

**IN THE COURT OF APPEAL OF TANZANIA**

**AT IRINGA**

**CRIMINAL APPLICATION NO. 113/12 OF 2018**

**YORDAN s/o NG'ANG'ISE.....APPLICANT**

**VERSUS**

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

**(Application for Extension of time to Apply for Review from the Judgment of  
the Court of Appeal of Tanzania at Iringa)**

**(Msoffe, Kaijage, Mmilla, JJA.)**

**dated the 25<sup>th</sup> day of June, 2014**

**in**

**Criminal Appeal No. 212 of 2010**

.....

**RULING**

27<sup>th</sup> & 29<sup>th</sup> April 2021.

**SEHEL, J.A.:**

Before me is an application for an extension of time made under Rules 10 and 66 (1) (a) to (e) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant intends to file an application for review of the judgment of the Court dated 25<sup>th</sup> June, 2014, out of time.

Briefly, the applicant, Yordan Ng'ang'ise together with Athumani Hassani who is not a party to the present application were convicted by the

District Court of Iringa at Iringa with an offence of armed robbery contrary to sections 285 and 286 of the Penal Code, Cap. 16 R.E 2002 (the Penal Code) and with an offence of rape contrary to sections 130 (1) (2) (e) and 131 of the Penal Code. They were sentenced to thirty (30) years imprisonment for each count. The sentences were ordered to run concurrently. They were also sentenced to suffer twelve strokes of cane and ordered to compensate the victim of rape TZS 200,000.00. Aggrieved, they unsuccessfully appealed to the High Court and to the Court. Since the applicant wishes to challenge the decision of the Court through review, he filed the present application for extension of time through a notice of motion supported by an affidavit sworn by the applicant, himself.

The respondent Republic opposed the application by filing an affidavit in reply sworn by Hope Charles Massambu, learned State Attorney.

At the hearing of the application, the applicant appeared in person fending for himself, whereas, Ms. Hope Charles Massambu, learned State Attorney entered appearance for the respondent Republic.

In arguing the application, the applicant first adopted his notice of motion and affidavit in support of the application. He then explained the reason as to why he delayed in filing the application for review. He

contended that he could not file the application for review on time because, immediately after the delivery of the judgment of the Court, he was transferred from Iringa prison to Mbeya prison. He further argued that Mr. Alfred Kingwe, learned advocate who appeared before the Court to argue his appeal did not consult him. Hence, he said, he was not aware of the grounds of appeal filed and argued by the learned advocate. He submitted that since he was not satisfied with the way the learned advocate conducted his appeal, he decided to file the present application. He therefore prayed for the application to be granted.

From the outset, Ms. Massambu opposed the application. Elaborating the reasons for not supporting the application, Ms. Massambu argued that in terms of Rule 10 of the Rules, the Court can exercise its discretionary power in granting extension of time if there is a good cause advanced by the applicant. She contended that the applicant in his affidavit and oral submissions, failed to advance any reason let alone good cause for delay. She added that in the application for extension of time to file review, the applicant ought to show that he has an arguable case in the intended application for review but, according to paragraph 5 of the affidavit, the reason stated by the applicant was a surprise of the contents and substance

of the judgment occasioning a miscarriage of justice, without any further explanation. Ms. Massambu argued, surprise is not a ground within the ambit of Rule 66 (1) of the Rules. She therefore prayed that the application be dismissed for want of merit.

In rejoinder, the applicant pleaded ignorance of the law that he is a lay person. He therefore urged me to consider his application and grant it for the reasons he had submitted earlier on.

From the rival submissions, the issue before me is whether, the applicant has advanced good cause for the grant of the extension of time to file an application for review. As hinted earlier, the applicant predicated his application under Rule 10 of the Rules which is the governing law in an application for an extension of time. The Rule provides: -

*"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."*

From the above, the Court is bestowed with a very wide discretionary power on either to grant or refuse an application for extension of time where a party has found himself that he was delayed in doing any act authorized or required by the Rules, whether before or after the expiration of the period and whether before or after the doing of the act. Of course, such power has to be exercised judiciously. Acting judicially is to act for good cause or sufficient reason (see the case of **Martha Daniel v. Peter Thomas Nko** [1992] TLR 35).

What amounts to good cause has not been defined but certain factors have to be taken into consideration in determining whether to grant or refuse extension of time. Some of the factors were laid down in the case of **Joel Silomba v. The Republic**, Criminal Application No. 5 of 2012 (unreported) that: -

*i) "the length of the delay;*

*ii) the reason for the delay, was the delay caused or contributed by dilatory conduct of the applicant;*

- iii) whether there is an arguable case, such as, whether there is point of law or the illegality or otherwise of the decision sought to be challenged; and/or*
- iv) the degree of prejudice to the opposite party if the application is granted.”*

Applying the above factors to the present application, it is noted that the applicant's application for extension of time was filed on 4<sup>th</sup> September, 2018. Rule 66 (2) of the Rules prescribes a period of sixty (60) days within which a party may lodge an application for review. That period is counted from the date of the judgment or order sought to be reviewed. The judgment which the applicant intended to challenge is dated 25<sup>th</sup> June, 2014. Therefore, the sixty (60) days period expired on 24<sup>th</sup> August, 2014. Counting from the date the judgment was delivered to the date the present application was filed, that is, 4<sup>th</sup> September, 2018, almost a period of four years has elapsed. To me, the length of the period, covering the date the judgment was delivered to the date the application for extension was filed, is too long. As such, the applicant failed to pass the first test/factor.

The second factor is whether the applicant managed to explain away a delay of four years. The only reason he has advanced in his oral submissions was the transfer from one prison to another prison. Unfortunately, that reason is neither stated in his notice of motion nor affidavit in support of the application. Be as it may, transfer is not a good cause because he could as well file the application for review from Mbeya prison given that the applicant did not explain the impediment, if any, he had or experienced from Mbeya prison. With the absence of an explanation, we failed to see any valid reason that caused the applicant not to lodge the application for review within the stipulated time of sixty days from Mbeya prison.

More so, I have carefully gone through his notice of motion and affidavit in support of the application but I failed to find any justifiable reason for the delay. The affidavit which the applicant filed in support of his application contains six paragraphs. The first, second and third paragraphs give a history of his case. The sixth paragraph deposed that he would wish to be present in the hearing of the application for extension of time. The fourth and fifth paragraphs reads: -

*"4. That, I am the applicant in this application to  
C.A.T for extension of time within which to lodge an*

*application for review to the C.A.T out of time in Criminal Appeal No. 212/ 2012.*

*5. That, my Lords, having heard in Court and later read the judgment of the Court I was very surprised by its contents and substance of the some resulted to miscarriage of justice on my part, hence this application.”*

It is, therefore, gathered from the above that there is no single explanation stated by the applicant in his affidavit as to why he could not file the application for review within the prescribed period of sixty days. As rightly submitted by the learned State Attorney, the fact that he was surprised with the outcome of his appeal does not amount to any reason nor could it be termed as good cause. In the circumstances, the applicant failed to pass the second hurdle.

Apart from the applicant advancing the reason for the delay, in application like the one at hand, he is also required to show that he has an arguable case. That is, he is required to demonstrate in the application for extension of time that he is intended to predicate his application for review on the ground(s) listed under Rule 66 (1) of the Rules. This was the position

stated in the case **Mwita Mhere v. The Republic**, Criminal Application No. 7 of 2011 (unreported) where the Court was faced with a similar application and it had this to say: -

*"But in application of this nature, the law demands that the applicant should do more than account for the delay. To succeed in showing that he has good cause under Rule 10 of the Rules, **it must be shown further that the applicant has an arguable case. An arguable case is one that demonstrates that the intended grounds of review is at least one of those listed in Rule 66 (1) of the Rules.**" [emphasis is added].*

The applicant submitted orally that he decided to seek an application for review because he was not satisfied with the way the learned advocate conducted his appeal. The conduct of the appeal by the advocate is not one of the grounds of review listed under Rule 66 (1) of the Rules. Similarly, the issue of surprise as rightly submitted by Ms. Massambu is not a ground of review within the ambit of Rule 66 (1) of the Rules. Nor could it be taken that the applicant has an arguable case in the application for review in case an extension of time is granted. Therefore, in totality, the applicant has failed to

advance any reason let alone good cause to warrant me 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. Accordingly, I do hereby dismiss it.

**DATED** at **IRINGA** this 29<sup>th</sup> day of April, 2021.

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

The Ruling delivered this 29<sup>th</sup> day of April, 2021 in the presence of the Appellant in person linked via video conference at Iringa Prison and Ms. Edna Mwangulumba, State Attorney for the respondent/Republic is hereby certified as a true copy of the original.



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**