

M. A. KWARIKO  
**JUSTICE OF APPEAL**

The ruling delivered this 5<sup>th</sup> day of December, 2022 in the presence of Applicants in person and Ms. Akisa Mhando, 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**