

**IN THE COURT OF APPEAL OF TANZANIA**

**AT SUMBAWANGA**

**CRIMINAL APPLICATION NO. 66/09 OF 2022**

**SABAS KUZIRIWA.....APPLICANT**

**VERSUS**

**THE DPP ..... RESPONDENT**

**(Application for extension of time to lodge application for review of the  
Judgment of the Court of Appeal of Tanzania at Mbeya)**

**(Mwambegeie, Mwandambo and Mashaka, J.J.A)**

**dated the 29<sup>th</sup> day of November, 2021**

**in**

**Criminal Appeal No. 40 of 2019**

**.....**

**RULING**

19<sup>th</sup> September & 4<sup>th</sup> October, 2023

**KENTE, J.A.:**

By any standards, this ruling which is in respect of an application for extension of time within which the applicant namely, Sabas Kuziriwa may apply for review of the judgment of this Court in Criminal Appeal No. 4 of 2019, must be very short.

The applicant was tried in the Resident Magistrates Court of Sumbawanga and convicted of rape contrary to sections 130(1) (2) (e)

and 131 (1) of the Penal Code, Chapter 16 of the Revised Laws. He was subsequently sentenced to the mandatory minimum sentence of thirty years imprisonment. He appealed to the High Court (sitting at Sumbawanga) which sustained both the conviction and sentence. Being aggrieved by the decision of the High Court and still undaunted, the applicant vainly appealed to this Court which delivered its judgment on 30<sup>th</sup> November, 2021 dismissing his appeal in its entirety.

By a Notice of Motion taken under Rules 10 and 66(1) (b) and (e) of the Tanzania Court of Appeal Rules, 2009 (hereinafter the Rules), the applicant preferred the present application praying to be allowed to file an application for review of the above – mentioned judgment of this Court out of time. For the purposes of exactitude, the motion was lodged in Court on 8<sup>th</sup> September, 2022 that is exactly after 278 days of the delivery of the judgment which is sought to be reviewed.

If I may quote with some necessary moderation, the affidavit upon which the motion is premised provides in an entirely lacking style, thus:

*I, Sabas Kuziriwa, an adult, male, Christian, Tanzanian and prisoner of a sound mind currently serving 30 years*

*imprisonment at Kitai Prison Farm Songea Ruvuma, do hereby make oath and state as follows:*

- 1. That, I am the applicant in the present application hence conversant with all the facts to be deposed.*
- 2. That, I was convicted of the offence of rape contrary section 130(1), (2) (e) and 131 (1) of the Penal Code Cap. 16 and sentenced to 30 years imprisonment in Criminal Case No. 118/2015 concluded on 30<sup>th</sup> March, 2016.*
- 3. That, it would be in the interest of justice if this application will be allowed.*

Notably, the respondent did not file any affidavit in reply to resist the application.

At the hearing of the application whereas the applicant appeared in person paddling his own canoe, Ms. Safi Kashindi Amani learned State Attorney appeared to represent the respondent the Director of Public Prosecutions. On being invited to expound on his grounds in support of the application, the applicant had nothing meaningful to say.

Submitting in opposition to the application, Ms. Amani was very brief. Referring to Rule 10 of the Rules, she argued that, the applicant

had failed to give the reason as to why he could not file the application for review within sixty days of delivery of the judgment sought to be reviewed as required by law. Going forward, the learned State Attorney submitted that the applicant had even failed to do more than merely accounting for the delay as recently held by this Court in the case of **Charles Haule v. Republic**, Criminal Application No. 27/10 of 2022. She thus prayed that, the application should be dismissed for want of merit.

As can be deduced from Rule 10 of the Rules, the threshold for grant of an application for extension of time is for the applicant to furnish good cause so as to explain away the delay.

I have considered the pleading and submissions by both parties together with the applicable law. Rule 10 of the Rules of this Court provides in no ambiguous terms that:

*"10. 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”.*

*[Emphasis supplied]*

Rule 66(3) of the Rules sets the timeline within which an application for review must be made. It provides that:

*“(3) The notice of motion for review shall be filed within sixty days from the date of the judgment or order sought to be reviewed and it shall set out clearly the grounds for review”*

Having taken a cursory look at the applicant’s founding affidavit, it appears to me as it would appear to any other objective observer that, the applicant has completely fallen short of meeting the required threshold. It must be emphasized here that, review as provided for under rule 66(1) of the Rules, is not a remedy for the aggrieved party to have a free ride. Among others, the conditions prescribed under sub-rule 3 of that Rule must be met or in the alternative, the intending applicant has to resort to Rule 10 of the Rules as the applicant did. It is actually quite inconceivable that the applicant could have expected to prove his case without producing convincing evidence showing that,

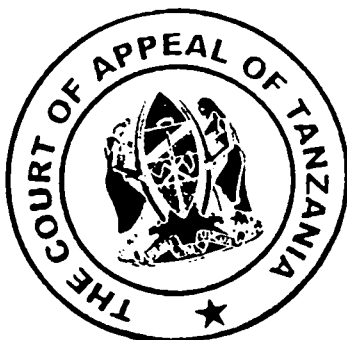
for good cause he was precluded from lodging an application for review within sixty days of the judgment sought to be reviewed.

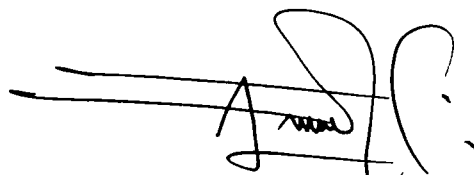
Clearly, as submitted by Ms. Amani, what the applicant has stated in his affidavit does not fall within the ambit of Rules 10 and 66 (1) of the Rules. In the premise therefore, I find the application to have no merit and I accordingly dismiss it.

**DATED at SUMBAWANGA this 4<sup>th</sup> day of October, 2023.**

P. M. KENTE  
**JUSTICE OF APPEAL**

The Ruling delivered this 4<sup>th</sup> day of October, 2023 in the presence of the Appellant in person and Ms. Marietha Augustine Maguta, learned State Attorney for the Respondent is hereby certified as a true copy of the original.



  
E. G. MRANGU  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**