

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

CRIMINAL APPLICATION NO. 50/12 OF 2017

YUSUFU HASSAN APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application for extension of time to apply for review of the decision
of the Court of Appeal of Tanzania, at Tanga)

(Munuo, Msoffe, Kimaro, JJ.A.)

dated the 12th day of March, 2010

in
Criminal Appeal No. 152 of 2008

RULING

18th February, 2020

KEREFU, J.A.:

This is an application in which the applicant seeks the order of the Court for extension of time within which to lodge an application for review out of time. The basis of the application is the decision of this Court (Munuo, Msoffe, Kimaro, JJ.A.) dated 12th March, 2010 in Criminal Appeal No. 152 of 2008.

The application has been preferred under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) through a Notice of Motion supported by the affidavit of Mr. Yusufu Hassan, the applicant. The

respondent did not file an affidavit in reply and thus, the application is uncontested.

The grounds of the application which are cited both, in the Notice of Motion and the supporting affidavit are that:-

- (a) The applicant lodged his first application for review at the Court of Appeal, Arusha Registry, but the Registrar refused to register the same on the reasons that, the applicant case was not heard at that Registry;*
- (b) The applicant delayed to lodge his application at Tanga in time as he has been transferred to Arusha Central Prison; and*
- (c) That, what stated above are crucial reasons which delayed the applicant to lodge the review application.*

It is also important at this stage to narrate, albeit briefly, that the genesis of the matter as obtained from the record of the application indicate that, the applicant together with one Hashimu Mohamedi were jointly charged with the offence of armed robbery contrary to sections 285 and 286 of the Penal Code, Cap. 16 R.E. 2002 in Criminal Case No. 292 of 2005 in the District Court of Muheza at Muheza within Tanga Region. They

were sentenced to a term of thirty years imprisonment and ordered to compensate the complainant Tshs. 1,136,000/= the value of the stolen property. Aggrieved, they unsuccessfully lodged Criminal Appeal No. 5 of 2007 in the Court of Resident Magistrate at Tanga before W.E. Lema, PRM (Extended Jurisdiction). Still aggrieved, they filed Criminal Appeal No. 152 of 2008 where this Court partly allowed the appeal in respect of Hashimu Mohamed but dismissed the appeal by the applicant. Later, unsuccessful the applicant lodged an application for review, as indicated above.

At the hearing of the application, the applicant appeared in person, unrepresented, whereas the respondent was represented by Ms. Maisara Mkumba assisted by Mr. Winlucky Mangowi, both learned State Attorneys.

In his brief submissions, the applicant argued that this is not the first time he makes initiative towards filing an application for review of the referred Criminal Appeal No. 152 of 2008. He said, he lodged his first application for review at the Court of Appeal in Arusha Registry, but the Registrar refused to register the same on the reasons that, the Criminal Appeal No. 152 of 2008 was not heard at that Registry. He further submitted that, after that incident it became impossible for him to process

his application in Tanga as he was in Arusha Central Prison. The applicant submitted further that, during the visit of the Commissioner General of Prison (C.G.P) to Arusha Central Prison, he raised his complaint and the C.G.P ordered that he should be brought to Maweni Central Prison at Tanga and that is when he managed to lodge this current application. The applicant added that, pursuant to Prison Standing Orders he had been transferred from one prison to another, as even today he travelled all the way from Ludewa Prison to attend to this application. He lamented that, those frequent transfers which are beyond his control, have hindered him to process his application in time. He further added that, he being a prisoner behind bars, had no control of the said transfers or even making follow up on the application, as he depends much on the Prison Authority.

The applicant submitted further that, the charge sheet against which they were convicted cited wrong provisions of the law i.e Sections 285 and 286 of the Penal Code, Cap. 16 R.E 2002 instead of Section 287A. He said due to that omission, which went unnoticed by the trial and appellate courts, he was given a wrong sentence of thirty years instead of fifteen years.

He further argued that, immediately after he discovered that error he lodged an application in this Court, Arusha Registry but the said application was not processed as indicated above. It was his strong argument that what he has submitted constitutes good cause to warrant grant of this application. As such, the applicant prayed that the application be granted to allow him to lodge the intended application for review out of time.

On their part, Ms. Mkumba and Mr. Mangowi were quick to point out that the respondent does not oppose the application. They thus prayed that, the application be granted to allow the applicant to raise and clarify those issues during the review. The applicant had nothing to say in rejoinder as his application was not opposed by the respondent.

I have perused the record of the application and considered the submissions made by the parties. I wish to note that, the law is settled that in an application for extension of time, the applicant is required to show good cause as per Rule 10 of the Rules. For avoidance of doubt, the said Rule provides that:-

“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 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 added].

Under the above cited provision of the law, the requirement which the applicant has to satisfy is to show good cause for the delay in filling the application. There are numerous authorities to this effect and some of them include, **Kalunga & Company Advocates Ltd Vs National Bank of Commerce Ltd** (2006) TLR 235 and **Attorney General V Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 at pg 11 (unreported), to mention but a few.

In exercising its discretion to grant extension of time, the Court considers the following crucial factors; *the length of delay, the reason for the delay and degree of prejudice that the respondent may suffer if the application is granted*. It is therefore the duty of the applicant to provide the relevant material in order for the Court to exercise its discretion. See the **Regional Manager Tan Roads Kagera v Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported).

In the current application, I have had an opportunity to peruse the documents submitted by the applicant and there is no dispute that, the decision of the Court (Criminal Appeal No. 152 of 2008) sought to be reviewed was delivered on 12th March, 2010. It is also on record that, immediately, after discovering that the said decision has manifest errors on the face of record, the applicant presented his application for review in this Court at the Arusha Registry, but the same was not admitted due to the fact that his appeal was not heard in Arusha. As a result and due to frequent Prison transfers, the applicant found himself out of time and he did not have any other option other than to lodge this application for extension of time on 23rd June, 2017.

I am mindful of the position taken by the Court in various decisions where the Court considered the situation of prisoners that they are not free agents who can freely make follow-ups on their matters; and thus granted applications for extension of time. See for instance decisions in **Otieno Obute v. The Republic**, MZA. Criminal Application No. 1 of 2011; **Joseph Sweet v. The Republic**, Criminal Appeal No. 11 of 2017 and **Fabian Chumila v. The Republic**, Criminal Application No. 6/10 of 2019 (all unreported). Specifically, in **Otieno Obute** (supra) while granting

extension of time to the applicant who was a prisoner, the Court stated that:-

*"I have considered the averments by both parties and come to the conclusion that this application has merit ... **As a prisoner, his rights and responsibilities are restricted.** Therefore, he did what he could do. **He may have been let down by reasons beyond his means...** Accordingly, the application is granted."* [Emphasis added].

Similarly, in the current application, the applicant being a prisoner could not have any means to make follow-ups on his case, as he has been moving from one prison to another. It is evident that even today we had to postpone the morning session to this afternoon hours (1500hrs) as the applicant was still on his way from Ludewa Prison located at Ludewa District in Njombe Region to this (Tanga) Region. In the event and following the above authorities, I agree with the learned counsel for the respondent that the reasons for delay advanced by the applicant, a prisoner, constitute good cause.

It is my considered view, since the applicant has indicated that his application for review will be based on the manifest error on the face of the record resulting in the miscarriage of justice i.e Rule 66 (1) (a) of the Rules, I find this to be in compliance with the requirement of the law. In that respect, I again, agree with the learned counsel for the respondent who submitted that further elaboration and explanation on the said ground will be pursued in an application for review if extension of time is granted.

Therefore, in the exercise of the Court's discretion, I extend time for the applicant to lodge his application for review out of time. The application should be lodged within sixty (60) days from the date of delivery of this Ruling. It is so ordered.

DATED at TANGA this 18th day of February, 2020.

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 18th day of February, 2020 in the present of the Applicant and Ms. Maisara Mkumba, learned State Attorney assisted by Mr. Winlucky Mangowi, learned State Attorney for the Respondent is hereby certified as a true copy of the original.




H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL