

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 25/01 OF 2021

KADIRIA SAID KIMARO APPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(Application for extension of time to apply for review against
the decision of the Court of Appeal of Tanzania
at Dar es Salaam)**

(Mziray, J.A, Mkuye, J.A, Kitusi, J.)

dated the 26th June, 2019

in

Criminal Appeal No. 301 of 2017

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RULING

4th & 12th July, 2023

MAIGE, J.A:

In the decision under discussion which was delivered on 26th June, 2019, the Court dismissed the applicant's appeal against the decision of the High Court of Tanzania at Dar es Salaam (Mwandambo,J) convicting him of illicit trafficking in narcotic drugs contrary to section 16(1)(b) (i) of the Drugs and Prevention of Illicit traffic in Drugs Act, Cap. 95 R.E. 2001

and sentencing him to imprisonment of 20 years and payment of fine of Tanzania Shillings 122,031,900.00.

By a mistake and perhaps because of being an unrepresented layperson, the applicant, believing that the said decision had some errors capable of being corrected by way of review, initiated an application for revision instead of review. Therefore, when he appeared before the Court for hearing on 2nd day of June, 2021 and upon a short dialogue with the Court, the applicant withdrew the said application. As the time limit for an application for review had already expired, he, on 10th June, 2021, lodged the instant application.

The application has been brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and is founded on the affidavit of the applicant which was not factually opposed by the respondent. The grounds in support of the application according to the notice of motion are as follows;

- 1. The applicant mistakenly lodged REVISION to the Court under Rule 65 of the Tanzania Court of Appeal Rules, 2009 that was registered as Revision No. 81/01/2019.*
- 2. That there is manifest error apparent on the face of the record which is contrary to Rule 66(1) (a) of the Tanzania Court of Appeal Rules, 2009 as:-*

- (a) The applicant's cautioned statement that was recorded by the investigator on 6th day of February, 2011 was illegally admitted in evidence but at page 12 to 16 of the judgment it was held that investigator was allowed so to do by section 58(4) of the CPA as amended by the Written Laws (Misc. amendment) Act No. 3 of 2011 without considering that the said amendment was operational from July, 2011.*
 - (b) The principle of chain of custody was not considered consistently as it was in previous similar cases.*
3. *The applicant was denied a right to be heard as his written submissions were not considered.*

At the hearing of the application, the applicant appeared in person without representation. Mr. Yussuf Aboud, learned State Attorney appeared for the respondent Republic.

When invited to address me on his application, the applicant adopted the notice of motion and affidavit and prayed that the application be granted. In reply, Mr. Aboud in the first place, submitted that, indeed, the facts in the notice of motion and affidavit sufficiently demonstrate that the applicant was prevented from timely pursuing the intended application by good cause. He contended however based on the principle in **Grayson Zacharia Mkumbi @ Mapendo v. R.** Criminal Appeal No. 12/01/2017 (unreported) that; in an application for extension of time to apply for

review by the Court, aside from showing good cause for the delay, the applicant is required to demonstrate by affidavit or otherwise that the intended application for review fall within the purview of the provisions of rule 66 (1) of the Rules. He submitted that the intended grounds of review shown in the notice of motion do not whether expressly or by implication raise any grounds for review under the above provisions. In his contention, therefore, the application should be dismissed.

Being a layman, the applicant had nothing to submit in rejoinder rather than leaving the matter for the decision by the Court.

I agree with Mr. Aboud that in an application for extension of time to apply for review, the applicant has, on top of demonstrating good cause for delay, to establish *prima facie* that the intended application falls in any of the grounds mentioned in section 66 (1) of the Rules. That position was clearly stated in the case of **Elia Anderson v. R**, Criminal Application No. 265/01 of 2016 (unreported) referred in **Grayson Zacharia** (supra) where it was stated:

"An application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for delay, but also established by affidavit evidence, at the stage of extension of time, either impliedly or explicitly, that if extension is

granted, the review application would be predicated on one or more of the grounds mentioned in paragraphs (a) or (b) or (c) or (d) or (e) of Rule 66(1)."

In this case, it is not in dispute that, the applicant delayed to pursue the intended appeal because of confusion on the remedy available under rule 66 (1) of the Rules for a party aggrieved by the decision of the Court. He went for revision instead of review. When he realized that the approach he took was not in law, time was no longer with him. Sooner than longer, he commenced the instant application. In the circumstances of this case and taking into account that the applicant is unrepresented lay person who is in prison custody, I entirely agree with the learned State Attorney that, the delay in question was a mere excusable technical delay. The applicant thus passes the first test.

This takes me to the second test as to whether the grounds of the intended review contained in the notice of motion *prima facie* fall on one or more of the grounds mentioned in rule 66(1) of the Rules. I have taken time to go through the proposed grounds of the intended review as reflected in the notice of motion. At this stage, I cannot fairly say that the said grounds do not fall within the purview of rule 66(1) of the Rules without the decision in question being examined, which is not within my powers. It is my humble opinion, therefore, that for the purpose of

deciding whether or not to grant an extension of time, the facts in the notice of motion as afore stated demonstrate that if extension of time was granted, the intended application would be predicated on grounds for review set out in the provisions just referred. The applicant thus passes the second test as well.


In the final result and for the foregoing reasons, therefore, the application has merit and it is granted. The intended application for review should be filed within thirty days (30) from the date hereof.

DATED at DAR ES SALAAM this 10th day of July, 2023.

I. J. MAIGE
JUSTICE OF APPEAL

The ruling delivered this 12th day of July, 2023 in the presence of the Applicant in person via Video link from Ukonga Prison and Ms. Gladnes Senya, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL