

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CRIMINAL APPLICATION NO. 64 OF 2022

OMARY HAMIS @ MPONELA1ST APPLICANT

RASHID HUSSEIN @ CHIDEWA 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time for filing review from the
decision of the Court of Appeal of Tanzania at Dar es Salaam)**

(Wambali, Mwandambo and Mashaka, JJ.A.)

dated the 20th day of July, 2022

In

Criminal Appeal No. 414 of 2019

RULING

31st Oct, & 15th November, 2023

ISSA, J.A.:

On 20th July 2022, this Court sustained a conviction on the offence of armed robbery and a sentence of thirty years of imprisonment. The applicants are now before the Court with an application for extension of time within which to file a review against the judgment. The main reason given in the affidavit of the 1st applicant is that they have discovered the apparent errors in the judgment of the Court resulting to miscarriage of justice. Further, he deponed that, they could not file their application for review on time

as the judgment of the Court was delivered on 20th July 2022, but the certified copy was received by the Officer in Charge of Ukonga prison on 29th September 2022.

As the application was called for hearing, the applicants appeared in person and they reiterated the reasons given in the affidavit of the 1st applicant. Ms. Jacqueline Werema, learned State Attorney who appeared for the respondent/Republic did not object to the application.

As mentioned above, the judgment of this Court which is sought to be reviewed was delivered on 20th July 2022, but the certified copy was received by the Officer in Charge of Ukonga prison on 29th September 2022 and this application was filed on 24th October, 2022. Rule 66(3) of Tanzania Court of Appeal Rules, 2009 (Rules) provides that the notice of motion for review shall be filed within sixty days from the date of judgment or order sought to be reviewed. The task before me, therefore, is to determine whether good cause has been shown by the applicant to entitle him extension of time.

The Court's power to grant extension of time, is provided under Rule 10 of the Rules and it has been stated in various decisions of this Court, that the power of the Court to extend time under this Rule is

both broad and discretionary. The discretion is judicial and it must be exercised according to the rule of reason and justice, and not according to private opinion or arbitrary. See **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christians Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

Further, the power under Rule 10 is only exercisable if good cause is shown. Whereas there is no invariable universal definition of what constitutes good cause, in exercising its discretion under the said Rule, the Court is bound to consider the prevailing circumstances of the particular case and should also be guided by a number of factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged. This position of law has been restated by the Court in a number of cases including; **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] T.L.R. 387 and **Lyamuya Construction Co. Ltd** (supra).

But in applications of this nature, the law demands that the applicant should do more than account for the delay. To succeed in showing that he has a good cause under Rule 10 of the Rules, it must be shown further that the applicant has an arguable case. An arguable case is one that demonstrates that the intended grounds of review is at least one of those listed in Rule 66(1) of the Rules. That rule provides: -

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 the 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.*

If an application fails to disclose any of the above grounds, it is deemed not to have disclosed a good cause and is liable to be dismissed (See **JUMA SWALEHE v. R** Criminal Application No. 4 of 2010, **AZARIA FURAHA AND ANOTHER v. R** Criminal Application No. 5 of 2009 (all unreported)).

In this case, the application for extension of time to file for review out of time was filed on 24th October 2022, after three months and four days had elapsed from the date of the judgment of this Court. The period from 20th July 2022 to 29th September 2022 when the Officer in Charge of Ukonga prison received the certified copy of the judgment is accounted for and the period of 25 days from 29th September 2022 to 24th October 2022 when the application was filed in Court is the period which the applicants have been preparing their application with assistance from prison authority. This period is reasonable taking into account that the applicants are serving their time in prison.

With respect to the requirement under Rule 66 (1), the applicants have advanced the first and third grounds that there is a manifest error on the face of the record resulting in the miscarriage of justice, and that the Court's decision is a nullity.

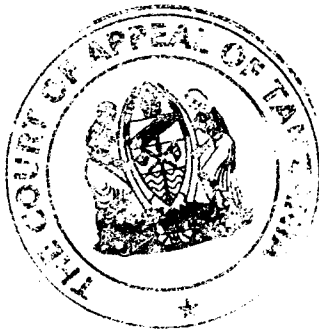
Having examined that averment in the affidavit and the fact that the application has not been contested by the respondent, I am satisfied that the applicant has explained a way the delay given their situation as prisoners with limited freedom of movement and resources. Further, they have managed to show that their intended

application for review will be predicated on two of the grounds for review listed under Rule 66(1). I accordingly grant the application as prayed in the notice of motion. The applicants should lodge their application for review within 60 days from the date of the delivery of this ruling.

DATED at DAR ES SALAAM this 13th day of November, 2023.

A. A. ISSA
JUSTICE OF APPEAL

The Ruling delivered this 15th day of November, 2023 in the presence of the applicants via video facility, and in the presence of Ms. Christine Joas, learned Senior State Attorney assisted by Ms. Jacqueline Werema, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.




S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL