IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

CRIMINAL APPLICATION NO. 14/11 OF 2020

GODFREY MAHONA ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

[Application for Extension of time to lodge a Review against the Decision of the Court of Appeal at Tabora]

(Luanda, Mmila & Mkuye, JJA.)

dated the 15th day of August, 2017

in

Criminal Appeal No. 535 of 2015

.....

RULING

19th September, & 2nd October, 2023

KAIRO, J.A.:

By way of notice of motion, the applicant Godfrey Mahona has filed this application for extension of time in which to apply for review of the judgment of this Court given in Criminal Appeal No. 535 of 2015 delivered on 15th September, 2017. The application is predicated under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by an affidavit sworn by the applicant.

Briefly the background of the application is that, the applicant was charged with the offence of rape before the District Court of Shinyanga at

Shinyanga. After the trial, the Court found him guilty and sentenced him to life imprisonment. His efforts to protest his innocence through appeals at the High Court and the Court of Appeal respectively, proved futile.

Still adamant, he intends to lodge an application for review before the Court but failed to do so within the prescribed time after receiving a copy of the judgment subject to review on 21st August, 2017. Hence this application.

The applicant has fronted two good causes which, according to him, warrant the grant of the extension of time sought. The first is based on reasons for delay wherein the applicant associated it with the death of his father, coupled with poor communication between him and his family and ignorance of the legal process for review.

Amplifying, the applicant in paragraphs 5 to 7 deponed that he depended on his father to find an advocate to assist him on the review process which he was not conversant with and thus, he gave a copy of the judgment intended to be reviewed to his father on 23rd August, 2017 for the purpose. However, the father died before engaging the advocate. He further deponed that, the copy of the judgment was thus returned to him by his sister on 28th June, 2019 with the bad news concerning the

death of his father. The applicant thus lodged this application with the help of prison officers on 7th October, 2019.

The second one canvassed the ground of the intended review whereby in paragraph 8 of his affidavit, the applicant deponed that the decision was based on manifest error and the same is a nullity. Illustrating, the applicant stated that, he was not arraigned and his plea was not taken immediately before the prosecution case was opened.

At the hearing of the application, the applicant appeared in person, unrepresented while the respondent Republic was represented by Mr. Enosh Gabriel Kigoryo, learned State Attorney. The applicant adopted the notice of motion together with his affidavit and had nothing useful to add. He prayed that his application be granted.

On his part, Mr. Kigoryo opposed the application from the outset. He submitted that, under Rule 60 (3) of the Rules, the application for review was to be filed within 60 days from the decision date which was 15th August, 2017. He went on submitting that, the applicant was given the judgment intended to be reviewed on 23rd August, 2017, that is 6 (six) days later and the applicant gave the same to his father on 23rd August, 2017 for him to process the review, but until 28th June, 2019, when the judgment was returned by his sister, the applicant had not made any

effort either to communicate with his relatives over the issue or lodge the review, despite the lapse two years. The learned State Attorney further contended that, even after receiving the documents from his sister, 4 (four) months lapsed before filing this application on 29th October, 2019. According to him, the inaction shows laxity and negligence on the part of the applicant. He argued that his failure to account for the time lapsed since the delivery of the judgment at issue cannot by any standard justify his prayer for the extension of time sought.

Refuting the applicant's reason of not knowing how to go about the review process, the learned State Attorney contended that, the law is long settled that ignorance of law cannot constitute good cause for the grant of extension of time. He referred the Court to the case of **Ally Kinanda and 2 Others vs. The Republic,** Criminal Application No. 1 of 2016 (unreported) to fortify his argument.

Mr. Kigoryo also dismissed the reason of searching for legal assistance outside the prison advanced by the applicant to be the cause of delay. He argued that since this application was filed through the legal assistance of the Prison Officers, thus, the said reason is redundant.

Responding to the allegation of failure to arraign him and take his plea immediately before the prosecution case was opened which the

applicant labelled to be manifest error and the nullity of the decision, Mr. Kigoryo argued that the complaint is not a legal requirement. He further submitted that an application for review is neither a 2nd bite nor an appeal and thus, the alleged error has to be manifested in the decision intended to be reviewed and not in the proceedings. He concluded that, the said ground is misplaced and prayed the Court to dismiss the application.

In his rejoinder, the applicant reiterated what he deponed in his affidavit and the prayers in the notice of motion.

The main issue for the Court's determination is whether the application is meritorious.

According to rule 10 of the Rules upon which this application is predicated, the applicant has to exhibit good cause in order to convince the Court to exercise its discretion to extend the time sought. As to what exactly constitute good cause, the discretion has been left to the Court as in essence there is no hard and fast rule in establishing the same. Nevertheless, the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010 (unreported) has laid down some principles as to what constitutes *"good cause"*. The principles are as follows: -

"(a) the applicant must account for all the period of delay

(b) the delay should not be inordinate

(c) the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and

(d) if the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."

(Also see **Zahara Kitindi and Another vs. Juma Swalehe and Nine Others,** Civil Application No. 4/05 of 2017 (unreported).

In the instant matter, the applicant intends to lodge review which under rule 66 (3) of the Rules, the time within which to file it is 60 days from the date of the decision sought to be reviewed. According to record, the said decision was delivered on 15th August, 2017 and thus the 60 days lapsed on 14th October, 2017. However, this application was filed on 29th October, 2019, that is, after a lapse of more than two years.

The question is whether the two years lapse has been accounted for and the answer is readily in the negative. In trying to account for delay, the applicant stated that he handed over the copy of the judgment

intended to be reviewed to his father who was to find an advocate to initiate the review process, but unfortunately his father died before accomplishing the mission. It is noteworthy that there is no proof as regards the alleged death. But further, even if the proof would have been available, the record shows that, 23 moths had lapsed since the document was handed over to the applicant's father without taking any step to initiate the intended review. To say the least, the applicant demonstrated negligence and lack of diligence.

It was also the contention of the applicant that he sought for the legal assistance through his father since he was not aware of the review process. However, as submitted by Mr. Kigoryo and rightly so, ignorance of law does not constitute sufficient cause to warrant the grant of an extension of time. There is a plethora of authorities to this effect such as **Ally Kinanda And 2 Others vs. Republic** (supra) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) to mention, but a few.

In **Ngao Godwin Losero** (supra) the Court observed as follows when faced with a similar situation: -

> *"As has been held times out of number, ignorance of law has never featured as good cause for extension of time... To say the least, a diligent and*

prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness"

Flowing from the cited decision, the applicant had a duty to ask for the procedures on how to go about the review process from the prison officers who were at his disposal. As such, his decision to seek the legal assistance through his father was taken at his own peril. Besides, the applicant gave no reason of doing so considering that the legal assistance through the prison officers is available in prisons and in fact, the applicant used the prison officers to prepare and file this application after the document given to his father was returned unattended. Therefore, the reason of searching for legal assistance does not hold water.

That a part, the record further reveals that even after getting back the judgment subject to review, he filed this application four months later. However, the four months delay was not accounted for. Again, his inaction apart from being inordinate, it also depicts apathy and sloppiness on the part of the applicant in pursuing the intended action, thus contrary to the principles laid down in **Lyamuya's** case (supra). Considering the above stated situation, I am increasingly of the view that, the applicant has failed to advance 'good cause' to justify the exercise of the discretion conferred upon me under rule 10 of the Rules.

Notably, the law is now settled that in application of this nature, the law demands the applicant to do more than merely accounting for delay. The requirement which is now a settled law is for the applicant to demonstrate that the intended ground of review is among those listed in rule 66 (1) of the Rules. The Rule provides as hereunder: -

> *"66(1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-*
>
> *(a) the decision was based on a manifest error on the face of the record resulting in miscarriage of justice, or*
>
> *(b) a party was wrongly deprived of an opportunity to be heard,*
>
> *(c) the Court's decision is a nullity*
>
> *(d) the Court had no jurisdiction to entertain the case or*
>
> (e) *the Judgment was procured illegally, or by fraud or perjury.*

The provision has been interpreted in our various decisions. For example, in **Yusuph Simon vs. Republic** Criminal Application No. 7 of 2013] (Unreported) we stated as follows: -

> *"Admittedly, the Court is strictly enjoined under Rule 66 (1) of the Rules, not to entertain in application for review except on the basis of the*

five grounds prescribed thereunder. ***Indeed, law is settled that an applicant who filed an application under Rule 10 of the Rules for extension of time in which to file an application for review, should not only state in his notice of motion or in the affidavit filed in support thereof, the grounds for delay, but should also show that his application is predicated upon one or more grounds of review listed under rule 66 (1) of the Rules"***

[Emphasis added].

As above stated, the applicant in the case at hand pleaded manifest error on the decision intended to be reviewed and that the said decision is a nullity. Expounding on the two grounds of review, the applicant alleged that he was not arraigned nor his plea taken immediately before the prosecution case was opened. The allegation however was vehemently refuted by Mr. Kigoryo.

I do not want to be detained by the applicant's contention. Suffice to state that, the canvassed grounds by the applicant are required to be in the decision subject to review. However, the applicant's allegation touches the proceedings at the trial Court which this Court is not seized with. Besides, the proceedings are not subject to review by the Court.

Entertaining such allegation would amount to re-opening of the hearing of the matter while the application for review is neither another appeal nor a second bite application as correctly argued by Mr. Kigoryo. See **Efficient International Freight Ltd and Another vs. Office Du Burundi**, Civil Application No. 23 of 2005] (unreported) and **Anyelwisye Mwakapake vs. Republic** (supra). Thus, the ground is misplaced in the circumstance of this application.

In the final analysis, I am constrained to find this application devoid of merit and I accordingly dismiss it.

DATED at **TABORA** this 30th day of September, 2023.

L. G. KAIRO
JUSTICE OF APPEAL

Ruling delivered this 2nd day of October, 2023 in the presence of Mr. Godfrey s/o Mahona, the Applicant in person and Mr. Enosh Gabriel Kigoryo, State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.

G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL