

IN THE COURT OF APPEAL OF TANZANIA

AT MOROGORO

CRIMINAL APPLICATION NO. 69/01 OF 2022

AUSI MZEE HASSAN.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for extension of time to file a review of the Judgment of the
Court of Appeal of Tanzania at Dar es Salaam**

(Mugasha, Kwariko And Kente, JJA.)

dated the 11th day of November, 2021

in

Criminal Appeal No. 17 of 2020

RULING

25th April & 12th May, 2023

MASHAKA, J.A.:

The applicant, Ausi Mzee Hassan filed the application for extension of time within which to file an application for review of the judgment of the Court dated 11th November, 2021 (Mugasha, Kwariko and Kente, JJA.). The notice of motion which predicated under rules 10 and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) is supported by an affidavit affirmed by the applicant.

The respondent did not file the affidavit in reply in terms of rule 56 (1) of the Rules.

To appreciate the merits or otherwise of the application, it is pertinent to bring forth its background as follows; the applicant was convicted by the Resident Magistrate's Court at Kibaha with three counts under the Penal Code; first count, armed robbery, second count causing grievous harm and third count, assault causing actual bodily harm. The applicant was found guilty in the first, second and third counts and sentenced to thirty years, five years and two years' imprisonment respectively which were to run concurrently. Aggrieved, by the convictions and sentences, he appealed to the High Court of Tanzania. The appeal was transferred to the RM's Court of Kibaha to be presided over by NAME OF MAGISTRATE, Senior Resident Magistrate with Extended Jurisdiction (Ext. Jur.). The appeal was partly allowed and partly dismissed. While allowing the appeal by quashing the conviction and setting aside the sentence in respect of the second count, the SRM with (Ext. Jur.) was satisfied that the appellant was deservedly convicted and sentenced by the trial court and his appeal challenging conviction and sentence in respect of first and second counts was without merit and dismissed it in its entirety.

Still undaunted, he preferred his final appeal, Criminal Appeal No. 17 of 2020 which was also dismissed by the Court. As he still wishes to fault the

decision of the Court through review, he filed the present application for extension of time citing the following intended grounds of review: -

"1. *That, the decision of the Court was based on a manifest error on the face of the record resulting in the miscarriage of justice as:*

a) The Court misapprehended the evidence of identifying witnesses whose identification was done under a horrible circumstance;

b) The visual identification evidence of the identifying witnesses relied upon by the Court could be mistaken because the Court did not consider under such brutal circumstance there were chances of not concentrating on the face of the perpetrators but on the weapon wielded by the perpetrators (weapon focus).

2. He was wrongly deprived of an opportunity to be heard:

a) Most of the grounds before the Court were not considered yet at no any given had he abandon them."

At the hearing of the application, the applicant was present in person unrepresented whereas Ms. Neema Haule, learned Senior State Attorney represented the respondent Republic.

Submitting in support of the application, the applicant commenced by adopting the contents of the notice of motion and the supporting affidavit. To amplify his reason for seeking the extension of time to file an application for review, he contended that the impugned judgment for review was delivered on 11th November, 2021 while he was serving his sentence at Ukonga Prison in Dar es Salaam. He averred at paragraphs 5 and 6 of the supporting affidavit that after obtaining a copy of the impugned judgment, he was transferred to Ruanda Prison, Mbeya to attend a basic training in carpentry and joinery from January, 2022 to August, 2022. He attached a certificate awarded to him to prove same. He argued that, while at Ruanda Prison he could not process and file an application for review within the prescribed period of 60 days due to lack of proper logistics to do so. At paragraph 8 of his supporting affidavit, he implored me to consider that his delay to file the application was caused by his transfer from Ukonga Prison, Dar es Salaam Region to Ruanda Prison, Mbeya region where no logistics were made available to inmates to prepare such application for review. He contended that he had demonstrated good cause to warrant extension of time to file an application for review under rule 66 (1) (a) (c) of the Rules.

In reply, the learned Senior State Attorney opposed the application and argued that the applicant has shown no good cause for the Court to grant

the extension of time as provided under rule 10 of the Rules. She contended further that the judgment was delivered on 11th November, 2021 and the applicant attached a certificate to show that he attended a training course at Ruanda Prison in Mbeya Region from January, 2022 to August, 2022 though the dates are unknown. Ms. Haule argued that there is no explanation offered for the delay between 12th November, 2021 and 31st December, 2021, a delay of almost 50 days. She further claimed that it is not known when the applicant left Ukonga Prison in Dar es Salaam for Ruanda Prison, Mbeya. Also, after completion of his training he returned to Ukonga Prison on 27th September, 2022 and after a lapse of 75 days, he lodged the present application on 12th December, 2022. She bolstered her arguments with the case of **Robert Nyengela v. Republic**, Criminal Application No. 42/13 of 2019 (unreported). In that case, the Court held that it is the requirement of the law that in an application for extension of time, the applicant has to account for each day of delay.

She referred to paragraph 8 of the applicant's supporting affidavit where he stated that, there were no facilities to enable him to process his application for review at the Ruanda Prison for the eight months he was there. She submitted that the applicant was not truthful because in the case of **Robert Nyengela v. Republic** (supra) the appellant who was

incarcerated in Ruanda Prison was able to file his application for review. Ms. Haule concluded that the applicant has failed to account for each day of delay.

On the reasons relied on to file an application for review if granted the extension of time, Ms. Haule argued that the reasons advanced by the applicant were not grounds for review as required by rule 66 (1) of the Rules but rather related to issues identification and of identification denied a right to be heard. She expounded that the complaint that he was denied a right to be heard because his grounds of appeal were not considered by the Court was not correct as she moved my attention to page 3 of the judgment sought to be reviewed where the Court took the six grounds of appeal placed before them in an abridged form of two grounds.

Having heard and considered the arguments from both parties, it is undisputed that though the Court's powers to extend time under rule 10 of the Rules are both broad and discretionary, such powers can only be exercised where good cause is shown. Thus, the crucial issue for determination is whether the applicant has shown good cause to enable me to exercise discretionary power to extend time to lodge his intended application for review.

This application is predicated under rule 10 of the Rules which gives discretion to the Court to grant extension of time where there is good cause which reads:

"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"

The applicant averred that there is a manifest error on the face of the record hence the Court's intervention is of the utmost importance as the statutory period of sixty days to lodge an application for review has passed. The applicant has emphasized that there is a need to extend time to file an application for review.

It is a settled position of the law that, for the Court to exercise its discretion to extend time, there must be a "*good cause*" shown by an applicant that upon becoming aware of the fact that he/she is out of time, there ensued circumstances beyond his/her control that prevented them to

act in time to persuade the Court to exercise its discretion in favour of granting an extension of time. Also, what constitutes good cause has not been laid down by any hard and fast rules as the term "good cause" is a relative one and dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion as held in **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported).

There are number of factors which have to be considered that there is a good cause as stated in **Tanga Cement Company Limited v. Jumanne D. Masangwa & Amos A. Mwalwanda**, Civil Application No. 06 of 2001; **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016 (both unreported). Good cause can also be deduced from the decision of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), that one, an applicant must account for all the period of delay; two, the delay should not be inordinate; three, an applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; four, if the court feels that there are other sufficient reasons,

such as the existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

In my considered view, the appellant failed to take action for the period almost 50 days from the date of judgment 11th November 2021 to 31st December 2021. He has accounted for the days from January 2022 to August, 2022, that he was attending training in Mbeya where he could not process his appeal as he has gone there for the said training. However, there is no account made by the applicant from 27th September, 2022 when he returned to Ukonga Prison until 12th December, 2022 when he filed this application, about a total of 75 days which the applicant exhibited a laxity.

As correctly submitted by the learned Senior State Attorney, the applicant is required to advance good cause for the Court to grant him extension of time which is the spirit of rule 10 of the Rules.

Flowing from the above, extension of time is a matter within the discretion of the Court as such, a party seeking an extension must always put forward material and consideration that would persuade the Court to exercise its discretion in favour of an extension See: **Godfrey Anthony and Ifunda Kisite v. The Republic**, Criminal Application No. 6 of 2008 (unreported).

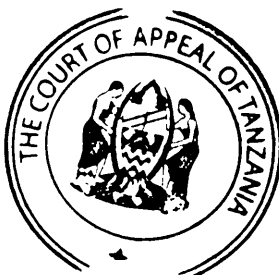
All in all, I find that the applicant has failed to establish that the delay was due to a good cause. He failed to exercise diligence and exhibited laxity.

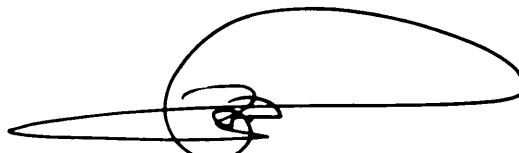
That said, the applicant has failed to advance any reason let alone show good cause to warrant me to exercise my judicial discretion. In the end, I am constrained to find that the application for extension of time is without merit and has to fail. The application for extension of time to file an application for review is dismissed.

DATED at **MOROGORO** this 11th day of May, 2023.

L. L. MASHAKA
JUSTICE OF APPEAL

This Ruling delivered this 12th day of May, 2023 in the presence of the Applicant appeared in person via Video Link from Morogoro Prison, Mr. Shabani Abdallah Kabelwa, Mr. Elias Masini Esansu, and Daniel Athanas Makalo, both learned State Attorneys for the respondent, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL