

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT TANGA**  
**CRIMINAL APPLICATION NO. 8/12 OF 2023**

**NICHOLAUS MGONJA @ MAKAA ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Application for extension of time to file an application for Review from  
the Judgment of the Court of Appeal of Tanzania at Tanga)**

**(Lila, Levira And Kitusi, JJ.A.)**

**dated the 23<sup>rd</sup> day of September, 2020**

**in**

**Criminal Appeal No. 85 of 2020**

-----

**RULING**

22<sup>nd</sup> & 29<sup>th</sup> April, 2024

**ISMAIL J.A.:**

The applicant is a murder convict whose attempt to challenge the conviction, through an appeal to the Court bore no fruits, as his appeal was dismissed for want of merit. The conviction related to a murder incident which occurred on 24<sup>th</sup> September, 2012 in Lushoto, Tanga Region, whereupon Farida Michael @ Tindikali, the applicant's wife, was found in bed with another man, and that both of them were in nudity. Incensed at what was apparently an act of cheating, the applicant drew a machete and inflicted multiple cuts on the deceased's head, ribs and hands, thereby terminating her life.

Trial proceedings culminated in the applicant's conviction, and an eventual death sentence. Bemused by the finding of the High Court, he preferred an appeal to this Court but, as stated earlier on, the same fell through. The Court was convinced that the death of the deceased in respect of which the applicant claimed responsibility was committed with malice aforethought.

In the instant application, the applicant's quest is for extension of time which will enable him to institute an application for review against the decision of the Court. The application is supported by an affidavit sworn by the applicant himself from which grounds therefor are gathered. Of relevance in the applicant's deposition is paragraph 4 which states as follows:-

*"4. That, I received my copy of judgment after passing through the sixty (60) days of reviewing the said decision, so that when I prepare[d] the notice of motion I realized that [I] am out of time."*

When the matter was called on for hearing, the applicant appeared in person, unrepresented, while the respondent was represented by Messrs. Paul Kusekwa and Aloyce Kulaya, both learned State Attorneys. When Mr. Kusekwa rose to address the Court, he admitted that the respondent had not filed an affidavit in reply, meaning that the respondent did not intend to oppose the application. He urged the Court

to look at the merits of the application and see if it meets the threshold set for its grant.

The applicant implored the Court to grant the application, contending that the delay in instituting the application for review was caused by the delay in supplying him a copy of the judgment. By his reckoning, the said copy was furnished to him eight months after the pronouncement of the judgment. This was after the lapse of the time prescription for filing an application for review. This, in his contention, justified his prayer for extension of time.

Having heard the applicant and after reviewing the application, the question to be resolved is whether the applicant has demonstrated good cause for granting the application. This Court is vested with discretion to grant an extension of time for the doing of any act authorized or required by the Tanzania Court of Appeal Rules, 2009 (the Rules). The guiding principle, as was underscored in **Zuberi Mussa v. Shinyanga Town Council** [2009] TZCA 16 TANZLII) is that, the discretion is judicial and its application must be judicious and that courts must look at circumstances of each case, regard being had to principles of justice, equity and common sense.

The key precondition for granting the extension is that the applicant must show good cause. This is in terms of rule 10 of the Rules which stipulates as follows:

*"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 is added]

What we discern from the cited provision is that grant of extension of time is predicated on a condition that a party asking for it must exhibit good cause. The good cause on which the grant is to be premised must be gathered from the depositions made in the affidavit that supports the application, and it is in the form of reasons for the delay and why extension is sought. Thus, as it was held in **Dr. Bernard Mutalemwa Mutungi (by the appointed Attorney Joyce Rehema Mutungi v. Peter Nshekanabo Mutungi**, Civil Application No. 77/17 of 2022 (unreported):

*"It is not enough for the party to give reasons for his inability to take action within time prescription*

*set by law. He should also satisfy the Court that extension of time is, in the circumstances of a particular case, fitting. It involves giving reasons as to why he thinks time should be extended."*

Significantly, the position in the cited decision was an emphasis to what the Court held earlier in **Republic. v. Yona Kaponda and 9 Others** [1985] T.L.R. 84, wherein it was observed as follows:

*"In deciding whether or not to extend time I have to consider whether or not there is 'sufficient reasons'. As I understand it, 'Sufficient reasons' here does not refer only, and is not confined, to the delay. Rather, it is 'sufficient reason' for extending time, and for this I have to take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved."*

It follows, therefore, that goodness or otherwise of the reasons for extension of time must be weighed against the known factors which include reasons for the delay, length of delay, degree of prejudice to the respondent if time is extended and such other factors – see: **Lyamuya Construction Company Limited v. Board of Trustee of Young Women's Christians Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

There is yet another consideration, and this is with regard to an application for extension of time for filing a review, the rarest of the remedies when they involve decisions of this Court which is the apex in the country's judicial ladders. The rationale for this is derived from the trite position which is to the effect that a judgment of the final court is final and a review of such judgment is an exception – see: **Blueline Enterprises Ltd. v. East African Development Bank**, Civil Application No. 21 of 2012 (unreported). It is because of the circumscribed nature of the remedy of review, whose grant is discretionary as opposed to a party's right, that a person seeking to access this right through extension of time must, as a matter of law, demonstrate that he intends to rely on one or several of the grounds stipulated in rule 66 (1) of the Rules. It entails that such factual reality must clearly feature in the affidavit that supports the notice of motion. This settled position has been accentuated in many a decision of the Court, including **Laureno Mseya v. Republic**, Criminal Application No. 8 of 2013 (unreported), in which the Court reiterated the stance taken in its earlier decisions in **Charles Barnabas v. Republic**, Criminal Application No. 13 of 2007; **Miraj Seif v. Republic**, Criminal Application No. 2 of 2009; and **Eliya Anderson v. Republic**, Criminal Application No. 2 of 2013 (all unreported). In **Charles Barnabas** (supra) the Court held:

*"By the same parity of reasoning, I believe it would not be a monstrous justice 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 explicitly or implicitly, 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."*

Thus, in **Laureno Mseya** (supra), the Court concluded as follows:

*"In the said nine-paragraph affidavit, the applicant is only showing the chronology of his case from the trial court to the time when his application was struck out on 27/6/2013. **It is starkly silent on why he is seeking an extension order to apply for review.** As was the in **CHARLES BARNABAS**, the applicant is working under the misapprehension that he has an automatic right to review, which unfortunately is not the case."*

[Emphasis provided]

The affidavit in support and the applicant's oral submission have cited a sole reason for grant of extension, which is that there was a delay in furnishing him with a copy of the judgment of the Court against which

a review was contemplated. But, as the applicant said all that, he was economical with facts regarding the date on which he received the copy though he said, in his submission, that he got it about eight months after delivery of the judgment. It is not clear if, after receipt, he took action immediately, though the indication is that it took him in excess of a whopping 17 months, excluding the eight months that he spent awaiting being supplied with the said judgment. Equally opaque, is the ground on which the impending review is based and whether such ground falls under rule 66 (1) of the Rules. This delay is, by all standards inordinate, and failure to cite any of the grounds for review permitted by law are nothing but a manifestation of the height of ineptness which is exceedingly inconsistent with diligence and promptness.

I hold the view that applicant's apathetic conduct is not insignificant as to cast a blind eye on. It is in the realm of conducts which, if condoned, will project the Court as going against the grain of what was decided in the case of **KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another** [1972] E.A. 503, in which it was held:-

*"...no court will aid a man to drive from his own wrong."*

As I hold that the application is wanting, I am not oblivious of the fact that in applications for extension of time involving inmates, a special



consideration should be accorded where reasons for the delay are stated in the affidavit but would, in the ordinary way of doing things, require that they be supplemented by affidavits sworn by prison officers. This is especially where the delay is due to difficulties that come with the applicant's incarceration (see: **Nduruwe Hassan v. Republic**, Criminal Appeal No. 70 of 2004; and **Renatus Muhanje v. Republic**, Criminal Appeal No. 417 of 2016 (both unreported)). In my settled view, however, such consideration only applies where the founding affidavit contains depositions which explain the reasons for delay and reasons that justify institution of a review. Subsequent enquiries with prison authorities would only achieve a limited purpose of verifying if the cited difficulties truly existed. In the case where, like the instant application, the affidavit neither carries the reason for the delay nor the ground on which the impending review is premised, the leniency accorded in the cited cases must elude the applicant as the application is simply unsupported, and whatever else that comes by way of an oral submission is a bare assertion that lacks evidential value. It cannot trigger the Court's discretion under rule 10 of the Rules. This, then brings me to the conclusion which was drawn by the Court in **Deogratias Nicholaus @ Jeshi & Another v. Republic**, Criminal Application No. 1 of 2014 (unreported) wherein it was held:-

*"Once it is obvious that an applicant is seeking an extension of time to apply for review not on genuine reasons based on Rule 66 (1) but as a disguised way to move the Court to sit on appeal over its own final judgment, as is the case here, such an application should be rejected outright."*

I am convinced that this is the fate that should befall the instant application. It has to fall through. In consequence, I find that the application has failed to meet the threshold for its grant. Accordingly, the same is hereby dismissed.

It is so ordered.

**DATED** at **TANGA** this 29<sup>th</sup> day of April, 2024.

M. K. ISMAIL  
**JUSTICE OF APPEAL**

The Ruling delivered this 29<sup>th</sup> day of April, 2024 in the presence of the Applicant in person and Ms. Sylvia Mitanto, learned Senior State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**