

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CRIMINAL APPLICATION NO. 26/01 OF 2021

HALFANI MWISHESHE MBEGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Mwangessi, Mwambegele, Levira, JJA)

Dated the 2nd day of October 2020

in

Criminal Appeal No. 54 of 2018

RULING OF THE COURT

24th & 30th August, 2023

MGEYEKWA, J.A.

This is an application for extension of time within which the applicants herein can lodge an application for review. The basis of the application is the decision of this Court (Mwangessi, Mwambegele, Levira, JJA.) dated 2nd October, 2020 in Criminal Appeal No. 54 of 2018. The application has been preferred under Rules 10 and 66 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) through a notice of motion

supported by two separate affidavits of the applicant and H.A. Lissu ,the prison officer in charge, respectively.

The grounds for an extension of time have been stated in the notice of motion thus:

- 1. The decision of the Court was based on a manifest error on the face of the record as the evidence of the doctrine of recent possession relied upon to convict the applicant was contradictory, unreliable, incredible and contravened some guidelines required to the standard;*
- 2. The decision of the Court was based on a manifest error on the face of the record as the evidence that was led to support the prosecution evidence was not properly analysed because of that default, the applicant was convicted while the prosecution evidence (PW1) was not sufficient to sustain his conviction;*
- 3. The decision of the Court was based on a manifest error on the face of the record as since all exhibits (Exh. P1, P2 & P4) were expunged from the record, no amount of other evidence could corroborate PW1 nor PW3's story.*

When the application came for hearing before me, the applicant appeared in person, unrepresented, while the respondent Republic was represented by Ms. Jenipher Massue, learned Principal State Attorney assisted by Ms. Mossie Kaima, learned State Attorney. The respondent, Republic did not oppose the application.

In the supporting affidavit, the applicant urged the Court to adopt his affidavit and the Prison Officer's affidavit to form part of his submission. Briefly, the applicant in his affidavit deponed that after being dissatisfied by the decision of the High Court, he appealed to the Court which was registered as Criminal Appeal No. 54 of 2018, however the same was dismissed on 2nd October, 2020. Later, he was transferred from Ukonga Prison to Kitai Agriculture Central Prison in Ruvuma Region. He added that, being a prisoner behind bars he had no control of the process of filing applications. Upon arriving at Kitai Prison he informed the officer in Charge of the Prison of his intention to file an application for review and he promised to assist him. The applicant stated that he discovered that the judgment of the Court has manifest errors on the face of the record, the same constitutes good cause to warrant a grant of this application. As such, the applicant prayed that the application be allowed.

In conclusion, the applicant beckoned upon this Court in the interest of justice to grant his application.

On his part, H. A Lissu, the Prison Officer in Charge deponed that in October, 2020, soon after the applicant's appeal was dismissed the applicant approached the prison authority with intention to file a notice for review. He further deponed that the Prison authority received the copies of the judgment on 2th October, 2020 by that time the was already transferred to Kitai Agriculture Central Prison, thus, the applicant's delay was out of his control. In the interest of justice, the officer in Charge urged the Court to allow the applicant to file an application for review.

I wish to preface my determination of this application by stating at the outset that, in an application of this nature, the applicant is required to show good cause in terms of Rule 10 of the Rules. The said Rule provides that: -

"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.”

Guided by the above-cited provision of the law, the applicant must show good cause for the delay in filling the application. There are numerous authorities to this effect and some of them include, **Osward Masatu Mwizarubi v Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, **Attorney General v Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016, and **Maulid Swedi v The Republic**, Criminal Application No. 66/11 of 2017 (all unreported), to mention a few.

In exercising its discretion to grant extension of time, the Court considers crucial factors, which are not necessarily exhaustive but at the moment they include; the cause of the delay, length of the delay, whether the applicant has accounted for the delay, and whether there is illegality or any point of law of sufficient public importance in the decision sought to be challenged. I have also considered the fact that extension of time is an equitable remedy that is available to a deserving party at the discretion of the Court. It is therefore the duty of the applicant to provide relevant material facts for the Court to exercise its discretion.

To justify the delay, the applicant in paragraphs 4, 5, 6, 7, and 8 of the affidavit has narrated what transpired after the delivery of the judgment of this Court in Criminal Appeal No. 54 of 2018 up to when he was availed with the copy of the judgment. Later, he filed the instant application before the Court. His assertions are supported by H.A. Lissu, Officer In Charge of Ukonga Central Prison situated at Dar es Salaam.

Guided by the above findings, I find and I hold that the delay is excusable and it has been satisfactorily explained. I have considered the circumstance of the case at hand that, the applicant being a prisoner, depends much on the prison authority to prepare and take care of the whole process of lodging matters in Court. Intrinsically, the applicant cannot be blamed for logging incompetent applications, as it may sometimes be unfair to expect too much from him.

The Court, in its numerous decisions of this nature, has considered the situation of prisoners that they are not free agents who can freely lodge matters before the Court and make regular follow-ups on them. See **Joseph Sweet v The Republic**, Criminal Appeal No. 11 of 2017, and **Fabian Chumila v The Republic**, Criminal Application No. 6/10 of 2019 (all unreported).

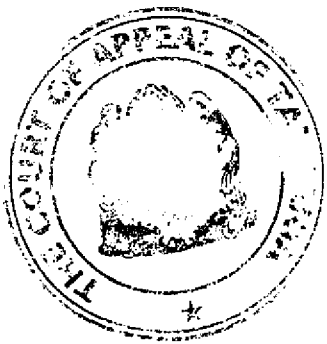
For the aforesaid reasons, proceed to extend time for the applicant to lodge his application for review out of time and order the requisite application to be lodged within sixty (60) days from the date of delivery of this Ruling.

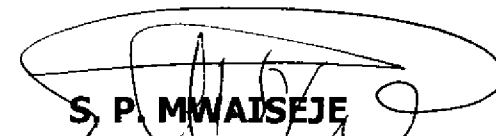
Order accordingly.

DATED at **DAR ES SALAAM** this 30th day of August, 2023.

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Ruling delivered this 30th day of August, 2023 in the presence of the applicant in person and Genes Tesha, learned Senior State Attorney for the respondent is hereby certified as a true copy of the original.




S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL