

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

(CORAM: LUANDA, J.A., LILA, J.A., And MKUYE, J.A.)

CRIMINAL APPEAL NO. 136 OF 2016

**SIDE NGONYANI APPELLANT
VERSUS
ELIAS BABU RESPONDENT**

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

(Chikoyo, J.)

**Dated the 4th day of May, 2016
in
PC Criminal Appeal No. 2 of 2016**

JUDGMENT OF THE COURT

30th May & 6th June, 2018

LILA, J.A.:

Before the Primary Court of Matiri within Mbinga District in Ruvuma Region, the appellant instituted a criminal charge against Elias Babu, the respondent herein. The respondent was accused of obtaining money by false pretences contrary to section 302 of the Penal Code, Cap 16 R.E. 2002. Trial ensued and at the end he was

convicted as charged and was sentenced to pay Tshs. 100,000/= fine or serve three months jail term. He was also ordered to pay the appellant Tshs. 1,665,000/= as compensation and had, if he opted to pay fine, to pay an initial installment of Tshs. 1,000,000/= compensation. The remaining Tshs. 665,000/= was to be paid on 30th December, 2015.

As it were, the respondent was aggrieved. He preferred an appeal to the District Court of Mbinga in Criminal Appeal No. 48 of 2015. The District Court (M.N. Ntandu, RM) upheld the decision of the primary court. Still aggrieved, the respondent appealed to the High Court of Tanzania (Songea Registry) in PC Criminal Appeal No. 02 of 2016. The High Court (Chikoyo, J.) allowed the appeal, quashed the conviction and set aside the sentence and orders made by the Primary Court. It also ordered Tshs. 100,000/= and 1,000,000/= already paid as fine and compensation, respectively, be refunded to the appellant.

The High Court decision aggrieved the appellant, hence the present appeal constituting of three grounds of appeal which for a reason soon to be disclosed we see no reason to reproduce them.

At the hearing of the appeal only the appellant entered appearance but was unrepresented. The respondent's appearance could not be procured following his disappearance from the village he formerly resided.

The above circumstances notwithstanding, the appellant pressed the appeal be heard in the absence of the respondent.

Given the fact that the respondent was not duly notified to appear at the hearing of the appeal, under Rule 80(6) of the Tanzania Court of Appeal Rules 2009 (The Rules), we could have found it fit to adjourn the hearing of the appeal.

However, upon our serious examination of the record of appeal, we realized that there is no certificate on point(s) of law issued by the High Court for determination by the Court in terms of section 6(7) (b) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002

(AJA). We, accordingly, wished to know whether the appeal before us is competent and capable of being adjourned.

The appellant, a layperson and unrepresented as well as this being a legal issue had nothing substantial to tell the Court. He kept urging the Court to assist him in making sure that his appeal is heard on merit.

This matter need not detain us much. It is obvious that the matter originated from the primary court. An appeal to the Court mandatorily requires the High Court to certify that there is a point of law involved in the appeal. That is in terms of section 6(7) (b) of AJA which provides that:-

(7) Either party

(a) ... (NA)

(b) to proceedings of a criminal nature under Head

*(c) of part III of the Magistrates' Court Act, **may, if the High Court certifies that a point of law is involved, appeal to the Court of Appeal.***

But where the order appealed against is a declaratory order the determination of the Court of Appeal on it shall also have effect only as a declaratory order. [Emphasis added]

Head (c) of Part III of the Magistrate's Courts Act prescribes the Appellate and Revisional Jurisdiction of the High Court in relation to matters originating in Primary Courts.

In essence, the import of the above cited provisions of the law is that any appeal on matters originating from the primary court requires a certificate from the High Court that a point of law is involved in the appeal.

It is vividly clear that the certificate on points of law is missing in the instant record of appeal. This contravenes the imperative requirement of section 6(7) of the AJA. The Court was confronted with an identical situation in the case of **John Kayombo Vs Republic**, Criminal Appeal No. 146 of 2009 and **Rajabu Gwada and 3 others Vs Republic**, Criminal Appeal No. 238 of 2010 (Both unreported). In both cases, the Court consistently refrained from

entertaining appeals from Primary Courts for want of certificate on a point of law evolved in the appeal which should be sought by the party seeking to appeal and granted by the High Court. In both occasions, the Court found the appeals to be incompetent for want of certificate and struck them.

In the circumstance this purported appeal is incompetent for lacking the requisite certificate. We accordingly strike it out.

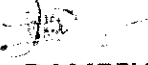
DATED at **IRINGA** this 2nd day of June, 2018.

B. M. LUANDA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL