

**IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA**

(CORAM: MBAROUK, J.A., MASSATI, J.A., And ORIYO, J.A.)

CRIMINAL APPEAL NO. 146 OF 2009.

**ERASTO KAYOMBO APPELLANT
VERSUS
THE REPUBLIC..... RESPONDENT**

**(Appeal from decision of the High Court of
Tanzania at Songea)**

(Uzia, J.)

**dated 16th day of March, 2009
in
Criminal Appeal No. 5 of 2006.**

RULING OF THE COURT

15th & 19th March, 2012.

ORIYO, J.A.:

This is a third appeal. It has its origin in Criminal Case No.369 of 2003 at the Maposeni Primary Court, Songea, between Joseph Moyo as the complainant and Erasto Kayombo as the accused. The appellant was charged with and convicted of cattle theft contrary to sections 265 and 268 of the Penal Code, Cap.16, R.E. 2002. At the conclusion of the trial, the appellant was sentenced to fifteen years imprisonment.

Being aggrieved by the conviction and sentence, the appellant appealed to the District Court of Songea where the appeal was dismissed. Still dissatisfied he appealed to the High Court sitting at Songea in Criminal Appeal No. 5 of 2006. As was the case in the subordinate courts, his innocence was not believed and his appeal was dismissed on 16/3/2009. The appellant has now come to this Court to further protest his innocence. A notice of intention to appeal was lodged on 29th March 2009 followed by a Memorandum of Appeal.

At the hearing of the appeal, Mr. Edson Mwavanda; learned State Attorney, appeared for the respondent Republic, while the appellant appeared in person, as he did in the lower courts. The learned State Attorney was the first to submit on a preliminary objection, on a point of law, a notice of which had been earlier filed. The point of objection was as follows:-

"The appeal is incompetent for failure to comply with section 6(7)(b) of the Appellate Jurisdiction Act, Cap.141, R.E.2002.

WHEREFORE, the respondent shall pray that the instant appeal be struck out".

Elaborating briefly on the objection, the learned State Attorney stated that as the original trial began in a Primary Court, the appellant was required by law to get a certificate from the High Court that there is a point of law involved in the intended appeal to this Court. He further stated that, the appellant instead of getting the said certificate from the High Court first, he came directly to the Court to file a notice of appeal. On that account, submitted Mr. Mwavanda, the appellant failed to comply with the procedure laid down under Section 6(7)(b) of the Appellate Jurisdiction Act, Cap.141 R.E.2002 and it rendered the appeal incompetent. He prayed that the appeal be struck out.

Section 6(7)(b) of the Appellate Jurisdiction Act, Cap.141, R.E.2002, provides:-

"(7) Either party –

(a) Not applicable

*(b) to proceedings of a criminal nature under Head (c) of Part III of the Magistrates Courts Act, **may**, if the High Court certifies that a point of law is*

involved, appeal to the Court of Appeal". (Emphasis supplied).

In terms of Section 6(7)(b), in criminal matters, there is no automatic right of appeal to this Court, in a third appeal. For an appellant whose criminal case began in a Primary Court, there is no direct route to lodge an appeal in the Court of Appeal. In order to lodge a competent criminal appeal to the Court, the intended appellant has to go through the High Court first with an application for a certificate that the intended criminal appeal has a point of law involved. It is only when the appellant is armed with the certificate from the High Court, that a competent criminal appeal may be instituted in this Court.

It appears from the record that the appellant did not make any attempt to apply for the certificate from the High Court. As correctly stated by the respondent, he failed to comply with the procedure laid down under Section 6(7)(b) of the Appellate Jurisdiction Act.

preliminary point of objection and strike out the appeal as incompetent.

Accordingly ordered.

DATED at **IRINGA** this 16th day of March, 2012.

M. S. MBAROUK
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL



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

A handwritten signature in black ink, appearing to be "J. S. Mgetta", written over a horizontal line.

(J. S. Mgetta)
DEPUTY REGISTRAR
COURT OF APPEAL