

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

CRIMINAL APPLICATION NO. 47/01 OF 2022

RAMADHANI SAID OMARY APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

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

(Ndika, Mwandambo, Kente. JJ.A.)

dated the 21st day of July, 2022

in

Criminal Application No. 87/01 of 2019

RULING

6th & 16th November, 2023

ISSA, J.A.:

The applicant, Ramadhani Said Omary together with six others who are not parties to this application were charged in the District Court of Morogoro at Morogoro with three counts of offences, namely: conspiracy to commit an offence contrary to section 384, armed robbery contrary to section 287A and retaining stolen property contrary to section 311, all under the Penal Code.

After a full trial, the applicant was found guilty of armed robbery, on which he was convicted and sentenced to the mandatory minimum sentence of thirty years in jail. The rest of the accused persons were

acquitted. The applicant being aggrieved with that decision he unsuccessfully appealed to the High Court (Mzuna, J). Still aggrieved, he lodged his second appeal to this Court (Mziray, Ndika, Mwambegele, JJ.A.) where, again the applicant was unsuccessful. Undaunted, he pursued the remaining remedy which is review before this Court (Ndika, Mwandambo, Kente, JJ.A.).

The Court on 19.7.2022 dismissed the application for review for lack of merit, but the applicant refused to throw down the towel. He has now approached this Court with an application for extension of time within which to apply for a review of the ruling of this Court on review. The application is predicated under Rule 10, 48(1), and 66(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by affidavit of the applicant.

At the hearing of the application, the applicant appeared in person, but the respondent/Republic was represented by Mr. Ramadhan Kalinga, learned Senior State Attorney.

The applicant adopted his affidavit and added that although his earlier application for review was dismissed he is still aggrieved by the decision of the High Court which denied him his right to be heard. He added that this Court while hearing his application for review admitted

that he was not heard by the High Court but still dismissed his application for review. Hence, he prayed for extension of time so that his application for review could be heard again.

Mr. Kalinga first supported the applicant's prayer for extension of time, but after careful reading of the Rules he changed course and abandoned that position. He submitted that the applicant has already been heard by this Court, hence, he cannot come again with the second application for review. He prayed for the application to be dismissed.

I shall now proceed to determine the matter on the basis of the arguments and legal principles. The application was brought under Rule 10 of the Rules which empowers the Court to grant extension of time. It has been stated in various decisions of this Court that the power of the Court to extend time under rule 10 of the Rules, 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 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).

In this application the ruling which is sought to be reviewed was delivered on 22.7.2022. This application for extension of time to review that ruling was filed on 2.9.2022 after 40 days from the ruling. Rule 66(3) of the 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. Hence, in this matter there was no delay and there was no need for extension of time. The application for extension of time, in fact, was misconceived. But at the moment if this application is struck out, the applicant would be barred by limitation to file an application for

review, and has to come again for extension of time. Hence, all things being equal I would find it prudent to extend the time provided other conditions are satisfied.

The applicant in order to succeed in showing that he has a good cause under Rule 10 of the Rules, it must also be shown 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 **Bakari Israel v R** Criminal Application No. 4 of 2011, **Juma**

Swalehe v R Criminal Application No. 4 of 2010, **Azania Furaha and Another v R** Criminal Application No. 5 of 2009 (all unreported).

In the present application, the applicant has advanced the second ground that he has been wrongly deprived the opportunity to be heard by the High Court. But this is not a novel issue, it has already been determined by the Court in his earlier application for review. Even if that was not the case, the concept of second review is not allowed by the Rules. Rule 66(7) is very clear on this aspect. It provides:

"Where an application for review of any judgment and order has been made and disposed of, a decision made by the Court on the review shall be final and no further application for review shall be entertained in the same matter."

This view is fortified by the decision of this Court in **OTTU on behalf of P.L. Asenga & 106 Others V. AMI (Tanzania) Limited**, Civil Application No. 20 of 2014 where the Court held:

"A review does not contemplate a right to a second bite. That is to say, where an application for review has been made and disposed of the decision or order made by the Court on the review shall be final and no further application for review

shall be entertained on the same matter. This requirement is obviously, premised on the public policy demand for finality and certainty of the law."

Therefore, in the light of that clear provision, this application is misconceived and is hereby dismissed.

It is so ordered.

DATED at DAR ES SALAAM this 15th day of November, 2023.

A. A. ISSA
JUSTICE OF APPEAL

The Ruling delivered this 16th day of November, 2023 in the presence of the applicant via video facility, and in the presence of Mr. Ramadhani Kalinga, learned Senior State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.




S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL