

TANZANIA / JUDGMENT

jamal msitiri chajaba vs republic

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IN THE COURT OF APPEAL OF TANZANIA AT TANGA CRIMINAL APPLICATION NO. 52/12 OF 2017 JAMAL MSITIRI @ CHAU A B AAPPLICANT VERSUS THE REPUBLIC.....RESPONDENT (Extension of time to file Review out of Time from the Judgment of the Court of Appeal of Tanzania at Tanga) (Ndika. J.T Dated the 6th day of July, 2017 in Criminal Appeal No. 102 of 2010

RULING

14th & 16th September, 2020 KITUSI. JA.: The applicant is serving a long custodial sentence of 30 years having been convicted of Armed Robbery more than a decade ago. That was at Lushoto District Court. He lost his appeal to the High Court and to the Court as well. He then made an application for review of our decision, but that application was struck out for being supported by a defective affidavit. The applicant is still at it. Presently he applies for extension of time so that he may apply for a review outside the statutory time. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by the applicant's own affidavit. Hearing of the application was attended by Mr. Pius Hilla, learned Senior State Attorney and Ms. Elizabeth Mhangwa, learned State Attorney who actually argued it on behalf of the respondent Republic. The applicant participated from Maweni Prison through video link. The application is basically uncontested as in her brief submissions Ms. Mhangwa stated that the supporting affidavit has shown good reason for the applicant's delay. What I gather from the supporting affidavit and its attachments, is that in Criminal Application No. 1 of 2012 before the Court, the applicant's application for review was lodged by him within time. However, as I stated earlier, that application was struck out on account of defects in the affidavit. I am certain that this kind of delay is what has, in contemporary times, been referred to as technical delay which should be differentiated from actual delays. There are, hitherto, many cases on that position including; Salvand K.A Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006, cited in another decision in Philimoni Simwandete Mbanga v. The Principal Secretary Ministry of Defence and The Attorney General Civil Application No. 168/01 Of 2018 (both unreported). Therefore, Ms. Mhangwa is correct in my view, in supporting the application because the delay is merely technical after all, and the law is settled on that. The Court has often than not, granted extension of time when the delay is of that nature. The matter would have

ended there. However, there is the requirement that in an application for extension of time to apply for review, the applicant must, in addition to showing reasons for delay, demonstrate one of the grounds falling under Rule 66 of the Rules which he intends to rely on in seeking the review. So, I put to the learned State Attorney the question if the applicant has discharged that duty, and she submitted that he has not. In addressing that question, the applicant submitted that he was unhappy with the way his case was conducted during trial because he does not even know how he and the victim's father are related. He further submitted that at the intended hearing of the application for review he will disclose the nature of his complaints. True, it is settled law that in addition to showing good cause for the delay, an applicant seeking extension of time to apply for review must show one of the grounds under Rule 66 of the Rules upon which the intended review is predicated. In *Mwita Mhere v. Republic*, MZA Criminal Application No. 7 of 2011 (unreported), we said: "But in applications of this nature, the law demands that the applicant should do more than account for the delay. To succeed in showing that he has a good cause under Rule 10 of the Rules, it must be shown further that the applicant has an arguable case. An arguable case is one that demonstrates that the intended grounds of review is at least one of those listed in Rule 66(1) of the Rules". In the case at hand, the applicant's account in relation to that principle is hollow, in my view, as he is yet to figure out what he intends to raise at the intended review. Further, the contention that he was unhappy with the way the trial was conducted misses the point miserably because the subject of the intended review is the decision of the Court. The applicant has not intimated how he intends to bring Rule 66 of the Rules against that decision. Rule 66 of the Rules provides: "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,
- (d) the Court had no jurisdiction to entertain the case or
- (e) the judgment was procured illegally, or by fraud or perjury". With respect, none of what has been stated by the applicant both in his affidavit and in his brief oral submissions, fits into the above provision. I reiterate what was stated in the case of *Mwita Mhere* (supra), that good cause in an application for extension of time to apply for a review includes establishing that the intended review is based on one of the grounds under Rule 66 (1) (a) to (e) of the Rules. That has not been done in this case. Consequently I dismiss this application as it is devoid of merit. DATED at TANGA this 15th day of September, 2020. I. P. KITUSI JUSTICE OF APPEAL The Ruling delivered this 16th day of September, 2020 in the presence of the appellant in person and Ms. Elizabeth Mhangwa State Attorney for the respondent is hereby certified as a true copy of the original. DEPUTY REGISTRAR COURT OF APPEAL 5

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/jamal-msitiri-chau-a-b-a-v-the-republic-extensionoftime-tzca-2020--6a3ea52a3b1caa912982291f

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