

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA
CRIMINAL APPLICATION NO. 32/02 OF 2020**

AMINI JUMA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for Extension of Time to file Application for Review against the
Judgment of the Court of Appeal of Tanzania at Arusha)**

(Mbarouk, Mjasiri, Massati, JJA)

dated the 17th day of October, 2011

in

Criminal Appeal No. 303 of 2008

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RULING

2nd & 8th December, 2022

MASHAKA, J.A.:

The applicant, Amini Juma has lodged a notice of motion under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), moving the Court to extend time within which he can lodge an application for review against the decision of the Court (Mbarouk, Mjasiri and Massati, JJA) dated 17th October, 2011 in Criminal Appeal No. 303 of 2008.

The notice of motion is supported by an affidavit of the applicant. On the other hand, the respondent did not file affidavit in reply.

Briefly, the background to this application is that the applicant was charged and convicted by the High Court of Tanzania at Arusha with the

offence of murder contrary to section 196 of the Penal Code [Cap 16 R.E 2002]. He was sentenced to serve life imprisonment. Being aggrieved, he appealed to the Court vide Criminal Appeal No. 303 of 2008 where his appeal was dismissed and the sentence was enhanced from life imprisonment to death by hanging. On 1st December, 2011 the applicant lodged Criminal Application No. 3 of 2011 for review. The application for review was withdrawn on 27th November, 2017. The applicant filed an application for extension of time to file an application for review vide Criminal Application No. 50/02 of 2019 which was withdrawn on 26th March, 2020. Hence the present application which is predicated on two grounds as follows:

- 1. The decision of the Court in Criminal Appeal No. 303 of 2008 resulting in conviction and enhancing the sentence from life imprisonment to death by hanging contains manifest errors on the face of the record which occasioned miscarriage of justice.*
- 2. The applicant had drafted and filed an application for review which was incurably defective hence his advocate sought for leave to withdraw and file a proper application for review.*

At the hearing of the application, the applicant was present and represented by Mr. Ehpraim Koisenge, learned advocate whereas, the

respondent Republic, enjoyed the services of Ms. Akisa Mhando, learned Senior State Attorney assisted by Ms. Eunice Makala, learned State Attorney.

Mr. Koisenge adopted the supporting affidavit to form part of his oral submission. He stated that the application is brought under rule 10 of the Rules to be granted extension of time to file an application for review of the decision dated 17th October, 2011 in Criminal Appeal No. 303 of 2008. He argued that the application for review was lodged late on 1st April, 2020 which is eight (8) years, six (6) months and fourteen (14) days after the prescribed time. He stated that rule 66 (3) of the Rules provides for an application for review to be lodged within sixty (60) days from the date of the impugned decision. Referring to paragraphs 5, 6, 7 and 8 of supporting affidavit, he recounted that for the first time on 1st December, 2011 the applicant lodged within time Criminal Application No. 3 of 2011 which was awaiting in the Court until 27/11/2017 when the learned advocate for the applicant prayed to withdraw it. It was pending in the Court for five (5) years, 11(eleven) months and sixteen (16) days.

Referring to paragraphs 10 and 11, Mr. Koisenge argued further that another Criminal Application No. 50/2 of 2018 was lodged on 09/01/2018 and eventually withdrawn again by the applicant on 26/03/2020. It had

been pending in the Court for two (2) years, two (2) months and eight (8) days.

He submitted further that at paragraph 9 of affidavit the applicant averred that a total of 42 days passed when the applicant's advocate was attending treatment, preparing for the lodgement of the application. On 1st April, 2020 the applicant lodged this application almost 5 days after the previous application was withdrawn on 26th March, 2020.

He further submitted that the decision in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, (unreported) formulated four guidelines to be considered by the Court. He claimed that at paragraph 15 of supporting affidavit the applicant has accounted that, he was looking for an advocate and succeeded to engage him on 30/03/2020, while in prison serving his sentence.

The learned advocate contended that though they have not explained the reasons but have stated that the impugned decision was incurably defective as shown on the notice of motion and averred at paragraph 3 of the supporting affidavit. He prayed to the Court to exercise

its discretion and grant extension of time to lodge an application for review.

In reply, at the onset, Ms. Mhando supported the application made under rule 10 of the Rules. She referred to paragraphs 12 and 15 of the supporting affidavit and she is convinced that the applicant has provided explanation on his delay in lodging his application for review on time bearing in mind that he is in prison. She prayed to the Court to grant the application. Mr. Koisenge had nothing to add in rejoinder.

Having considered the submissions by learned counsel for the parties, the issue for determination is whether the applicant has demonstrated good cause to warrant extension of time to lodge an application for review. As stated earlier, the application is predicated under rule 10 of the Rules which gives discretion to the Court to grant extension of time where there is a good cause. Before the Court exercises its discretion, it must have sufficient material before it in which the applicant is to account for each day of delay. Also, the applicant must show diligence in prosecuting the intended action. The spirit of rule 10 of the Rules is for the applicant to advance good cause for the Court to exercise its discretion and grant extension of time. The said provision reads thus:

"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."

The above cited provision requires the applicant to show good cause for the delay in filing the intended matter within the time prescribed and account for each day of delay. In the present application, the applicant in a nutshell has advanced two reasons for his delay; **one**, that the delay was caused by the fact that he is in prison and he could not engage an advocate easily; and **two**, that there is a manifest error on the face of the record when the Court declined his appeal and enhanced his sentence.

Commencing with the first reason that he was in prison, it is not disputed that the applicant is in prison serving his sentence. However, the guidelines set cannot be waived against him. The said guidelines were formulated in **Lyamuya Construction Company Ltd** (supra), where the Court articulated the following guidelines to be considered for the grant of extension of time; **one**, the applicant must account for all the period of delay; **two**, the delay should not be inordinate; **three**, the

applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; **four**, if the court feels that there are other sufficient reasons, such as the existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

In the light of the above, the issue of accounting days of the delay by the applicant, a prisoner would be a difficult process taking into account that all his correspondences have to pass through the Prisons Officer In charge. According to paragraphs 4, 5, 6, 7 and 8 of the supporting affidavit, after the delivery of the impugned decision on 17th October, 2011, the applicant filed his application for review within the prescribed time and the same was withdrawn on 27th November, 2017. That period is termed a technical delay which is explicable and excusable as held in **Yara Tanzania Limited v. DP Shapriya & Co. Limited**, Civil Application No. 498/16 of 2016 (unreported).

The applicant is required to account from 28th November, 2017 to the 31st March 2020, as the present application was lodged on 1st April, 2020. As averred at paragraphs 10, 11, 12, 13 and 14 of the supporting affidavit, the applicant had lodged an application for extension of time on 9th January, 2018 which was withdrawn on 26th March, 2020. This shows

that the applicant was not negligent in pursuing his application for extension of time to file for review. Further to that, from 26th March, 2020 when the application of extension of time was marked withdrawn to 1st April, 2020 when this application was filed cannot be said is inordinate delay.

As gleaned at paragraph 15 of the supporting affidavit, it is my observation that the circumstances of the application are peculiar, as the applicant is incarcerated and has to process his application through the prisons authority. Having taken into consideration that the delay was not inordinate and he has shown diligence in prosecution of the action he intends to take and the fact that the respondent does not resist the application, I find that there is good cause for extension of time.

Now, I move to the second reason in which the applicant is seeking extension of time to lodge an application for review.

It is trite law that, for the court to allow such an application, the applicant has to enumerate the grounds for review listed under rule 66(1) of the Rules. In **Mwita Mhere v. Republic**, Criminal Application No. 7 of 2011 (unreported), the Court held thus:

"But in application of this nature, the law demands that the applicant should do more than account for the

delay. To succeed in showing that he has 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."

Under paragraph 3 of the supporting affidavit, the applicant averred that when declining his appeal in Criminal Appeal No. 303 of 2008 and enhancing his sentence to suffer death by hanging comprises manifest error on the face of the record occasioning the miscarriage of justice.

Without going into the merits of the grounds for review, the ground stated in the applicant's affidavit falls within the ambit of rule 66 (1) (a) of the Rules that the decision was based on a manifest error on the face of record resulting in the miscarriage of justice. In the circumstances, I am certain that the applicant has shown that he has an arguable case in the application for review in case extension of time is granted.

I have carefully considered the reasons advanced for delay by the applicant; I am satisfied that in terms of rule 10 of the Rules the reasons for the delay as shown above constitute good cause and has satisfied that there is manifest error on the face of the record.

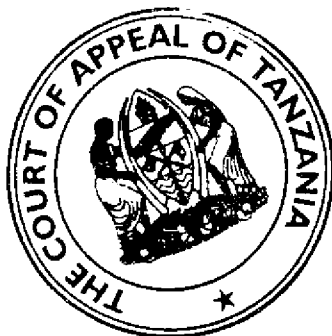
Overall, the applicant has demonstrated good causes for the Court to grant extension of time to file an application for review.


In the result, the application is granted. The applicant to lodge the intended review within sixty (60) days from the date of delivery of this Ruling.

DATED at ARUSHA this 8th day of December, 2022.

L. L. MASHAKA
JUSTICE OF APPEAL

The ruling delivered this 8th day of December, 2022 in the presence of Applicant in person and Ms. Penina Ngotea, 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