

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CRIMINAL APPLICATION NO. 36/08 OF 2021

ABDALLAH SOSPETER @ MABOMBA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(Application for extension of time to file review arising from the decision of the
Court of Appeal of Tanzania at Mwanza)**

(Rutakangwa, Lubuva and Juma, JJA.)

dated the 19th day of March, 2007

in

Criminal Appeal No. 178 of 2004

RULING

30th Oct. & 9th Nov., 2023

KHAMIS, J.A.:

Abdallah Sospeter @ Mabomba, the applicant herein, was convicted of the offence of armed robbery contrary to sections 285 and 286 of the Penal Code and gang rape contrary to section 131'A' (2) of the then Sexual Offences Special Provisions Act, No. 4 of 1998. Upon mitigation, he was sentenced to thirty (30) years imprisonment for the first count and life imprisonment for the second count. The sentences were to run concurrently.

Through Criminal Appeal No. 6 of 2013 of the High Court of Tanzania at Mwanza, the applicant unsuccessfully challenged the decision and sentence of the trial Resident Magistrate Court of Musoma. Upon dismissal of the appeal by the High Court, he knocked the doors of this Court through Criminal Appeal No. 178 of 2004. On 19th March, 2007 this Court dismissed the appeal in its entirety.

Aggrieved by the finding, the applicant filed the notice of motion dated 26th July, 2021 which was made under rules 10 and 48 of the Tanzania Court of Appeal Rules, 2009 (the Rules). Essentially, the applicant seeks an order for extension of time to admit an application for review of the decision of the Court in Criminal Appeal No. 178 of 2004.

The application is premised on the grounds stated in the notice of motion and further articulated in the supporting affidavit of the applicant affirmed on 16th March, 2021. It was contended that, immediately after dismissal of Criminal Appeal No. 178 of 2004, the Court did not inform him of his right to challenge the decision by way of review and of the time within which to lodge an application for review.

It was further contended that, when the impugned decision was delivered by the Court, the applicant was not aware of the avenue for review. He became aware of it upon inquiries from the prison

authorities. He was subsequently advised to lodge the present application by Court officials who visited him in prison.

It was asserted that, as the applicant is in prison serving a sentence, he was financially constrained and solely depended on prison authorities to process his application, hence occasioning a further delay. It is only upon concerted efforts by the prison officers to follow up the matter that the application found its way in Court.

The application was strenuously resisted by the respondent who preferred an affidavit in reply affirmed by Ms. Mwanahawa Changale, learned State Attorney. The learned counsel deposed that, the applicant's ignorance of the law is not an excuse for non-compliance of the law and procedure. It was further deposed that, the applicant inordinately delayed to file the application as ten (10) years had elapsed from the date of delivery of the impugned judgment to the date of filing this application, and that, the applicant failed to account for such period of delay.

When the application was slotted for hearing, the applicant was present, under custody, and unrepresented. The respondent enjoyed legal services of Ms. Mwanahawa Changale, learned State Attorney. At

the instance of the applicant, the learned State Attorney was the first to address the Court followed by the applicant's response as he so wished.

Oposing the application, Ms. Changale contended that, the applicant miserably failed to show a good ground for extension of time hence moved the Court to dismiss the application. She submitted that, lack of knowledge of the law as demonstrated by the applicant, is not a good defence for its non - compliance or breach of it.

Further, she contended that, contrary to the express requirements of rule 66(1) of the Rules, the applicant did not point out the reasons for preferring a review. In support of the contention, she cited **Jumapili Msyete v. Republic**, Criminal Application No. 4/06 of 2017 [unreported] wherein the Court held that, in an application for extension of time to file review, the applicant is duty bound to show the grounds of review.

Ms. Changale also faulted the applicant for the omission to account for the ten (10) years delay in filing the application for review. On that issue, she found refuge in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 [unreported].

In response, the applicant adopted contents of the affidavit in support of the notice of motion and added that, prior to the filing of this application, he lodged a similar application in the year 2017 which was subsequently withdrawn on account of the defects detected by the Court. On that note, he asserted that, he never slept on his rights as the delay was due to lack of legal knowledge on how and when to file an application for review.

The issue for consideration is whether the applicant has made out a case for the grant of an order for extension of time within which to lodge an application for review of the decision of the Court.

Where a good cause is shown, this Court is mandated to extend the time limited by the Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by the Rules, whether before or after expiration of such set time [rule 10 of the Rules]. The Court is also vested with jurisdiction to review its judgment or order but an application for review has to be filed within sixty days from the date of the judgment or order sought to be reviewed [rule 66 (1) and (3) of the Rules].

In **Eliya Anderson v. Republic**, Criminal Application No. 3 of 2011 [unreported], the Court outlined the manner on which an

application for extension of time to file an application for review should be presented, thus:

"I believe it would not be a monstrous justice to hold that an application for extension of time to apply for review should not be entertained unless the applicant has not only shown good cause for the delay, but has also established by affidavital evidence, at that stage, either implicitly or explicitly, that the review application would be predicated on one or more of the grounds mentioned in rule 66(1), and not on mere personal dissatisfaction with the outcome of the appeal, which appears patently to be the case in this application. If we want to remain truly faithful to the much cherished public policy which calls for finality to litigation and certainty of the law as declared by the court of last resort, then we cannot divorce the application of the strict provisions of rule 66(1) from the proceedings of this type."

The legal stance reproduced above was applied in **Jumapili Msyete v. Republic** [supra], wherein a failure to show the proposed grounds of review rendered the application for extension of time to file an application for review devoid of merits hence dismissed.

In the instant application, neither the notice of motion nor the applicant's affidavit in support of the application manifested the proposed grounds to be relied upon by the applicant in moving the Court to review its decision. This omission is fatal in view of the legal requirements enumerated in the cases of **Eliya Anderson** and **Jumapili Msyete** [supra].

Apart from the requirement to indicate the proposed grounds of review, an application of this nature, like any other application for extension of time, is discretionary. Judicial discretion refers to a judge's power to make a decision based on his/her individualised evaluation, guided by the principles of law. In **Henry Muyaga v. TTCL**, Civil Application No. 8 of 2011 [unreported], the Court listed down factors to be considered in an application for extension of time which include: the length of delay; the reason for the delay; the chances of success of the intended appeal; and; the degree of prejudice that the respondent may suffer if the application is not granted. I fully subscribe to this legal stance which reflects a correct approach on the exercise of judicial discretion.

In the present case, I have considered that the impugned decision was handed down on 19th day of March, 2007 while this application was

presented for filing on 26th day of July, 2021. By simple arithmetic, the application was lodged after almost fourteen (14) years. Even if the application lodged by the applicant in 2017 is considered, still the period of delay is inordinate, by any degree of imagination. Worse enough, this period of delay was not accounted for by the applicant as per legal dictates restated in **Lyamuya Construction Company Limited** [supra].

The applicant contended that, he was not timely informed of the right to file an application for review and of the time frame within which to file such an application. In my view, this assertion is without legal base and is bound to fail. A similar concern was made in **Kenedy Owino Onyachi & Charles John Mwanika Njoka v. Republic**, Criminal Application No. 26/01 of 2019 [unreported], wherein this Court ruled that:

"One of the applicants' claim for the delay is that they were not accordingly informed another chance within sixty (60) days to file review of the judgment of the Court of Appeal of Tanzania either by the Court of Appeal Registrar who read the judgment or the prison authorities who are our (their) guardians. However, with due respect, I find this claim to be very interesting. I say so

because there is no law which requires the person pronouncing judgment on behalf of the Court to explain a right of review to the parties. It should be noted that an application for review is not automatic right to be exercised by whoever wishes to do so. It has been stated in times without number by this Court that review of this Court judgment is not a routine procedure but a procedure of its own kind (sui generis) and that it is exercised very sparingly and with circumspection."

On the strength of the above position, I am in all four with Ms. Changale that, at the time of delivery of the impugned decision, or any other time thereafter, the Court was not bound to explain to the applicant or any other party to the case, of his right to challenge the decision by way of review which is uncommon avenue sparingly reserved with watchfulness. I am also in agreement with the learned counsel that, *ignorantia juris non excusat*. That, ignorance of the law excuses no one. It is trite law that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content or requirement.

For the afore stated reasons, I have no doubt that, in the circumstances of this case, the grounds advanced by the applicant for


an order of extension of time within which to file an application for review are immaterial and renders the application devoid of merits, hence, hereby dismissed.

DATED at **MWANZA** this 8th day of November, 2023.

A. S. KHAMIS
JUSTICE OF APPEAL

The Ruling delivered this 9th day of November, 2023 in the presence of applicant in person, unrepresented, and in the absence of the respondent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL