

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

CRIMINAL APPLICATION NO. 02 OF 2015

**EVODIUS RUTECHURA @ THEOBARD NESTORY.....APPLICANT
VERSUS**

THE REPUBLIC..... RESPONDENT

**(Application for Extension of time to lodge Review from the decision
of the Court of Appeal of Tanzania at Mwanza)**

(Bwana, Mjasiri, And Mandia, JJJA.)

**dated 13th day of September, 2012
in
Criminal Appeal No. 258 of 2009**

RULING

4th & 8th June, 2015

MUSSA, J.A.:

In the High Court of Tanzania, at Mwanza, the applicant was convicted for the offence of murder and sentenced to death (Rwakibarila, J.). His appeal to this Court was dismissed in its entirety (Bwana, J.A, Mjasiri, J.A. And Mandia, J.A.). He presently applies for extension of time within which to lodge an application for review.

The application is by Notice of Motion, taken out under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by two affidavits duly sworn by the applicant and a Senior Superintendent

of Prisons, namely, J. S. Wishi. In the two affidavits, the applicant and the Senior Superintendent of Prisons assign illness as the sole cause for the applicant's failure to lodge the application in time.

The application is resisted by the respondent Republic in an affidavit in reply, duly sworn by Ms. Martha Mwandanya, learned Senior State Attorney. In the affidavit in reply, the respondent faults the applicant for not attaching a medical Chit from the Sekou Toure Hospital. It is noteworthy that the chit attached by the applicant was written by the Prison Medical Officer. In addition, the learned Senior State Attorney criticizes the applicant for not indicating the ground upon which the application for review will be predicated.

At the hearing before me, the applicant was fending for himself, whereas the respondent had the services of the same Ms. Mwadenya. The applicant fully adopted the Notice of Motion as well as the supporting affidavits, without more. On her part, the learned Senior State Attorney also adopted the affidavit in reply. She, in addition, sought to rely on the unreported Criminal Application No. 8 of 2014 – **Salum Nhumbili vs. The Republic.**

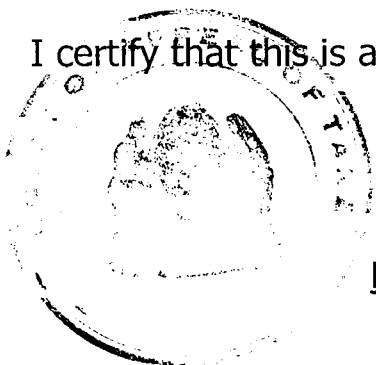
I have dispassionately considered the rival arguments of the parties herein. It may be that the applicant was, indeed, prevented by illness from filing the application in good time. But, as correctly rejoined by Ms. Mwadenya, the applicant ought to have shown in either the Notice of Motion or the supporting affidavits that if the court grants his application, he has chances of succeeding in whichever aspect among those shown under Rule 66 (1) (a) to (e) (see **Salum Nhumbili**, *supra*).

That was not indicated in this application and, accordingly, no good cause has been shown. In the final result, the application is hereby dismissed.

DATED at **MWANZA** this 5th day of June, 2015.

K. M. MUSSA
JUSTICE OF APPEAL

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




Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL