IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: G. PWAMANG, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CRIMINAL MOTION

NO.J8A/8/2015

18TH NOVEMBER 2015

KWAKU FRIMPONG @ IBOMAN **APPLICANT**

VRS

THE REPUBLIC **RESPONDENT**

R U L I N G:

The applicant and three (3) other accomplices were convicted by the High Court, Accra on the 26th of August 2006 for the offences of conspiracy to commit robbery and robbery and were sentenced to 65 years each In Hard Labour (IHL).

Applicant herein appealed to the Court of Appeal which on the 23rd Day of October 2008 dismissed his appeal against conviction and sentence. He further appealed to the Supreme Court and on the 18/1/2012 the court dismissed his appeal against conviction but reduced his sentence to 40 years IHL to run from the date of arrest which was 2002.

This present application was filed on the 5/8/2015 by the applicant in person; not acting through a lawyer. He described the application in the motion paper

as follows: "Motion on notice for leave to appeal for review". When one considers the substance of the motion, it is essentially an application for extension of time to apply for a review of the decision of the regular panel of this court which gave its decision on the 18/1/12. So I shall consider the application as one for extension of time.

Rule 55 of the Supreme Court Rules 1996 (CI 16) provides as follows: "An Application for review shall be filed at the registry of the court not later than one month from the date of the decision sought to be reviewed."

Rule 60 of CI 16 provides as follows: "Any of the time limits specified in this part may on application be extended or abridged by the court."

Rule 60 of CI 16 does not set a time limit within which an application for extension of time to apply for a review of a decision of the court may be filed. It is unlike rule 8(4) of CI 16 on civil appeal and rule 66 on the supervisory decision of the court which both set time limit for application for extension of time.

Nevertheless I am being called upon by the applicant to exercise a discretion in his favour and extend time for him. Though the state has been served with the application and with a number of hearing notices nothing has been filed on behalf of the Attorney General. That notwithstanding I am required to consider the grounds of the application as contained in the affidavit in support of the motion to determine whether a proper case has been made for time to be extended.

In the case of **Botchway Vrs. Appiah [2003/04] SCGLR 137, Adade JSC** stated as follows at page 139; "If an extension of time should be sought, it must be for sound and convincing reasons sufficient to induce the court to sympathise with the applicant and exercise its discretion in his favour. It is not enough merely to say "I have delayed, I want an extension of time.""

It is a settled principle of law that where a statute allows a party to apply for extension of time within which to take a step in proceedings but it does not set a time limit within which the application may be brought, a party deciding to apply for extension of time must nonetheless make the application timeously.

In addition, the applicant has to give substantial and credible reasons for failing to take the step within the time as set by the statute.

In the instant case the application has been brought after three years, eight-months (3yrs 8mnths) of the decision being sought to be reviewed. This application is certainly not being made timeously. The courts have tended to be lenient towards convicted prisoners who are in lawful custody when it comes to extending time but 3years, 8 months in the circumstance of this case is unreasonable delay in my opinion. What is more, the affidavit in support does not provide any reason for the long delay.

The review jurisdiction of the Supreme Court as provided for in Rule 54 of C.I. 16 is a special one. In the case of **Agyekum vs Asakum Engineering and Construction Ltd. [1992] 2GLR 635** François JSC said at p651 as follows: "*The Supreme Court has expressed the view many times before that the review jurisdiction does not provide the platform for rehearing previous legal positions, whatever new learning or erudition are thrown into the melting pot. The acid test remains as always the existence of exceptional circumstances and the likelihood of miscarriage of justice that should provoke the conscience to look at the matter again. I would consequently for my part reject the invitation to traverse known corridors revisiting the pros and cons of argument only to conclude that the stance remains unswervingly unshaken. I am firmly against the attempt to turn the review jurisdiction into a further avenue for appeal. We have no constitutional power to do so.*"

Consequently, an applicant who is seeking for extension of time to apply for review ought to show by his affidavit in support grounds which prima facie show exceptional circumstances which has resulted in a miscarriage of justice or new and important matter of evidence which could not be produced at the time the decision was given.

I have carefully read the affidavit in support in the instance case and noted the grounds stated therein as the basis for seeking to apply for a review of the decision of the regular panel of this court dated 18/1/15. I have also read the judgement of the court which was unanimous and have come to the conclusion that all the matters being raised now were dealt with in the detailed and exhaustive judgement of the court. It is apparent on the affidavit that the appellant is seeking to reargue the appeal by way of review; but the

review jurisdiction is not a further appeal. There must be an end to litigation and I think no useful purpose will be served by granting leave to applicant to file for a review of the decision delivered 3 years, 8 months ago.

The application is accordingly refused.

G. PWAMANG

JUSTICE OF THE SUPREME COURT

COUNSEL

APPLICANT FOR HIMSELF.

WILLIAM KPOBI ESQ. CHIEF STATE ATTORNEY FOR THE REPUBLIC