

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA
CRIMINAL APPLICATION NO 2 OF 2010

FADHILI YAHAYA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Application from the Decision of the Court of Appeal of Tanzania
at Arusha)

(Kaji,J.A Kileo, J.A and Kimaro, J.A.)

dated the 21st day of April, 2008

in

Criminal Appeal No. 209 of 2006

RULING

21st & 22nd September, 2011

MSOFFE, J.A.:

This is an application for enlargement of time to file an application for review of this Court's decision (Kaji,J.A, Kileo, J.A and Kimaro,J.A.) dated 21st April, 2008 in Criminal Appeal No. 209 of 2006. The application which is by way of a notice of motion is supported by the applicant's affidavit deponed on 9th April, 2010. Although the applicant, a lay man, did not state so in so many words, the application is taken under Rule 10 of the

Tanzania Court of Appeal Rules, 2009 (the Rules). Under the Rule the Court has the discretion to extend time if good cause is shown. Paragraph 5 of the affidavit assigns the main reason for the failure to file an application for review in good time thus:-

5. That, as I was preparing all necessary documents for review, the prisons typing equipment was out of order which marked a technical delay which was out of my ability.

In terms of Rule 66(3) of the Rules it is imperative that an application for review be filed within sixty days from the date of the judgment or order sought to be reviewed. In this case, the judgment of the Court was delivered on 21st day of April, 2008, as already stated above. This means that the intended application for review ought to have been filed within a period of sixty days from that date. The crucial issue in this application is whether the applicant has exhibited good cause for the failure to file the

application within time to warrant the exercise of this Court's discretionary power under Rule 10 in his favour.

Ms. Javelin Rugaihuza, learned State Attorney, appeared on behalf of the respondent Republic. She opposed the application on two main grounds. **One**, the applicant has not indicated or shown in his affidavit that the intended review has chances of success. **Two**, the averment under paragraph 5 of the affidavit is not substantiated by an affidavit from the prison officer.

With respect, I am in agreement with Ms. Javelin Rugaihuza. To start with, it is true that the applicant has not indicated whether the intended application has chances of success. On this, I go along with my sister Kimaro, J.A. in **Azania Furaha and Another V. Republic**, Criminal Application No. 5 of 2009 (unreported) whereby she cited with approval this Court's decision in **Royal Insurance Tanzania Ltd v. Kiwengwa Strand Hotel Limited**, Civil Application No. 111 of 2009 (unreported) that in an application of this nature an applicant is expected to show that

what he intends to challenge by way of a review has a likelihood of success. In this sense, it is expected that an applicant will show that one or more of the grounds stipulated under Rule 66(1) of the Rules was or were violated or exist in the judgment intended to be reviewed.

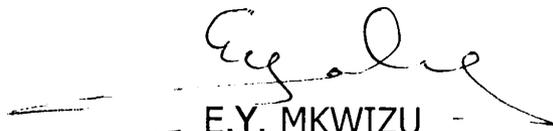
It is also true, as contended by Ms. Javelin Rugaihuza, that the averment under paragraph 5 of the affidavit is not supported by an affidavit from the prison officer. In the absence of such affidavit it is difficult to believe that "the prisons typing equipment was out of order" at the material time. At any rate, if it was true that the equipment was out of order it is difficult to comprehend that the prisons department could have failed to repair "the typing equipment" for a period of about two years i.e from 21st April, 2008 when this Court's decision was given to 9th April, 2010 when this application was filed. What is more, is the fact that the applicant submitted orally before me that the notice of motion and the affidavit in support thereof were prepared by him under the supervision and guidance of the prison officer. If that was true, it defeats reason that the prison officer could have failed to file an affidavit in support of the serious allegation made under paragraph 5 of the applicant's affidavit.

When all is said and done, I am of the settled view that in the totality of the foregoing, this application has no merit. It is hereby dismissed.

DATED at ARUSHA this 21st day of September, 2011.

J.H. MSOFFE
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


E.Y. MKWIZU -
DEPUTY REGISTRAR
COURT OF APPEAL