IN THE COURT OF APP0EAL OF TANZANIA
AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 9 OF 2008

(From the Judgment/Decree/Order/Finding/Decision of the Court of Appeal of Tanzania at Dar es Salaam)

(Munuo, J.A., Kaji, J.A., and Kalegeya, J.A.)

dated the 17th March, 2008
In
Criminal Appeal No. 28 of 2005

RULING

17th September, 2008 & 7th October, 2008

OTHMAN, J.A.

The three applicants by way of notice of motion lodged on 16.07.2008 under rule 8 of the Court of Appeal rules, 1979 (Rules) seek an extension of time within which they can file their application for review our of time against the judgment of the Court in criminal appeal No. 28 of 2005 delivered on 17.03.2008.

Having been convicted and sentenced by the District Court of Morogoro at Mahenge for the offence of robbery with violence c/ss. 285 and 286 of the Penal Code Cap 16 R.E. 2002, the high Court on 27.05.2004 dismissed their appeal. On second appeal this court did same on 17.03.2008.

The application for extension of time is supported by the applicant joint affidavit sworn on 14.07.2008 in paragraph 5 they aver:-

"5, *That we failed to file n application for review within time due to scarcity of stationeries and typewriters encovatered the prison authorities."*

In their oral submissions the man thrust of the applicants submissions was that the delay was attributable to prison authorities, in particular the Prison Admission office to which they had expressed their intention to seek review and had presented their application for review within time. It was contention that if there was no scarcity of stationeries and typewriters their affidavit could not have been sworn before the Prison authorities.

The respondent Republic represented by the Ms. Msabila, Learned State Attorney resisted the application. Relying on **Charles Barnabas V.R.** Criminal application No. 11 of 2007 (CA) (unreported) she correctly submitted that an application for review should have been filed within a period of 60 days of the date of the delivery of the judgment of the Court of Appeal. This, she urged, had not been filed within a period of 60 days of the date of the delivery of the judgment of the court of appeal. This, she urged, had not been complied with. For furthermore that the applicants had only given a general reasons while they were requested to elaborate by giving the name or names of the prison officials to whom they had presented their application for review within time. That the application had no foundation.

Telling as the starting point the judgment of the court delivered on 17.03.2008, against which review was intended an application for its review was to have been preferred with a period of 60 days thereof (**Director of Public prosecutions v. Prosper Walukusa,** Criminal Application No. 6 of 2000 (CA) (unreported) Charles Barnabas's Case. This application for extension of time was feed on 14.07.2008.

Under rules 8 suspect reason has to be shown by the applicants to explain the delay involved. Borrowing from Abdallah Salanga and 63 others. V. Tanzania Harbours Authority, Civil Application No. 4 of 2001 (CA) (unreported) by sufficient reason is …reason which convincing by explain away the delay to constitute the application for review in compliance with the law. The court's discretionary powers to quart an decline an extention of time must be exercised judicially. Each case terms on its own unique facts and circumstances.

The pertinent question is whether or not sufficient reason for delay has been put forward. In considering the matter one cannot be too insensitive or in considerate to the responsibilities including statutory of prison authorities for relaying communications between incarcerated person in whose hands they were and the Court.

Having anxiously deliberated on the available materials and submissions, including the absence of an affidavit in reply by the respondent Republic, I am unpersuaded that sufficient reason has been adduced to explain away the delay invoked. **First,** the assertion in paragraphs 5 of the applicants affidavit on the scarcity of stationary and typewriters encountered by prison authorities in unreported by any affidavit or other evidence by these authorities to show that situation is completed.

Second, no particular prison official at the prison Administration who was

allegedly involved in the delay was named 9see, **Issack Sefegale V Tanzania Portland Cement Co. Ltd,** Civil Application No. 25 of 2002 (CA) (unreported); **No at Ngirwa t/a Quality Squattiest General Ltd V. Tanzania Harbours Authority,** Civil application No. 170 of 2005 (CA)(unreported). **Third,** it is not know whether there was such alleged stationeries and typewrites shortage for the whole period of the delay. Forth, the assertion that if there was no problem of stationeries and typewrites the affidavit covered not have been sworn before prison authorities is not borne out by the record. That relied upon was sworn before the Resident magistrate at Kisutu resident Magistrate Court.

All in all therefore, I am satisfied that no sufficient reason has been established to persuade me to quart the extention of time prayed for.

In the Court the application is hereby dismissed. It is so ordered.

DATED at DAR ES SALAAM this 7th day of October, 2008.

M.C. OTHMAN
JUSTICE OF APPEAL

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

S.S. MWANGESI
SENIOR DEPUTY REGISTRAR