

TANZANIA / JUDGMENT

ally mkombozi vs republic

2014 tzca 254 6 march 2014

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6 March 2014

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IN THE COURT OF APPEAL OF TANZANIA ATARUSHA (Application for Extension of Time to file Review from Decision of the Court of Appeal at Oar es Salaam) (Kaji, I.A • Kileo, I.A • And Kimaro, I.A.,) Dated the 23rd day of April, 2004 in Criminal Appeal No.7 of 2007

RULING

27th February & 6th March, 2014 ORIYO, I.A: The matter has had a chequered history in this Court. In Criminal Appeal NO.7 of 2007, the Court dismissed the applicant's appeal. He was aggrieved. While pondering as to the best next cause of action on whether to make an application for a Review or Revision of the Court decision, he discovered that the 60 days limitation period to apply for either review or revision had expired. He opted to lodge an application for an extension of time to apply for revision in Criminal Application NO.4 of 2008. The application was struck out by a single Justice of the Court, (Mandia, J.A.). Being dissatisfied by the decision of the Single Justice, the applicant lodged another application to the Court in an attempt to explain away the delay, in Criminal Application No. 3 of 2010. The second application for extension of time sought was to file a Review from the decision of the Court in Criminal Appeal No. 7 of 2007. However, application no. 3 of 2010 met with an objection from the respondent Republic in that in terms of Rule 62(1) of the Court Rules, a single Justice of the Court lacked jurisdiction to entertain the application. The objection was upheld by the learned single Justice, Nsekela, J.A., and the application was accordingly struck out on 30th September, 2011. Undaunted, the applicant has come back to the Court for the third time with the present application lodged on 1/12/2011. When the application was called on for hearing, the applicant, appeared in person and Mr. Harun Matagane learned State Attorney, appeared for the respondent/Republic. At the applicant's request, I asked . the learned State Attorney to make his submissions first and the applicant would make his submissions in reply, if any. The learned State Attorney forthrightly submitted that the application is incompetently before a Single Justice of the Court and ought to be struck out. Mr. Matagane related the history of the matter in the Court as already stated above. He said that this is the third time that an application of this nature, for the extension of time before a Single Justice of the Court is coming up. He submitted that if the applicant was dissatisfied with the earlier decisions by single Justices of the Court, he should apply for a Reference before the Court and not Review as intimated in this application. It seems from the records in Criminal Application

Nos 3 of 2010 and in the Criminal Application before me, the applicant intended to apply for extension of time to file review from the decision of the Court (Kaji, Kileo and Kimaro, JJJA), in Criminal Appeal NO.7 of 2007. With great respect to the learned State Attorney, I differ with him on this aspect when he submitted that if the applicant is aggrieved by the decision of a single Justice, he should lodge an application for a Reference under Rule 62(1) of the Court Rules. Having made the above clarification, the remaining issue is on the competency of the application before me. The Notice of Motion is made . under rules 10 and 66(1) of the Court Rules. However, the body of the 3 Notice of Motion refers to application for extension of time to apply for Review and Revision interchangeably. Similarly for the applicant's affidavit in support of the Notice of Motion. The confusion does not end second affidavit filed in support to fortify the applicant's and affirmed by one G.R. Mushi, (ACP), an officer in charge of Arusha Central Prison. Through the second affidavit, the deponent, repeats the contents of the applicant's affidavit explaining away the delay to apply for Revision (not Review) within the prescribed period of 60 days. For the benefit of the applicant and in order to avoid such future errors, I hereby reproduce the relevant legal provisions on Review and "66. -(1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-

- a) .the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or
 - b) a party was wrongly deprived of an opportunity to be heard;
 - c) the court's decision is a nullity; or
 - d) the court had no jurisdiction to entertain the case, or
 - e) the judgment was procured illegally, or by fraud or perjury.
- (2) An application for review shall, subject to necessary modifications, be instituted in the same mode as a revision.
 - (3) 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.
 - (4) Copies of the notice of motion for review shall be served on the other party or parties as the case may be within fourteen days from the date of filing. The party filing the notice shall file proof of service with the court.
 - (5) An application for review shall as far as practicable be heard by the same Justice or Bench of Justices that delivered the judgment or order sought to be reviewed.
 - (6) Where the application for review is granted, the court may rehear the matter, reverse or modify its former decision on the grounds stipulated in sub-rule 1 or make such other order as it thinks fit.

- (7) Where an application for review of any judgment and order has been made and disposed or, a decision made by the court on the review shall be final and no further application for review shall be entertained in the same matter.(EmphasisMine). Rule 65 Institution of a Revision "65. - (1) Save where a revision is initiated by the Court on its own accord, an application for revision shall be by notice of motion which shall state the grounds of the application.
- (2) The notice of motion shall be signed by or on behalf of the applicant.
- (3) The notice of motion shall be supported by one or more affidavits of the applicant or some other person or persons having knowledge of the facts.
- (4) Where the revision is initiated by a party, the party seeking the revision shall lodge the application within sixty days (60) from the date of the decision sought to be revised.
- (5) The Notice of Motion and affidavits shall be served on the respondent within fourteen days from the date of filing. The party filing the notice shall file proof of service with the Court.
- (6) Where the application is initiated by the Court on its own accord, the Court shall have discretion to summon the parties and shall grant the parties an opportunity to address the Court.
- (7) Every application for revision shall be heard by the Court." (EmphasisMine). Revision that they are two separate, distinct remedies and should not be referred to interchangeably as it was done in this application. In view of what I have endeavoured to explain above, the Prison . authorities and other interested parties/institutions, are urged to take note of and observe the clear distinction and the objects of the remedies of Appeal Rules, 2009. In the event, the application is struck out for incompetence. DATED at ARUSHA this 1st day of March, 2014. K.K.ORIYO JUSTICE OF APPEAL

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Prepared on 14 October 2026 · Esheria