

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 11 OF 2015

1. ESIO NYOMOLELO }
2. FIKIRI NYOMOLELO } APPLICANTS

VERSUS

THE REPUBLIC..... RESPONDENT

(Application for extension of time to file review from the decision of the High Court of Tanzania at Dar es Salaam.)

(Mnzava, Mfalila, Lubuva, JJJ.)

Dated the 28th day of October, 1996

In

Criminal Appeal No. 49 of 1995

RULING

1st & 16th December, 2015

MZIRAY, J.A.:

This is an application made by way of notice of motion under Rule 10 and 66 (1) (a) and (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking for an order of extension of time to file an application for review of the decision of this Court in Criminal Appeal No. 49 of 1995 dated 28th day of October, 1996. In support of the application there were three affidavits; one is that of Esio Nyomolelo – 1st applicant, the 2nd one is that of Fikiri Nyomolelo – the 2nd applicant and lastly that of ACP S.I Mwaisabila, the Officer In charge of Ukonga Central Prison.

When the application was called on for hearing, the applicants appeared in person and fended for themselves. They had nothing more to elaborate from what they actually stated in their affidavit. They only adopted their affidavits and prayed that they be granted extension of time because the Prison Authority failed to expedite the process for lack of Legal Officers who could assist them in drafting the necessary documents for the intended Review.

On his part, Mr. Aloyce Mbunito, learned Senior State Attorney resisted the grant of the application. He stated that the judgment to be reviewed was delivered on 28/10/1996 while this application was filed in Court on 15/9/2015 – almost 19 years from the date the judgment was delivered. This is inordinate delay which cannot be entertained, he argued. In addition to that, the learned Senior State Attorney said that the applicants in their affidavits have not explained why it took such a long time to file the application. He stated that the reason that the Prison Authority delayed to render assistance as equally emphasised by the Officer In charge of Ukonga Central Prison in his affidavit cannot be sound reason to grant the application sought, considering such a long period of 19 years.

I have carefully considered the arguments both in support and against the application. With respect, Rule 10 of the Rules requires an applicant seeking for extension of time to show good cause before the Court uses its discretion to grant extension of time. The applicant is required to show and explain what prevented him from lodging his/her application within the prescribed time. In so doing, the applicant has to account for every day of the delay caused by him in his affidavit. See **Alluminum Africa Ltd vs Adil Abdallah Dhijab, Civil Appeal No. 6 of 1990** [unreported].

In the instant application, the applicants' affidavits essentially state the reason for the delay being absence of legal officer in the Prison who could promptly prepare the documents for review.

The position of the law, as aptly summarized in **Eliya Anderson v. R, Criminal Application No. 2 of 2013** (unreported) is that under Rule 10, a good cause could be factual or other reason" which could include illegality of the decision sought to be impugned. In cases of intended review, the only permissible points of law that may be taken are those shown in Rule 66 (1) which are; *a Manifest error on the face of the record, a party wrongly deprived of an opportunity to be heard, the court's*

decision is a nullity, the court's lack of jurisdiction and that the judgment was procured illegally, by fraud or perjury. An application for extension of time to apply for review is therefore expected to show in the ground in his notice of motion, or affidavit, at least one of those grounds, in addition to a factual account for the delay. (See **Deogratias Nicholas @ Jeshi and Joseph Mukwano V.R., Criminal Application No. 1 of 2014** (unreported)).

In this application one of the grounds stated is that there is a manifest error on the face of the record. In essence the applicants contest the prosecution evidence on record over which this Court in Criminal Appeal No. 49 of 1995 agreed with the lower court and made the concurrent findings of the fact thereon. The contentions being matters of evidence which however this Court had already determined, the same cannot again be raised under review. This in my view is an abuse of Court process. Apart from that, this Court has always discouraged delayed applications. In the case of **Marcky Mhango (on behalf of 684 others V. Tanzania shoe Co. Ltd and Tanzania Leather Associate Industries, Civil Application No. 37 of 2003** (unreported) this court stated;

"It is a duty of the court to desist from delayed applications such as this, the effect of which is to re-open a matter which was otherwise lawfully determined"

That being the position and taking into account the inordinate delay for 19 years, I am of the considered view that, the applicant has failed to show a good cause to warrant me exercise the discretionary powers conferred under Rule 10 of the Rules to grant extension of time to apply for review. In the end result therefore, I find the application devoid of merit and it is accordingly dismissed.

DATED at DAR ES SALAAM this 11th day of December, 2015.

R.E.S. MZIRAY
JUSTICE OF APPEAL

I certify that is a true copy of the original.


E.Y. Mkwizu

DEPUTY REGISTRAR
COURT OF APPEAL