

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

**CRIMINAL APPLICATION NO. 13 OF 2009**

**CHARLES BARNABAS .....APPLICANT  
VERSUS  
THE REPUBLIC ..... RESPONDENT**

**(Application for Extension of Time to file Review from the  
decision of the High Court of Tanzania at Tanga)**

**(Munuo, J.A., Msoffe, J.A., And Kaji, J.A.)**

**dated the 3<sup>rd</sup> day of June, 2005  
in  
Criminal Appeal No. 145 of 2003**

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**RULING**

12 & 15 March, 2010

**MSOFFE, J.A.:**

In this application the applicant is seeking extension of time to file an application for review of this Court's judgment in Criminal Appeal No. 145 of 2003. Under paragraph 4 of the affidavit in support of the notice of motion the applicant avers that he intends to challenge the merit of the judgment. With respect, as aptly observed by my brother Mandia, J.A. in **Miraji Seif v Republic**, Criminal Application No. 2 of 2009 (unreported), the primary purpose of a review is not to challenge the merits of a decision. A review is

intended to address irregularities of a decision or proceedings which have caused injustice to a party. Further to Justice Mandia's observation, I will add two other matters by way of emphasis. **One**, a review is not an appeal. It is not "a second bite", so to speak. As it is, it appears the applicant intends to "appeal" against the aforesaid decision through the back door. Our legal system has no provision for that. **Two**, with the coming into force on 1/2/2010 of the **Tanzania Court of Appeal Rules, 2009**, rule 66 (1) thereof sets out the grounds for review. Under **sub-rule (3)** an application for review must be filed within sixty days from the date of the judgment or the order sought to be reviewed.

In this application the applicant does not indicate anywhere that he intends to canvass any of the above grounds. Admittedly, the application was filed before the above Rules came into effect. Admittedly also, under the revoked **Tanzania Court of Appeal Rules, 1979** there was no provision for review. Hitherto, time limitation and grounds for review were set by the Court through case law. In this regard, the Court set a period of sixty days for applications for review – See, for instance, **Benson Kibaso**

**nyakonda @ Oiembe Patoda Apiyo v Republic**, Criminal Application No. 6 of 1999 (unreported). In similar vein, the Court set out grounds for review, notably in the case of **Chandrakant Joshubhai Patel v The Republic**, Criminal Application No. 8 of 2002 (unreported). Indeed, the framing of **Rule 66 (1)** (*supra*) is to a large extent based on this Court's decision in **Patel**. In this application, the applicant does not disclose anywhere that in the intended application for review he proposes to raise any of the grounds stipulated in **Patel**. Needless to say, **Patel** was decided in 2003. This application was filed in 2009, which was **after** the decision in **Patel**.

Under the above paragraph the applicant is also blaming the prison authorities for the delay in filing an application for review within time. The allegation is unsubstantiated in that there is nothing from the prison authorities to confirm it.

In fact, in my reading and understanding of the application it appears that the applicant is of the view that a review is automatic. With respect, a review is not automatic. A review to this Court is at

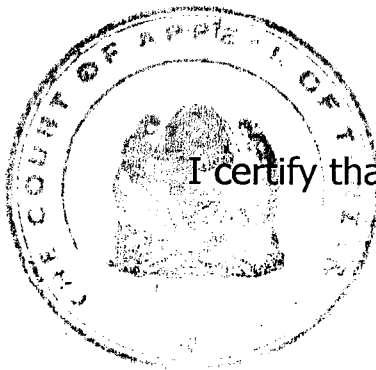
the discretion of the Court and is subject to the existence of any of the grounds set out under **Rule 66 (1)**.

The judgment subject of the intended review was delivered on 3/6/2005. This application was filed on 28/7/2009. On the basis of the material or record before me no sufficient reason has been advanced to explain the delay.

The application has no merit. It is accordingly dismissed.

DATED at TANGA this 13<sup>th</sup> day of March, 2010.

J. H. MSOFFE  
**JUSTICE OF APPEAL**



I certify that this is a true copy of original.

  
(N. N. CHUSI)  
**DEPUTY REGISTRAR**