

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

CRIMINAL APPLICATION NO. 10/06 OF 2023

AMANI RABI KALINGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**[Application for Extension of time to lodge application for Review against the
Decision of the Court of Appeal at Mbeya]**

(Mwambegele, Korosso & Rumanyika, JJA.)

dated the 18th day of October, 2022

in

Criminal Appeal No. 474 of 2019

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RULING

8th & 14th December, 2023

KAIRO, J.A.:

By way of notice of motion, the applicant Amani Rabi Kalinga has filed this application for extension of time in which to apply for review of the judgment of this Court given in Criminal Appeal No. 474 of 2019 delivered on 18th October, 2022. The application is predicated under Rule 10, 48 (1) and 66 (1) (a) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by an affidavit sworn by the applicant.

Briefly the background of the application is that, the applicant was charged of the offence of murder before the High Court of Tanzania, Mbeya Registry. After the trial, the Court found him guilty and sentenced him with

the mandatory sentence of death by hanging. His efforts to protest his innocence through an appeal at the Court of Appeal, proved futile.

Still dissatisfied, he intends to lodge an application for review before the Court but failed to do so within the prescribed time, hence this application on the ground that the delay was caused by the lack of papers in the prison's typing office.

At the hearing of the application, the applicant appeared in person, unrepresented while the respondent Republic was represented by Ms. Prosista Paul, learned State Attorney who also filed an affidavit in reply to oppose the application.

It was deposed in paragraphs 2, 3 and 4 of the affidavit in support of the application that the applicant was supplied with the decision of the Court after the dismissal of his appeal on 1st November, 2022. He immediately thereafter, on 7th November, 2022 prepared an application for review (the application). The document was then typed and he accordingly signed the same before the officer in charge on 12th December, 2022. The applicant went on to depose that the application was then handed over to the said officer in charge for onward transmission of the same to Court.

The applicant further deposed in paragraphs 5 and 6 that the officer in charge later on 14th February, 2023 notified him that when he forwarded

the application on 13th February, 2023, the deputy registrar notified him that the application was time barred. That upon asking the officer in charge why such delay, he told him that the delay was caused by the lack of typing papers at the prison office. He further stated in paragraphs 7 and 8 of the supporting affidavit that the delay was out of his control and that he had attached for reference the application for review which the registrar found to be out of time when forwarded by the prison officer to the Court.

When invited to amplify his application, the applicant reiterated the reason for delay he deposed in his affidavit. He added that the problem of lack of typing papers existed from 12th October, 2022 up to 10th November, 2022. He therefore prayed the Court to grant the application as the reason for delay was beyond his control, being an inmate.

Ms. Paul emphatically opposed to the application arguing that there was no sufficient cause exhibited by the applicant to warrant the grant of the extension sought. Elaborating, the learned State Attorney contended that there are contradictions in the applicant's affidavit as in paragraph 3, the applicant deposed that he prepared the application for review, take it to the prison officer on 12th December, 2022, ready for it to be taken to Court for filing. But in paragraph 6 he stated that the delay was caused by the absence of typing papers at the prison office. It was her contention that the

two statements of the applicant contradict each other which shows that there is no truth in the reason stated. She went on to submit that, according to the applicant's oral submission, the problem of papers in the typing office ended in November, 2022, which again contradicts what he deposed in paragraph 6 that he was notified by the officer in charge on the shortage of the papers on 14 February, 2023. She went on to argue that, apart from the contradictions shown, there is no affidavit from the said prison officer to support the stated reason for delay.

Countering the averments in paragraph 8, Ms. Paul submitted that the referred application has not been attached as deposed. Basing on what she endeavoured to show, Ms. Paul concluded that the applicant has failed to account for days of delay from 1st November, 2022 when he was supplied with the decision intended to be reviewed, up to 13th February, 2023 when the prepared application for review was taken to the registrar as per paragraph 5 of the supporting affidavit. It was her contention that the applicant has failed to demonstrate good cause to move the Court to exercise its discretion and grant the extension of time. Consequently, the application fails and ought to be dismissed. She sought reliance in the Court's decision in the case of **Jumanne Hussein Bilingi vs The**

Republic, Criminal Application No. 20 of 2014 (unreported) to fortify her arguments.

As a rejoinder, the applicant maintained what he had submitted in chief insisting his prayer to have this application granted.

The main issue for the Court's determination is whether the application is meritorious.

According to rule 10 of the Rules upon which this application is predicated, the applicant has to advance good cause in order to convince the Court to exercise its discretion to extend the time sought. However, what exactly constitute good cause was not codified although this Court has, in various instances, stated a number of factors to be considered. These are; whether or not the application has been brought promptly; an existence of valid explanation for the delay and whether there was diligence on the part of the applicant. [See: **Tanga Cement Company Limited vs Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001 and **Tauka Theodory Ferdinand vs Eva Zakayo Mwita** (Administratrix of the estate of the late Albanus Mwita, Civil Application No. 300/17 of 2016] (both unreported).

In the instant matter, the applicant intends to lodge review which under rule 66 (3) of the Rules, the time within which to file it is 60 days from

the date of the decision sought to be reviewed. According to record, the said decision was delivered on 18th October, 2022 and thus the 60 days lapsed on 17th December, 2022. However, this application was filed on 22nd February, 2023, that is, after a lapse of 65 days.

It is the applicant's position that delay was caused by the shortage of the typing papers in prison office. According to him he was so informed by the officer in charge of the prison. However, there was no affidavit sworn by the said officer to support the applicant's statement as rightly argued by Ms. Paul. Needless to state that, the statement being the *raison detre* of his lateness, amounts to material fact that goes to the root of the cause of delay. As such, an affidavit by the said officer in charge was necessary to corroborate the statement. [See: the case of **Mzee Mohammed Akida And 7 Others vs Low Shek Kon And 2 Others**, Civil Application No. 481/17 of 2017 (unreported)]. To say the least, the omission has made the statement to have less weight, thus, unreliable. Since the sole ground for the delay has collapsed, it goes that, no sufficient cause was exhibited by the applicant to warrant the grant of the extension of time sought.

That apart, indeed the applicant's depositions is full of contradictions as rightly submitted by the learned State Attorney. In paragraphs 3 and 4, the applicant deposed that he timely prepared the application for review,

typed and signed it accordingly. He then left the same with the the officer in charge for it to be taken to Court for filing. That was on 12th December, 2022 which was well within time.

In another version as per paragraphs 5 and 6, the applicant stated that he was on 14th December, 2023 told by the officer in charge that his application was time barred due to the shortage of typing papers in prison. Sincerely I failed to comprehend how the said shortage had to do with the already typed and signed application.

Not only that, but it was also his further submission that the so-called shortage of paper ended 10th November, 2022, which means by the time he had signed the application, the shortage was a thing of the past. As to how it turned out to be the cause of delay on 14th December, 2022 when he was so informed by the officer in charge is a puzzle which was not solved even by the applicant himself. It is my conviction that the contradictions, together with the failure to attach the affidavit of the officer in charge is a clear indication of the absence of a valid reason for delay contrary to the stated requirement in **Tanga Cement Company Limited** (supra).

Even if I would have found that the reason for delay was valid, still there are days which the applicant has not accounted for. It was his averment that he was given the copy of decision subject to review on 1st

November, 2022, thus 60 days within which to file review lapsed on 30th January, 2023. However, the application for review was submitted to Court for filing purpose on 13th February, 2013, that is after the lapse of 14 days which was not accounted for by the applicant.

It is a long settled legal position that in an application for extension of time, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application. We have consistently stated the said position of the law in our various decisions including in **Hassan Bushiri vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Marco M.S. Katabi vs Habibu African Bank (T) Ltd**, Civil Application No. 570/17 of 2020 and **Elius Mwakalinga vs Domina Kagaruki & Five Others**, Civil Application No. 120/17 of 2018 (all unreported), to mention but a few. **In Hassan Bushiri** (supra) the Court stated as follows:

"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

I am aware that in an in the application of this nature, the law also demands the applicant to do more than merely accounting for delay. The requirement which is now a settled law is for the applicant to demonstrate that the intended ground of review is among those listed in rule 66 (1) of


the Rules. However, the applicant in this matter cited the Rule as an enabling provision, instead of demonstrating the ground to be relied on during review if the extension of time would be granted. But also, since the applicant has failed to account for the delay, it is a futile exercise to discuss on this requirement, in my view, as it will have no bearing in salvaging the situation.

In the final analysis, I am constrained to find this application devoid of merit and I accordingly dismiss it.

DATED at MBEYA this 14th day of December, 2023.

L. G. KAIRO
JUSTICE OF APPEAL

The Ruling delivered this 14th day of December, 2023 in the presence of applicant in person, unrepresented, and Mr. Augustine John Magesa, 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