

TANZANIA / JUDGMENT

charles nanati vs republic

2023 tzca 17571 30 august 2023

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CRIMINAL APPLICATION NO. 81/01 OF 2020 CHARLES NANA T IAPPLICANT VERSUS THE REPUBLIC..... RESPONDENT (Application for extension of time to lodge an application for review out of time against the decision of the Court of Appeal of Tanzania at Dar es Salaam) (Mugasha, Levira, Kitusi, JJA) Dated the 6th day of March, 2020 in Criminal Appeal No. 286 of 2017 RULING OF THE COURT 24th & 30th August, 2023 MGEYEKWA. J.A. In this application Charles Nanati (the applicant), is by notice of motion made under Rule 10 and 66 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) moving this Court to extend time in which to file an application for review against this Court's decision dated 6th day of March, 2020 in Criminal Appeal No. 286 of 2017. The notice of motion is supported by an affidavit sworn by him. In the Notice of Motion, the applicant has advanced the following grounds:

1. The applicant unintentionally failed to lodge the review at the prescribed time due to the unforeseeable (sic) circumstances caused by the Covid-19 virus outbreak, hence this application;
2. The judgment was based on a manifest error on the face of the record which resulted in a miscarriage of justice. At today's hearing, the applicant appeared in person and was unrepresented, while the respondent Republic was represented by Ms. Jenipher Massue, learned Principal State Attorney assisted by Ms. Mossie Kaima, learned State Attorney. They did not oppose the application. In the supporting affidavit, the applicant narrated the sequence of events towards this application. The applicant averred that, he received a copy of the Judgment on 23rd March, 2020. However, he being a prisoner behind bars had no control of the process of filing applications or even making follow up therein, hence he depended much on his father and Prison authority. He asserted that after the lapse of Covid-19 2 pandemic, on 10th October, 2020 his father paid him a visit at the prison and informed him that an Advocate had told him that there was no other way forward as the Court decision was final. Finally, the applicant managed to lodge the instant application before the Court on 24th November, 2020. He prayed that the application be granted to allow him to lodge the intended application for review out of time. In determining the merits of

the application, I have opted to start with Rule 10 of the Rules that empowers the Court to grant extension of time upon showing good cause. It provides thus: - "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." In view of the above cited provision of the law, the applicant is obliged to show good cause for the delay in filing the application for Review. There are numerous authorities to this effect and some of them include, *Oswald Masatu Mwizarubi v Tanzania Fish Processing Ltd*, Civil Application No. 13 of 2010, *Attorney General v Tanzania Ports Authority & Another*, Civil Application No. 87 of 2016 and *Maulid Swedi v The Republic*, Criminal Application No. 66/11 of 2017 (all unreported), to mention a few. In exercising its discretion to grant extension of time, the Court considers crucial factors, which are not necessarily exhaustive but at the moment they include; cause of the delay, length of the delay, whether the applicant has accounted for the delay and whether there is illegality or any point of law of sufficient public importance in the decision sought to be challenged. I have also considered the fact that extension of time is an equitable remedy that is available to a deserving party at the discretion of the Court. It is therefore the duty of the applicant to provide relevant material facts for the Court to exercise its discretion. In order to justify the delay, the applicant in paragraphs 6 and 7 of his affidavit, averred that he received a copy of the Judgment on 23rd March, 2020 and his father was informed by the prison authority that his conviction was sustained and due to the outbreak of Covid 19 pandemic his father could not collect a copy of judgment timely to seek legal advice from legal practitioners. He stated in paragraph 12, that his father visited him and informed him that, there was no way forward as the decision of the Court was final. I have considered the fact that the applicant being a prisoner, depends much on the prison authority to prepare and take care of the whole process of lodging matters in Court. As such, the applicant cannot be blamed for lodging incompetent applications, as it may sometimes be unfair to expect too much from him. The Court, in its numerous decisions of this nature has considered the situation of prisoners that they are not free agents who can freely lodge matters before the Court and make regular follow-ups on them. See *Joseph Sweet v The Republic*, Criminal Appeal No. 11 of 2017 and *Fabian Chumila v The Republic*, Criminal Application No. 6/10 of 2019 (all unreported). For the aforesaid reasons, I hold that the delay is excusable and it has been satisfactorily explained. Therefore, I extend time for the applicant to lodge his application for review out of time and order the requisite application to be lodged within sixty (60) days from the date of delivery of this Ruling. Order accordingly. DATED at DAR ES SALAAM this 29th day of August, 2023. A. Z. MGEYEKWA JUSTICE OF APPEAL The Ruling delivered this 30th day of August, 2023 in the presence of the applicant in person and Genes Tesha, learned Senior State Attorney for the respondent is hereby certified as a true copy of the original. r^ i 2 > I

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