

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: MUSSA, J.A., MZIRAY, J.A., And NDIKA, J.A.)

CRIMINAL APPLICATION NO. 3/06 OF 2016

JIMMY ANDERSON MWAMPASHI.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

**(Application for Review from the Judgment of the Court of Appeal of
Tanzania at Mbeya)**

(Nsekela, J.A., Msoffe, J.A., And Oriyo, J.A.)

**dated 3rd of March 2011
in
Criminal Appeal No. 419 of 2007**

RULING OF THE COURT

4th & 6th October, 2017

NDIKA J.A.:

The applicant was convicted by the District Court of Mbeya of armed robbery contrary to section 287A of the Penal Code, Cap. 16 RE 2002. As a result, he was sentenced to imprisonment for a term of thirty years. As his first appeal to the High Court sitting at Mbeya was unsuccessful, he lodged a second appeal to this Court, which was

dismissed in its entirety on 3rd March 2011. Undeterred, the applicant lodged on 30th June 2016 this application under rule 66 (1) (a) of the Tanzania Court of Appeal Rules, 2009 ("the Rules") seeking review of the decision of this Court on his appeal.

Contesting the application, the respondent Republic duly lodged a notice of preliminary objection under rule 4 (2) (a) of the Rules contending that:

"the application is bad in law for being filed out of time."

At the hearing of the preliminary objection, Ms. Catherine Paul, learned State Attorney, appearing for the respondent, assailed the application that it was lodged out of the sixty days limitation period prescribed by rule 66 (3). She elaborated that while the judgment sought to be reviewed was delivered on 3rd March 2011, the instant application was filed in Court on 30th June 2016, which was more than five years beyond the prescribed limitation time. On that basis, she submitted that the application is rendered incompetent and that it is liable to be struck out.

On his part, the applicant stated, at first, that although the judgment of the Court he now seeks to be reviewed is dated 3rd March 2011, it was actually delivered on 10th May 2011. On being questioned by the Court, he acknowledged that after receiving a copy of that decision, he applied within the prescribed time for its review vide Criminal Application No. 1 of 2011 but that application was struck out on 22nd April 2016 on the ground that it had been laid under wrong provisions of the law. His next step, then, was to lodge the present application without seeking enlargement of time to do so.

Rule 66 (3) of the Rules requires that:

*"The **notice of motion for review shall be filed within sixty days** from the date of the judgment or order sought to be reviewed. It shall set out clearly the grounds for review."*

[Emphasis added]

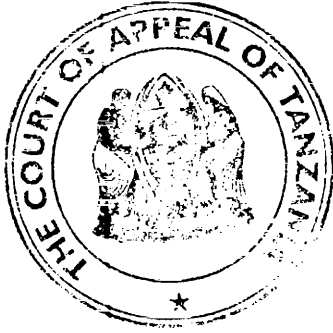
It is manifest from the above-quoted provisions that an application for review, like the instant application, must be lodged within sixty days from the date of the decision sought to be reviewed. Any application for review lodged out of time is liable to be struck out

for being incompetent: see, for instance, the following unreported decisions of this Court in **Charles Barnabas v Republic**, Criminal Application No. 13 of 2009; **Benjamin Mpilimi and Others v Republic**, Criminal Application No. 1 of 2011; **Henibo Samweli and Another v Republic**, Criminal Application No. 4 of 2010; and **Joseph Mukwano and Another v Republic**, Criminal No. 6 of 2013; and **Thomas Mlambivu v Republic**, Criminal Application No. 1 of 2011.

Having examined the notice of motion and the judgment sought to be reviewed, we agree with Ms. Paul that the present application, lodged on 30th June 2016, was filed more than five years beyond the prescribed sixty days limitation period, which is reckoned from 3rd March 2011 when the said judgment was delivered. We are, indeed, cognizant that even though the applicant had lodged in time his botched application for review (i.e., Criminal Application No. 1 of 2011), he could only have duly lodged a fresh application for review after seeking and obtaining from the Court extension of time to do so because the sixty days limitation period had already elapsed on or before 2nd May 2011. On that basis, we sustain the preliminary

objection and proceed to strike out this application for its incompetence.

DATED at **MBEYA** this 5th day of October 2017.



K. M. MUSSA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read "E. Y. Mkwizu", is written over the printed name and title.

E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL