

TANZANIA / JUDGMENT

jietegemeo gervas vs republic

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23 April 2020

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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM (LINKED TO TABORA REGISTRY THROUGH VIDEO CONFERENCING FACILITY) CRIMINAL APPLICATION NO. 21/11 OF 2017
JITEGEMEO GERVAS APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT (Application for extension of time to file an Application for Review of the decision of the Court of Appeal of Tanzania at Tabora) (Kimaro, Massati and Mzirav. JJ.A. ^ dated the 9th day of October, 2015 in Criminal Appeal No. 219 of 2013

RULING

3rd March & 23rd April, 2020 MZIRAY. J.A.: Jitegemeo Gervas, the applicant herein was convicted on 25.03.2013 by the High Court (Songoro, J.) sitting at Tabora for the murder of one Hamida Swalehe and awarded the mandatory death sentence. His conviction and sentence were endorsed by this Court (Kimaro, Massati and Mzirav, JJ.A.) on 9.10.2015 on appeal. He was not happy with the decision of the Court on appeal and, therefore, wanted to challenge the same by way of review. Time within which to challenge that decision by way of review had long expired. He thus lodged the present application by a notice of motion taken out under rule 10 of the 1 Tanzania Court of Appeal Rules, 2009 (hereinafter referred to as the Rules) seeking an extension of time to lodge an application for review against the decision. The motion is supported by an affidavit deposed by the applicant himself and the affidavit of Norbert Dotto Ntacho, the officer in charge of Uyui Central Prison at Tabora. The application was on the other hand vehemently resisted by the respondent Republic in the affidavit in reply sworn and deposed to by John Mkony, learned State Attorney. With the introduction of video conferencing system in our country in conducting case proceedings whilst prisoners are not physically in Court, hearing of the application was placed before me on 3.3.2020 linked to Tabora Registry through video conferencing facility where the applicant appeared in person, unrepresented. The respondent Republic had the services of Mr. John Mkony, learned State Attorney. The applicant just insisted that the main reasons for the delay to file an application for review are found in the affidavits filed to support the application. He thus prayed that the application be allowed so as to allow the applicant assail the decision of the Court by way of review. For his part, Mr. John Mkony, learned State Attorney for the respondent Republic resisted the application. His submission was basically that no sufficient

grounds have been advanced to warrant the Court grant the application sought. To substantiate his argument the learned State Attorney cited the unreported cases of Sayi Gamaya Mwanapili V. R, Criminal Application No. 17/11 of 2017 and Anyelwisye Mwakapake V. R, Criminal Application No. 1 of 2014 as authorities. In rejoinder submission, the applicant reiterated his position that the grounds he had shown in his affidavit are good cause for extension of time. The determination of this application will not detain me. To appreciate the determination of this application and the verdict to be arrived at shortly, let me, perhaps, state the settled law on applications for extension of time. In an application for extension of time, it is incumbent upon an applicant to prove to the satisfaction of the Court that the delay to take action on which an application is pegged was for good cause. This is the tenure and import of rule 10 of the Rules which for ease of reference, I take the liberty to reproduce: "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. " [Emphasis added]. Black's Law Dictionary (9th Edition) defines good cause as legally sufficient reason. The term good cause is a relative one and is dependent upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause, (see Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010). What are the factors to be considered by the Court in the course of exercising its discretion? In the case of Henry Muyaga v. Tanzania Telecommunication Company Ltd, Civil Application No. 8 of 2011 (unreported) which was cited in Henry Leonard Maeda and Another

- v. John Anael Mongi, Civil Application No. 31 of 2013 at page 19, it was stated thus: "In considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted." See also - The Attorney General v. Twiga Products Limited, Civil Application No. 28 of 2008 In the instant case, it was deposed that the applicant's failure to lodge the application for review within time was out of his control. It was stated that the applicant being a prisoner he prepared the application for review and handed the same to the prison authority for onward transmission to the Court but the application went missing in the Court registry. As the application could not be traced, the applicant was advised by deputy registrar to prepare a fresh one. I have given due consideration the argument advanced. I am satisfied in my view that the applicant's ground for the delay to lodge review application is justified, taking into consideration that he is a prisoner, who depends solely on the prison authority in preparation and lodging of pleadings in Court. Since, the applicant prepared his application for review and handed the same to prison authority as substantiated by Norbert Dotto Ntacho, the officer in charge of Uyui Central Prison at Tabora in his affidavit, then, the applicant cannot be blamed for the inaction. On that basis, I am satisfied that the applicant has given valid explanation for the delay. I accordingly grant leave and extend the period of instituting review proceedings in this Court out of time. The intended application should be instituted within thirty (30) days

from the date of delivery of this Ruling. Order accordingly. DATED at DAR ES SALAAM this 6th day of March, 2020. R. E. S. MZIRAY JUSTICE OF APPEAL The Ruling delivered this 23rd day of April, 2020 in the presence of Applicant in person and Ms. Gladness Senya, State Attorney for the Respondent/Republic is hereby certified as a true copy of the original. B. R. NYAKI DEPUTY REGISTRAR

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