

**IN THE COURT OF APPEAL OF TANZANIA**

**AT TABORA**

**CRIMINAL APPLICATION NO. 70/11 OF 2018**

**MASANJA SESAGULI ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**[Application for Extension of time to file Review against the Judgment of  
the Court of Appeal of Tanzania at Tabora]**

**(Mbarouk, Luanda & Mziray, JJA.)**

**dated the 22<sup>nd</sup> day of March, 2016**

**in**

**Criminal Appeal No. 108 of 2016**

**.....**

**RULING**

*22<sup>nd</sup> September, & 3<sup>rd</sup> October, 2023*

**KAIRO, J.A.:**

This ruling is in respect of an application for extension of time to file review under rules 10 and 48 of the Tanzania Court of Appeal Rules, 2009, (the Rules).

By notice of motion filed on 20<sup>th</sup> September, 2023 following the order to amend the previous one filed on 13<sup>th</sup> March, 2018 the applicant, Masanja Sesaguli is seeking an extension of time to file review the judgment of the Court of Appeal in Criminal Appeal No. 108 of 2016

delivered on 24<sup>th</sup> October, 2016. The application is supported by an affidavit sworn by the Applicant.

A brief background of this application is that, the applicant was charged with the offence of rape before the District Court of Urambo where he was found guilty and sentenced accordingly. He unsuccessfully appealed to the High Court and the Court of Appeal respectively. Still aggrieved, he intends to file the application for review on two grounds: **first**; that he was neither informed of the right for review in the Court's judgment subject to review nor by the honourable Justices on the delivery of the Judgment concerned, as such, he was not aware of his right to review; **second**, that the decision intended to be reviewed was based on manifest errors on the face of the record resulting in the miscarriage of justice.

At the hearing of the application, the applicant appeared in person, unrepresented while the respondent Republic was represented by Ms. Alice Silence Thomas, learned State Attorney.

When invited to amplify his application, the applicant adopted his notice of motion together with the supporting affidavit and had nothing useful to add. He prayed that his application be granted.

Ms. Thomas vehemently opposed the application because there was an inordinate delay of more than a year in filing of the application which was not accounted for. She went on to submit that, the applicant also did not exhibit good cause for the said delay thus, contrary to the requirement stipulated under rule 10 of the Rules. She sought reliance in the unreported case of **Anyelwisye Mwakapake vs. Republic**, Criminal Application No. 01 of 2014. She added that, the cited case has gone further and ruled out that, apart from showing good cause, the applicant over and above has to state at least one ground for review stipulated under rule 66 (1) of the Rules before the Court can exercise its discretion to grant the extension of time under rule 10 of the Rules. She however contended that though after going through the affidavit she noted that the applicant has alleged that the decision subject to review was based on manifest errors on the face of the record resulting in the miscarriage of justice which means, she quoted rule 66 (1) (a) of the Rules, but the same was not elaborated further, apart from just mentioning it.

In her conclusion, Ms. Thomas prayed the Court to find that, the applicant has failed to comply with both rules 10 and 66 (1) of the Rules and thus, the application is without merit and be dismissed as a consequence.

The applicant had nothing to re-join and left the matter to the wisdom of the Court, but reiterated his prayer to have this application granted.

According to the record of the application, it is true that the judgment of this Court sought to be reviewed was delivered on 24<sup>th</sup> October, 2016. Rule 66 (3) of the Rules provides for 60 days within which to file review counting from the judgment date. In the case at hand therefore, the time lapsed on 23<sup>rd</sup> October, 2016 which date is considered to be the time when limitation started to run for the applicant to account for delay.

The record further reveals that this application was filed on 13<sup>th</sup> March, 2018, thus arithmetically it was filed after the lapse of 15 months. By all standards, the time lapsed is inordinate and cannot be ignored. It is settled law that in an application for extension of time, the applicant has to account for each day of delay. Times without number the Court has reiterated this position. For example, in **Dar es salaam City Council vs. Group Security Co. Ltd**, Civil Application No. 234 of 2015 (unreported), the Court observed as follows: -

*"...the stance which this court has consistently taken is that an application for extension of time, the applicant has to account for every day delay."*

In the case at hand, the applicant has not accounted for the lapse of 15 months. I am aware that the applicant has complained that he was not informed of the right for review, and thus he is imploring the Court to consider the complaint as a sufficient cause for delay. In other words, the applicant is pleading ignorance of law. However, the law is long settled that ignorance of law does not constitute sufficient cause for the grant of extension of time under rule 10 of the Rules See: **Ally Kinanda and 2 others vs. The Republic** (supra).

That apart, and as rightly submitted by Ms. Thomas, in an application of this nature, the law further demands that the applicant should not only advance sufficient reasons for the delay, but he should as well account for all the days delayed. The applicant is also required to go further and show that his application is predicated on one or more grounds of review listed under rule 66 (1) of the Rules. [See: **Mwita Muhere vs. Republic**, Criminal Application No. 7 of 2012 and **Robert Nyengele vs. Republic**, Criminal Application No. 42/13 of 2019 (both unreported).

In the case under review, though the applicant alleged that the decision intended to be reviewed has manifest errors on the face of the record resulting in the miscarriage of justice, which means he has hinged

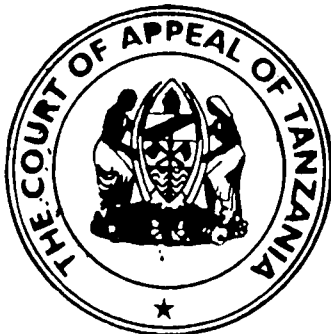
his intended review on rule 66 (1) (a) of the Rules, but the alleged errors were not pointed out and explained. A mere mentioning of the ground in my view, is not enough. The applicant was duty bound to go further and pin point the alleged errors. When asked by the Court to state and point out the alleged errors in the decision intended to be reviewed, the applicant could not instead, resorted to leave the matter to the wisdom of the Court.

In the circumstances, I join hands with the submission by Ms. Thomas and rule out that the applicant has failed to disclose good cause, as such I have no basis of granting this application. In the end, this application is dismissed in its entirety.

**DATED at TABORA** this 3<sup>rd</sup> day of October, 2023.

L. G. KAIRO  
**JUSTICE OF APPEAL**

Ruling delivered this 3<sup>rd</sup> day of October, 2023 in the presence of the Applicant in person and Mr. Steven Mnzava, State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**