

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

CRIMINAL APPLICATION NO. 76/04 OF 2019

COSMAS FAUSTINE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time within which to file application for
review from the judgment of the Court of Appeal at Bukoba)**

(Munuo, Massati, And Mandia, JJA.)

dated the 14th day of November, 2011

in

Criminal Appeal No. 103 of 2007

RULING

14th & 17th December, 2020

MWANDAMBO, J.A.:

The applicant was convicted of murder in Criminal Sessions Case No. 91 of 2000 before the High Court, sitting at Bukoba. His appeal against conviction and sentence was dismissed by this Court on 14th November, 2011 in Criminal Appeal No. 103 of 2007. Undaunted, he seeks to invoke the Court's power of review against our decision dismissing his appeal. However, as the applicant was late in seeking the review remedy, he has applied for an order extending the time within which to do so. This he has done by way of notice of motion predicated

under rule 10 of the Tanzania Court of Appeal Rules 2009 (the Rules). His own affidavit supports the application.

According to the notice of motion, the applicant intends to challenge the Court's decision on two grounds. **One**, that the Court's decision was a nullity and, **two**, that the impugned decision was procured illegally. The two grounds are premised under rule 66(1) (c) and (e) of the Rules. Out of 6 paragraphs in the founding affidavit, the most relevant ones are 4,5 and 6. paragraph 4 avers that the applicant made his first application for review in Criminal Application No. 6 of 2012 but he withdrew it for being defective. According to para 5, the applicant preferred an application for extension of time to seek review but that application was likewise withdrawn and hence the instant application. Para 6 alludes to the fact that the applicant's notice of motion has shown good cause for the grant of the application which will result in him filing his application for review.

During hearing, the applicant who had no legal representation, had very little to say. He urged me to grant the application on the strength of the reasons set out in the affidavit. In addition, he solicited sympathy from the Court for a favourable determination of the application to enable him pursue a review considering the long time he

has been in custody awaiting execution of his sentence which has now been commuted to life imprisonment by H.E the President.

Mr. Shomari Haruna, learned State Attorney who appeared for the respondent Republic resisted the application. The learned State Attorney invited the Court to find and hold that the applicant has not shown good cause for his delay in lodging he application for review for 8 years reckoned from the date of the impugned decision. He invited me to dismiss the application.

With respect, having examined the notice of motion and the supporting affidavit, I endorse the submissions by the learned State Attorney. It is plain that whereas the impugned decision was handed down on 14th November, 2011, the instant application was lodged on 19th July, 2019 a period of about 8 years. That was an inordinate delay having regard to rule 66(3) of the Rules which prescribe 60 days within which to do so.

I appreciate that the applicant had earlier on lodged his application in Criminal Application No. 6 of 2017 which was withdrawn followed by a subsequent one for extension of time in Criminal Application No. 53/04 of 2018 marked withdrawn on 14th May 2019. However, that in itself cannot suffice to exercise the Court's discretion under rule 10 of the

Rules. As rightly submitted by Mr. Haruna citing **Lyamuya Construction Co. Ltd v. Registered Trustees of the Young Women's' Christian Association of Tanzania**, Civil Application No. Civil Application No. 2 of 2010 (unreported), the Court can only grant an application for extension of time subject to the applicant meeting the following conditions namely; reason and length of the delay, accounting for each day of delay, absence of negligence or sloppiness in preferring the application and, in fitting cases, existence of an issue of illegality sufficient public importance in the impugned decision. See also: **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, **Saidi Ambunda v. Tanzania Harbours Authority**, Civil Application No. 177 of 2004 and **Abood Soap Industries Ltd v. Soda Arabian Alkali Limited**, Civil Application No. 154 of 2008 and **Joel Silomba v. Republic**, Criminal Application No.5 of 2012 (all unreported).

There is nothing in the affidavit resembling any of the mentioned conditions from which the Court can exercise its discretion under rule 10 of the Rules. Put it differently, the applicant has failed to show good cause with the net effect that I cannot exercise my judicial discretion in the manner prayed by the applicant. Doing otherwise will amount to

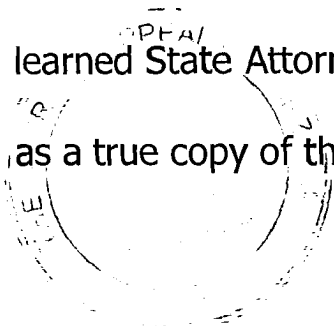
acting on personal whims or sympathy rather than on material necessary for the exercise of the discretion which must be done judiciously. It has been long settled that whims or sympathy has no place in the court's exercise of its discretion for extension of time. See: **Parry v. Carson** [1963] EA 546 referred in **Daud s/o Haga v. Jenitha Abdon Mchafu**, Civil Application No.19 of 2006 (unreported) and **Kalunga & Company Advocates v. National Bank of Commerce Limited** [2006] T.L.R 235.


In the upshot, I decline to exercise the discretion in the applicant's favour and dismiss the application. It is so ordered.

DATED at **BUKOB**A this 17th day of December, 2020.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

This Ruling delivered this 17th day of December, 2020 in the presence of the Applicant in person and Mr. Shomari Haruna, the learned State Attorney for the Respondent / Republic, is hereby certified as a true copy of the original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL