

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

**(CORAM: MASSATI, J.A., MUSSA, J.A. And MUGASHA, J.A.)**

**CRIMINAL APPEAL NO 11 OF 2015**

**MIKIDADI NASORO.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of the Resident Magistrate's Court of Mbeya  
at Mbeya)**

**(Lyamuya, SRM –Extended Jurisdiction)**

**dated the 31<sup>st</sup> day of March, 2014  
in**

**Criminal Appeal No. 11 of 2014**

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**RULING OF THE COURT**

**28<sup>th</sup> August & 1<sup>st</sup> September, 2015**

**MUGASHA, J.A.:**

This appeal originates from the Primary Court of Lupa where the appellant was charged with the offence of robbery with violence. He was convicted on his own plea of guilty and sentenced to imprisonment to a term of thirty (30) years. He appealed to the District Court of Chunya where the term of imprisonment was reduced to fifteen (15) years. Still dissatisfied the appellant unsuccessfully appealed to the High Court, hence the third appeal.

When the appeal was called for hearing, initially we had to deal with the preliminary objection raised by Ms. Lugano Mwakilasa, learned State Attorney to the effect that, this is a third appeal originating from Primary Court of Lupa

in Criminal Case No 53 of 2010. As such, in terms of section 6 (7) (b) of the Appellate Jurisdiction Act Cap 141 RE: 2002, the High Court ought to have issued a certificate on point/points of law involved in the intended appeal to be determined by this Court. Therefore, she urged us to strike out the appeal which is not competent in the absence of a requisite certificate on points of law.

The appellant conceded to the preliminary objection. However, he submitted to have sought requisite certificate but was availed with record of appeal instead of certificate on point of law involved.

Section 6 (7) (b) of the Appellate Jurisdiction Act (supra) provides:

*"Either party–*

*(a)..... Not applicable*

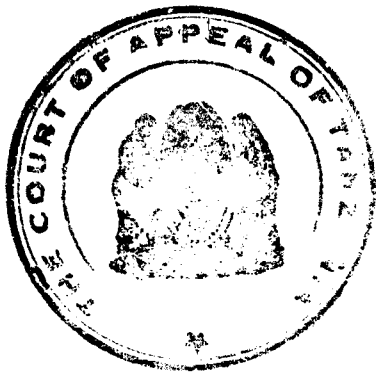
*(b) to proceedings of a criminal nature under Head (c) of Part III of the Magistrates' Courts Act, may, if the High Court certifies that a point of law is involved, appeal to the Court of Appeal."*

In terms of section 6 (7) (b) of the Appellate Jurisdiction Act (supra), in criminal matters, in a third appeal there is no automatic right of appeal to the Court of Appeal. In order to lodge a competent appeal to the Court, the appellant must lodge an application before the High Court seeking a certificate that there is a point of law involved in the intended appeal to this Court. After obtaining the requisite certificate, that is when the appellant can institute a competent appeal. Despite appellant's submission that he sought certificate

attempt. In that regard, the appellant failed to comply with the statutory procedure laid down under section 6 (7) (b) of the Appellate Jurisdiction Act (supra).

In the circumstances, the preliminary objection is upheld and the incompetent appeal before this Court is accordingly struck out. If the appellant so wishes, he may, subject to the law on limitation file the appeal afresh after obtaining the requisite certificate on a point of law from the High Court.

**DATED** at **MBEYA** this 31<sup>st</sup> day of August, 2015.




S. A. MASSATI  
**JUSTICE OF APPEAL**

K. M. MUSSA  
**JUSTICE OF APPEAL**

S. MUGASHA  
**JUSTICE OF APPEAL**

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

  
P. W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**