

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

CRIMINAL APPLICATION NO. 54/06 OF 2023

ASAJILE HENRY @ KATULE.....1ST APPLICANT

FREDY JOHN MWASHIUYA.....2ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(An application for extension of time to apply for review against the
decision of the Court of Appeal of Tanzania at Mbeya)**

(Mwambegele, Mwandambo And Mshaka, JJA.)

dated the 8th Day of December, 2021

in

Criminal Appeal No. 30 of 2019

.....

RULING

2nd & 3rd July, 2024

MAIGE, J.A.:

The applicants herein were convicted, by the District Court of Mbarali at Rujewa (the trial court), of the offence of gang armed robbery contrary to section 287C of the Penal Code. They were, as a result, sentenced to 30 years imprisonment each. Aggrieved, they appealed to the High Court of Tanzania at Mbeya (the first appellate court) which dismissed the appeal. Once again aggrieved, the applicants appealed to the Court. Again, the appeal was dismissed on 3rd December, 2021. The applicants, it would appear, are still aggrieved with the decision. They

would have but for the lapse of time, applied for review against the judgment of the Court. By this application, therefore, they are moving the Court, under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) for extension of time to file the intended review in. The application is founded on the applicants' joint affidavit which for clarity I shall reproduce hereunder:

- "1. THAT we were convicted for the offence of armed robbery contrary to section 287A of the Penal Code Cap 16 RE 2002 and sentenced to thirty years imprisonment.*
- 2. THAT we appealed to the High Court at Mbeya whereby when our appeal stood for hearing the High Court ordered our case to be retried at the trial court.*
- 3. THAT we returned back to the trial court and when the full trial was conducted, the trial court convicted and sentenced (us) to thirty years (imprisonment) without considering that we have been serving the said sentence within two years before the said retrial ordered (being) by the High Court.*
- 4. THAT the said error which resulted in miscarriage of justice was not revealed by all two courts which made the applicant to serve a new sentence different from the entire sentence delivered on 15/10/2015 as per the trial court judgment.*
- 5. THAT- now we, the applicants applying to this Court to reverse the said sentence so that it is counted from the date of delivery of the judgment of the trial court of 15/10/2015 of Criminal Case No. 73 of 2015."*

In opposition to the application, Ms. Xaveria Makombe, learned State Attorney deposed an affidavit in reply for and on behalf of the respondent Republic. In particular, she criticised the affidavit in support of the application for failure to account for the period between 8th day of December, 2021 when the judgment was delivered and 26th June, 2024 when the instant application was lodged.

At the hearing, the applicants appeared in persons without being represented. They fully adopted, in their oral submissions, the notice of motion and affidavit and urged me to grant the application. In a similar way, Ms. Zena James, learned State Attorney who together with Ms. Xaveria Makombe and Ms. Juliet Katabaro, both learned State Attorneys, appeared for the respondent, adopted the facts in the affidavit in reply and submitted that the application is devoid of any merit as the applicants have not accounted for the delay from the date of judgment to the date of the filing of the affidavit or at all. Making reference to the provisions of rule 10 of the Rules as considered in, among others, **Amani Rabi Kalinga v. R** (Criminal Application No. 10/06 of 2023) [2023] TZCA 17975 (14 December 2023) and **Grayson Zacharia Mkumbi @ Mapendo v. R** (Criminal Application No. 12/01 of 2017) [2019] TZCA 128 (17 May 2019), she urged me to dismiss the application for want of good cause.

In their rejoinder submissions, neither of the applicants had anything to add rather than praying for the Court's indulgence.

Having considered the rival submissions in line with the notice of motion and affidavit, I am bound to consider if good cause has been established as rule 10 of the Rules requires. The decision sought to be reviewed, it is common ground, was delivered on 8th December, 2021. This application was initiated on 31st day of December 2023. It was after expiry of a period of more than two years. As it can be seen from the affidavit reproduced elsewhere in this ruling, such period or part thereof has not been accounted for. In the absence of such account, I am in agreement with the learned State Attorney, that the delay has not been justified. After all, the purported errors sought to be challenged by way of review, as it may be apparent in paragraphs 3 and 4 of the affidavit is alleged to have been committed by the two courts below. There is no suggestion in the affidavit that it was raised in the appeal before the Court. Therefore, assuming, which is not, that the said error amounted to illegality within the rule in **the Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] T.L.R 387, it would not suffice as a ground for an extension of time in as much

as it could not pass the test in the said principle, of being manifestly apparent on the face of the record.

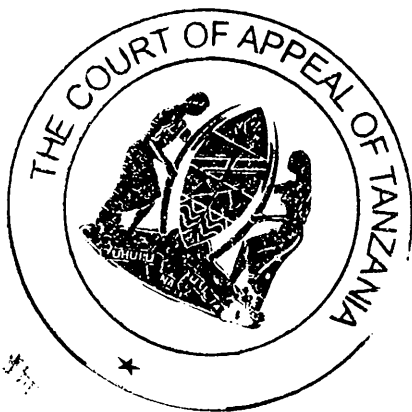
In my opinion, therefore, the application is without merit and it is hereby dismissed.

It is so ordered.

DATED at **MBEYA** this 2nd day of July, 2024.

I. J. MAIGE
JUSTICE OF APPEAL

The Ruling delivered this 3rd day of July, 2024 in the presence of Applicants in persons and Ms. Julieth Katabaro, learned State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "J. E. FOVO", is written over a horizontal line.

J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL