IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: RAMADHANI, J.A., LUBUVA, J.A. And LUGAKINGIRA, J.A.)

CRIMINAL APPLICATION NO. 6 OF 2000

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS ..... APPLICANT

AND

PROSPER MWALUKASA ..... RESPONDENT

(Review from the Judgment of the Court of Appeal of Tanzania at Dar es Salaam (A.S.L. Ramadhani, J.A., D.Z. Lubuva, J.A. and K.S.K. Lugakingira, J.A.) dated 12th May, 2000)

in

Criminal Appeal No. 32 of 1999

R U L I N G

RAMADHANI, J.A.:

The Director of Public Prosectuions filed an application for the review of our decision of 12th May, 2000. The respondent has filed a notice of preliminary objection asking this Court to strike out that application on two grounds.

Dr. Lamwai and Mr. Mwakolo, learned advocates, appeared for the respondent while Mr. J.L. Mbago, Learned Principal State Attorney, and Mr. J.T.N. Mulokozi, learned Sernior State Attorney, represented the applicant/Republic.

Dr. Lamwai has argued that the application for review is out of time. He conceded that the Tanzania Court of Appeal Rules, 1979 are silent as to limitation of time for review and

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that there is no other provision on the matter. However, he submitted that the inherent power of this Court to review its own decision cannot be without limitation of time. Dr. Lamwai submitted further that a sixty-days period of limitation is reasonable time.

Mr. Mulokozi reiterated what Dr. Lamwai said regarding absence of limitation. He then argued that even with a sixty days period of limitation as suggested by Dr. Lamwai, this application is late by only thirty days which can be accounted for. The learned senior state attorney explained that as the judgment was delivered in Dar es Salaam, the Attorney-General's Chambers in Mbeya became aware of it a few days before the filing of this application. That, he contended, is excusable as it provides reasonable cause for extension of time if that was necessary.

We are not persuaded by the argument of Mr. Mulokozi. For one thing, he was stating that from the bar. He should have filed an affidavit to that effect. Apart from that there are two other things: One, he has not said exactly when they became aware of the judgment. But two, and cnucially important, the Attorney-General's Chambers is one entity with limbs spread over the whole country and it should be taken as such. Thus the portion of the Chambers in Mbeya cannot plead ignorance when the headquarters in Dar es Salaam was fully and totaly informed.

So, what Mr. Mulokozi was disclosing to us was incomptence on the part of the Chambers in disseminating vital information. This Court has held on umpteen times that an error of an advocate cannot constitute sufficient cause to extend time.

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We dare say, in the same vein, that laxity cannot provide excuse for being late.

In Halais Pro-Chemie v. Welle A.G. /1996/T.L.R. 269 at 273 this Court by analogy adopted the sixty-days period of limitation provided by the Law of Limitation Act, 1971, for applications for revision to apply to such applications to this Court. This Court was well aware, in Halais, that it is not subjected to the Law of Limitation Act, 1971. Nevertheless, this Court was of the considered opinion that it is crucially important to fill the lacunae in the Tanzania Court of Appeal Rules, 1979, and hence provide for limitation in applications for revisions. We are of equally considered opinion that we should provide a period of limitation for applications for review by this Court. By analogy, and as suggested by Dr. Lamwai, we adopt the sixty-day period. The inherent power of this Court to review its own decisions cannot be without prescription of time.

After so ruling we are satisfied that about a hundred days elapsed from the time we delivered our judgment to the time this application was filed. Now, the forty days beyond the sixty-day period of limitation is obviously inordinate delay. So this application is time barred.

The issue of limitation alone is sufficient to dispose of this matter. However, the second ground advanced by Dr. Lamwai for striking out the application for review is equally important.

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In Transport Equipment Ltd v. Devram P. Valambhia Civil Application No. 18 of 1993, when declaring the inherent power of review by this Court, the full bench prescribed three instances: One, if there is a manifest error on the face of the record. Two, if a party has been wrongly deprived of opportunity to be heard. Three, if a decision of the Court was obtained by fraud.

This Court has already said, and we reiterate it here, that a notice of motion moving this Court to review its decision must disclose the circumstance or circumstances relied upon. Of course, in another occasion this Court acknowledged that the categories for review are not closed. However, the Court went further to observe that a case has to be made to extend the categories. In this application the notice of motion has neither disclosed the category for review nor has it made out a case for a new one.

We agree with Dr. Lamwai that the applicant wants an appeal from the previous appeal. For example, the applicant contends in the notice of motion that since this Court ordered the respondent to reimburse the Diocese of Mbeya five million shillings advanced to buy the Toyota Coaster Mini-bus, TZG 7061, then the Court should order reimbursement for all property that "share the same status and standing in the case as m/v TZG 7061".

But we were loud and clear in our judgment that:

> We must say that apart from the Toyota Coaster Mini-bus, TZG 7061 there is no iota of evidence, on the record to show that church money was used to acquire those other items of property. Nagging suspicion of that, yes, there is. But

> even in the case of that vehicle, it is only shs. 5 million that came from the church's coffers.

After saying so, we wonder what are those other items of property which have "the same status and standing in the case as m/v TZG 7061".

We are of the opinion that this is just a second bite at the appeal and not an application for review as provided by Transport Equipment Ltd. v. Devram P. Valambhia.

For the reasons given above, the preliminary objection is sustained. The application for review is struck out.

DATED at MBEYA this 30th day of March, 2001

A. S. L. Ramadhani
JUSTICE OF APPEAL

D. Z. Lubuva
JUSTICE OF APPEAL

K. S. K. Lugakingira
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(A. G. Mwarija)
DEPUTY REGISTRAR