

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

(CORAM: KILEO, J.A., MJASIRI, J.A. And MASSATI, J.A.)

CRIMINAL APPEAL NO. 37 OF 2013

EMMANUEL KABENGA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mbeya)

(Mwangesi, J.)

**dated the 17th day of July, 2011
in
PC. Criminal Appeal No. 21 of 2011**

RULING OF THE COURT

16th October, 2014

MJASIRI, J.A.:

When the appeal was called on for hearing, Ms Catherine Paul, learned State Attorney, raised a preliminary point of law a notice of which was filed on October 13, 2014. The preliminary objection reads as follows:

"This Court has no jurisdiction".

She submitted that the appeal is incompetent. The record shows that this appeal originated from the Primary Court of Tunduma, in Criminal Case No. 337 of 2000. Therefore the appellant was required to obtain a

certificate on a point of law from the High Court in terms of Section 6(7) (b) of the Appellate Jurisdiction Act Cap. 141, R.E. 2002.

The appellant, Emmanuel Kabenga a layman who appeared in person and was unrepresented did not have much to say. He simply stated that he did request the High Court Judge for a certificate when judgment was delivered.

Section 6(7) (b) of the Appellate Jurisdiction Act provides as under: -

"Either party to a proceedings of a criminal nature under Head (c) of the Part III of the Magistrates' Court Act Cap. 11, R.E. 2002 may, if the High Court certifies that a point of law is involved, appeal to the Court of Appeal".

In view of this requirement, failure by the appellant to apply and obtain such certificate from the High Court renders the appeal incompetent.

For the foregoing reasons we sustain the preliminary objection. The appeal is hereby struck out for being incompetent.

The appellant is advised to make his application to the High Court in order to obtain the necessary certificate. As this is an old matter having been in court since 2000, his application for a certificate on a point of law should be heard promptly after being filed. It is so ordered.

DATED at **MBEYA** this 16th day of October, 2014.

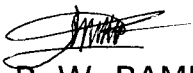


E. A. KILEO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL