

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

**CRIMINAL APPLICATION NO. 112/03 OF 2019**

- 1. YUSUPH MASALU @ JIDUVI .....1<sup>ST</sup> APPLICANT**  
**2. ELIAS JOHN @ SIPILIANO.....2<sup>ND</sup> APPLICANT**  
**3. SALUM MOHAMED @ NGASA.....3<sup>RD</sup> APPLICANT**  
**4. YOHANA STANLEY @ YOHANA .....4<sup>TH</sup> APPLICANT**

**VERSUS**

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

**(Application for extension of time to file an application for review from the  
Decision of the Court of Appeal of Tanzania at Dodoma)**

**(Mbarouk, Mziray, And Mwambegele, JJ.A.)**

**dated the 12<sup>th</sup> day of March, 2018**

**in**

**Criminal Appeal No. 163 of 2017**

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**RULING**

26<sup>th</sup> May & 2<sup>nd</sup> June, 2021

**MWARIJA, J.A.:**

In this application, the four applicants, Yusuph Masalu, @Jiduvi, Elias John @ Sipiliano, Salum Mohamed @ Ngasa and Yohana Stanley @ Yohana (the 1<sup>st</sup> – 4<sup>th</sup> applicants respectively) seek an order granting them extension of time to file an application for review of the Court's judgment handed down on 12.3.2018 in Criminal Appeal No. 163 of 2017. In that judgment, the Court upheld the decision of the High Court sitting at Dodoma (Mansoor, J.) arising from Criminal Appeal No. 57 of

2016 in which the Resident Magistrate's Court of Singida convicted the applicants of twelve counts under the then Economic and Organized Crime Control Act [Cap.200 R.E.2002] and sentenced them to imprisonment terms, the result of which all of them had to serve a maximum term of twenty years in prison.

The application which was brought under *inter alia*, Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules), is supported by affidavits sworn by each of the applicant. According to their notice of motion, the main ground upon which they have based their application may be paraphrased as follows: -

*That after dismissal of the appeal by the Court, the applicants who were prisoners could not promptly get legal advice on the prescribed period within which they had to file an application for review of the Court's decision.*

At the hearing of the application, which was conducted through video conferencing facility, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants were linked to the Court from Isanga prison while the 2<sup>nd</sup> applicant was linked from Ruanda respectively. On its part, the respondent Republic was represented in Court by Mr. Morice Sarara, who was being assisted by Ms. Neema Taji, both learned State Attorneys.

When the applicants were called upon to argue their application, they adopted the contents of their identical affidavits and opted to let the learned State Attorney submit first in reply to the application and thereafter make their rejoinder, if the need to do so would arise.

In his brief submission, Mr. Sarara argued that the applicants have not shown good cause upon which extension of time to file their intended application for review would be granted. According to the learned State Attorney, the applicants have merely alleged that they were unable to get legal advice regarding the prescribed period of filing an application for review but did not specify the period within which they awaited to get that assistance from the date of the dismissal of their appeal. Mr. Sarara added that, the applicants have also not substantiated their allegation by any affidavit from any prison official showing that they sought legal assistance to file the intended application but failed to do so within the prescribed time thus necessitating the present application.

On those arguments, the learned State Attorney urged the Court to dismiss the application for want of merit.

In their rejoinder, the applicants did not have any substantial arguments to make. The 1<sup>st</sup> applicant admitted that in his affidavit, he

did not disclose the date on which he informed the prison authority that he intended to file an application for review. On their part, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants prayed to be allowed to seek and file an affidavit of the Officer in-charge, Isanga prison to substantiate the applicants' allegation that after the dismissal of their appeal, they expressed their intention to lodge an application for review. On his part, the 4<sup>th</sup> applicant merely stated that, after having been returned to prison following the dismissal of the appeal and after lodgment of this application, he was transferred to Msalato prison.

From the parties' submissions, the issue for determination is whether the application has merit. To answer the issue, it is instructive to state that, the Court is vested with discretionary power to extend the time limited by the Rules or by a decision of the High Court or tribunal for doing of any act which is authorised by the Rules. That power is derived from Rule 10 of the Rules cited by the applicants in the notice of motion. That Rule states as follows:-

*" 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 authorised 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."*

It is thus pertinent to consider whether the applicants have shown good cause for them to be granted the sought order. As shown above, according to the applicants' affidavits, the cause of their delay in filing the intended application for review within the prescribed period is that they were not aware of the legal requirement of doing so within sixty days from the date of the decision sought to be reviewed. In ground five of their respective affidavits, each of them states as follows:

*"That I was also aggrieved by the subsequent decision [of the Court] but failed to file Review within the prescribed period of time due to lack of legal assistance."*

Rule 10 of the Rules which has been reproduced above does not define the phrase "*good cause*". However, in **Shanti v. Hindochie and Another** [1973] E.A. 207, the Erstwhile Court of Appeal for East Africa considered similar phrase, "sufficient cause" used in Rule 8 of the Rules of that Court (later carried out in the Tanzania Court of Appeal Rules, 1979) and defined it to mean the cause which is convincingly beyond the applicants control, that is to say;

*" . . . the more persuasive reason . . . that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."*

Some of the factors which may be taken into account in considering whether or not the applicant has shown good cause were stated by the Court in the case of **Lyamuya Construction Company Limited v. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil application No. 2 of 2010 (unreported).

They are:

- "(1) That the applicant must account for all the period of delay;*
- (2) The delay should not be inordinate;*
- (3) The applicant must show diligence and not apathy, negligence or sloppiness of the action that he intends to take;*
- (4) If the Court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged."*

It is not disputed that the applicants were assisted by Isanga prison officials to prepare and file the application at hand. However, as

submitted by Mr. Sarara, the applicants have not stated anywhere in their affidavits the period within which they awaited to be provided that assistance until on 1/7/2019 when this application was filed. Notwithstanding that lapse, as shown above, the applicants are in effect, pleading ignorance of law as the cause of their delay. It is trite position that ignorance of law does not constitute good cause – see for instance, the cases of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2011, **Charles Machota Salugi v. Republic**, Criminal Application No. 3 of 2011 and **Wambura N. J. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 320/01 of 2020 (all unreported). In the former case, the Court observed as that:

*" As has been held times without number, ignorance of law has never featured as a good cause for extension of time."*

Similarly in the latter case, the Court stated as follows:

*" Ignorance of law is no excuse and cannot amount to sufficient cause for extending time to take a certain step."*

On the basis of the above stated reasons, there is not gainsaying that the applicants have not shown good cause for grant of the sought


order. In the event, I find that the application is devoid of merit. The same is thus hereby dismissed.

**DATED at DODOMA** this 1<sup>st</sup> day of June, 2021.

A. G. MWARIJA  
**JUSTICE OF APPEAL**

This Ruling delivered this 2<sup>nd</sup> day of June, 2021 in the presence 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants in person linked through video conference from Isanga prison, 2<sup>nd</sup> applicant linked through video conference from Ruanda prison and Ms. Neema Taji, learned State Attorney for the Respondent / Republic, is hereby certified as a true copy of the original.



  
H. P. Ndesamburo  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**