

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

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CRIMINAL APPEAL NO. 238 OF 2010

**1. RAJABU NGWADA
2. GODFREY FRANK
3. MARTIN KIMEMILE
4. MUSTAPHA MANZI** }**APPELLANTS**

VERSUS

THE REPUBLIC..... RESPONDENT

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

(Uzia, J.)

Dated 8th day of September, 2010

in

PC Criminal Appeal No. 4 of 2009

RULING OF THE COURT

6th August, 2013

LUANDA, J.A.:

In the Primary Court of Iringa sitting at Kimande, Rajabu Ngwanda (henceforth the 1st appellant), Godfrey Frank (henceforth the 2nd appellant), Martin Kimemile (the 3rd appellant) and Mustapha Manzi were charged with armed robbery. Mustapha Manzi was acquitted whereas the remaining three were convicted as charged and each was sentenced to thirty (30) years imprisonment.

The three were aggrieved by the finding of the trial Primary Court. They unsuccessfully appealed to the District Court of Iringa at Iringa. Still dissatisfied, they appealed to the High Court of Tanzania (Iringa Registry) where again they were not successful. They have come to this Court and preferred this appeal.

When the appeal was called on for hearing, Mr. Okoka Mgavilenzi learned State Attorney who represented the respondent/Republic sought leave of the Court to raise a point of law in respect of the appeal lodged. The Court granted him leave to raise the point of law.

Mr. Mgavilenzi said the appeal before the court is incompetent. Elaborating why he said so, he said this appeal originated in Primary Court. In terms of section 6 (7) (b) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the Act) the appellants had to seek a certificate in the High Court on point of law. Since that was not done, the appeal is incompetent. The same should be struck out.

The 1st and 2nd Appellants who appeared in person had nothing useful to contribute to the point of law raised. They informed the Court that they did not know that they were required to seek a certificate of the High Court on point of law.

Indeed section 6 (7) (b) of the Act is clear that an appeal originating in primary Courts are only appealable in the Court when there is a certificate issued by the High Court that there is a point of law worth to be considered. The section reads:-

"6 (7) Either party-

(b) to proceedings of a criminal nature under Head

(c) of Part III of the Magistrates' Courts Act, 1963,

[Now Cap. 11 R.E. 2002] may, if the High Court

Certifies that a point of law is involved, appeal to

the Court of Appeal."

So, if one intends to appeal to this Court, he is required to seek and obtain certificate from the High Court that there is a point of law involved. A certificate on point of law is therefore a pre-requisite for lodging an appeal in this Court on criminal matters originating in primary courts. Failure to

apply and obtain such certificate from the High Court renders the appeal incompetent.

Since no certificate was sought and obtained, the purported appeal, as rightly pointed out by Mr. Mgavilenzi, is incompetent. The purported appeal deserves to be struck out which we hereby do. The appellants are at liberty to start afresh by first applying in the High Court for extension of time to lodge notice of appeal out of time. Thereafter file an application in the High Court for certificate on point of law, if they believe there is such point.

It is so ordered.

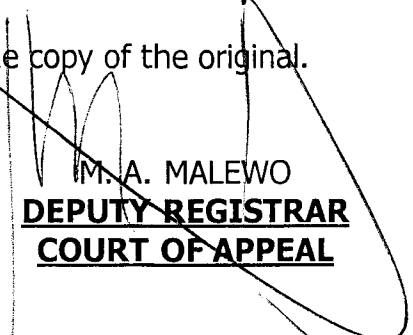
DATED at IRINGA this 6th day of August, 2013.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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


M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL

