

IN THE COURT OF APPEAL OF TANZANIA

AT SONGEA

CRIMINAL APPLICATION NO. 27/10 OF 2022

CHARLES HAULEAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Application for Extension of time to file Review from the decision of the

Court of Appeal of Tanzania at Iringa)

(Juma, CJ, Ndika, And Sehel, JJ.A)

dated the 30th day of April, 2021)

in

Criminal Appeal No. 250 of 2018

RULING

14th August, & 6th September, 2023

RUMANYIKA, J.A:

In the District Court of Songea at Songea, (the trial court), Charles Haule, the applicant was charged for rape and unnatural offence, contrary to sections 130 (1) (2) (e), 131 (3) and 154 (1), both of the Penal Code, Cap 16 (the Penal Code). After a full trial on 25/04/2016, he was convicted and sentenced to life imprisonment for each of the two counts and six strokes of the cane on the 1st count additionally. Dissatisfied with the conviction and sentences, he unsuccessfully appealed to the High Court of

Tanzania at Songea. Still aggrieved, he appealed to this Court where again he lost the battle on 30/04/2021.

Still yearning to have the Court overturn its own decision by way of review, and knowing that he is time barred, the applicant has filed the present application seeking for an order of extension of time.

The application has been preferred by way of notice of motion under rules 10, 49(1) and 66(3) of the Tanzania Court of Appeal Rules, 2009 ("the Rules") and has been supported with an affidavit sworn by Charles Haule, the applicant. The respondent resisted it by filling an affidavit in reply sworn by Hellen Martin Chuma.

The notice of motion comprises two grounds essentially, which are reproduced as follows:-

- 1. That, the failure to lodge the application for review of judgment was beyond my capacity.*
- 2. That, the failure was beyond my capacity since I am a prisoner under custody depend each and every thing from the prison authority.*

As such, he attributed his delay to file review with a belatedly rendered legal assistance to him as a prisoner.

At the hearing of the application on 14/08/2023, the applicant appeared in person, unrepresented. The respondent Republic was represented by Ms. Hellen Chuma learned State Attorney.

When invited to expound on his application, the applicant adopted his notice of motion and the supporting affidavit. However, he urged the Court to allow Ms. Chuma to submit first while reserving his right to reply, should that need arise.

Relying on her affidavit in reply filed on 09/08/2023, the learned State Attorney resisted the application for lacking merits and prayed for its dismissal. Referring to rule 66(3) of the Rules which sets forth a limitation period of sixty days for filing review, she contended that, the applicant did not account for each day of the delay of about nine months from 30/04/2021 when the Court dismissed his appeal and 11/04/2022 when he filed the instant application.

She also asserted that, the reason for the delay given is too general and unfounded for the Court to grant an extension of time sought. If anything, Ms. Chuma argued, the applicant's delay is inordinate, because,

she argued, like any other prisoners, it is common knowledge that, assistance of prison officers was always there.

Further, she contended that, it is common knowledge that prison officers' assistance was always there for the needy prisoners much as, in the instant application there is no prison officer's affidavit filed to support the applicant's allegations.

To winding up, Ms. Chuma asserted that, the application has not met the threshold for the granting an extension of time. To cement her point, she cited our decision in **Joseph Raphael Kimaro And Another v. R**, Criminal Application No. 54/02 of 2019 (unreported). She urged us to find that the application is devoid of merits thus liable to be dismissed.

In reply to the learned State Attorney's submission, the applicant contended that, upon the Court dismissing his appeal at Iringa, he was transferred to Ruanda prison, Mbeya that very day. He also asserted that, as he was not happy with the Court's decision and while processing his application for review, he was transferred to Isanga prison, Dodoma. Additionally, he argued, he presented his documents timely in 2021 to the authorities thereof for onward transmission. He blamed the prison officers

for causing the delay contending that, it is common knowledge that, as prisoner, his movements outside the prison cells were restricted. He further argued that, upon preparing the documents which he gave to the prison officers timely for onward transmission to the Court, he was home and dry. Since he had no means to push the prison officers to do the needful timely in the circumstance narrated above.

Prompted by the Court on the applicant's failure to indicate in the notice of motion, under which grounds mentioned under rule 66(1) (a)-(e) of the Rules the intended application for review would be predicated, if granted an extension of time, the applicant admitted to have omitted it.

On her part, Ms. Chuma stated that, there is no such requirement at this stage, until when extension of time is sought and granted, thus during the hearing of the intended substantive application when the said grounds could be stated. She cited the Court's decision in **Joseph Raphael Kimaro** (supra) to bolster her point.

Upon hearing of the rival arguments made by the applicant and the learned State Attorney, the issue that I am called upon to answer is whether the applicant has shown good

cause to warrant exercise of the Courts discretionary powers for the granting of an extension of time, in terms of rule 10 of the Rules. It reads:

The Court may upon good cause shown, extend 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;...

[Emphasis added].

Application of rule 10 of the Rules has been tested in a number of cases including **Laureno Mseya v. Republic**, Criminal Application No. 4/06 of 2016 and **Chiku Havid Chionda v. Getrude Nguge Mtinga as administratrix of the estate of the late Yohane Claude Dugu**, Civil Application No. 501/01 of 2018 (both unreported) where the Court stated that the Court has discretionary powers to grant an extension of time, upon good cause being shown by the applicant.

However, the law is settled that, what amounts to good cause is subjective. It is determinable on a case to case basis. Nevertheless, in all cases its bottomline has been lucidly restated by the Court in a number of cases. One of them is **Sumry High Class Ltd And Another v. Musa**

Shaibu Msangi, Civil Application No. 403/16 of 2018 [2018] TZCA 281 (22 October 2018: TanzLII). For instance in **Joel Silomba R**, Criminal Application No. 5 of 2012 (unreported) the Court restated the criteria considered to establish good cause as including:

- i) **" the length of the delay;**
- ii) ***The reason for the delay, was the delay caused or contributed by dilatory conduct of the applicant?;***
- iii) *Whether there is an arguable case, such as, whether there is point of law or the illegality or otherwise of the decision sought to be challenged; and or*
- iv) *The degree of prejudice to the opposite party if the application is granted."* (Emphasis added).

As it is alluded to above, in the instant application, the applicant intends the Court's judgment delivered on 30/04/2021 to be reviewed, if granted an extension of time. Pursuant to rule 66(3) of the Rules, an application for review is required to be lodged with sixty days from the date of the Court's decision sought to be reviewed. In this case therefore, it ought to be filed on, or by 30/06/2021 latest. However, the present application was filed on 11/04/2022, which is about nine months counting from the deadline stated above.

I agree with the learned State Attorney's contention that, the applicant's assertions that he got assistance of the prison officers to transmit the documents late to be unfounded thus, not a good cause. The reason I am saying so is that, the applicants' assertions on the delay were not supported by an affidavit of the alleged prison authorities. On that aspect, the law is clear that, if an affidavit mentions another person, then that other person should also take an affidavit to prove existence of the respective fact. See the case of **Sabena Technics Dar. Limited v. Michael Luwunzu**, Civil Application No. 451/18 of 2020 (unreported) citing **Benedict Kiwanga v. Principal Secretary Ministry of Health**, Civil Application No. 31 of 2000 and **NBC Ltd. v. Superdoll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002 (both unreported). Short of that, that remains to be hearsay evidence which is not accepted.

It follows therefore, that, the applicant did not account for each day of the said nine good months delay. Simply stated, his allegations are too general to justify the delay which I find to be inordinate. I am afraid, if any similar general allegation is accepted casually to be good cause for the granting of extension of time, then possibly, the rule against time-barred to

judicial proceedings would be rendered to be useless and ineffectual. It is the requirement of the law, that, the applicant cannot be spared accounting for each day of the delay. Since failure to do so is fatal rendering an application to be liable for dismissal. The Court has taken that stance in a number of cases for instance in **PrayGod Mbaga v. The Government of Kenya, Criminal Investigation Department and the Attorney General of Tanzania**, Civil Reference No. 04 of 2019 [2019] TZCA 547 (3 September 2019: TanzLII) and **John Lazaro v. R**, Criminal Appeal No. 34 of 2017 (unreported).

As regards the issue of the applicant's failure, in the present application to state which grounds mentioned under rule 66(1) (a)-(e) of the Rules would be preferred in the intended application, if an extension of time is granted, with respect, I do not accept Ms. Chuma's contention that, stating the intended grounds for review at this stage is not a legal requirement. In fact the vice versa is true.

In **Mwita Mhere v. R**, Criminal Application No. 07 Of 2011 which we have been referring to in a plethora of our decisions, in the cases including in **Iddy Salum @ Fredy v. R**, Criminal Application No. 03/01 of 2021 [2023] TZCA 245 (12 May 2023: TanzLII) and **Robert Nyengela v. R**,

Criminal Application No. 42/13 of 2019 [2021] TZCA 166 (3 May 2021: TanzLII). In the latter case, the Court held that:

*"But in application of this nature, the law demands that the applicant should do more than accounting 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...that demonstrates that the intended grounds of review is at least one of those listed in Rule 66 (1) of the Rules.**"*

(Emphasis added).

The above legal proposition applied, it is needless to say that the instant application is lacking in merit, as expressly admitted by the applicant. It is distinguished with **Joseph Raphael Kimaro** (supra). In this application there is a total failure of the applicant to state the said grounds whereas in the former case, the respondent's counsel stressed for detailed grounds mentioned under rule 66(1) (a)-(e) of the Rules on which the intended review would be predicated. I note that, a mere indication of the ground(s) without necessarily giving its detailed account is sufficient.

It is also worth noting that, as review by the Court of its own decision is not a rehearing of the matter, in this case, the respective appeal

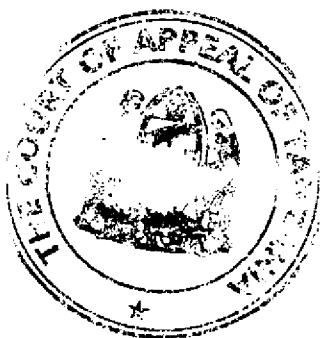
but rather, its resemblance. For that purpose therefore, rule 66(1) (a)–(e) of the Rules referred above saves as a safety gadget for filing similar applications. An application for extension of time to apply a review therefore, is not grantable forefront and as of right.


When all is said, and now that the applicant has not accounted for each day of about nine month's delay nor shown which grounds mentioned under rule 66(1) (a) – (e) of the Rules the intended review would be predicated, he is thus deemed not to have disclosed a good cause. Consequently, the application is unmerited and hereby dismissed.

DATED at DAR ES SALAAM this 5th day of September, 2023.

S.M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 6th day of September, 2023 via video conference from Songea prison in the presence of appellant Charles Haule in person and Ms. Hellen Chuma, learned Senior State Attorney for the Respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL