

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

**CORAM: LUANDA, J.A., ORIYO, J.A, And MUSSA, J.A.**

**CRIMINAL APPEAL NO. 191 of 2013**

**ABDALLAH MATATA.....APPELLANT**

**VERSUS**

**RAPHAEL MWAJA ..... RESPONDENT**

**(Appeal from the Decision of the Resident Magistrates' Court of Dodoma at  
Dodoma)**

**(Rutatinisibwa, PRM (Ext. J.)**

**dated the 14<sup>th</sup> day of May, 2011**

**in**

**PRM. Criminal Appeal No. 30 of 2012**

**.....**

**JUDGMENT OF THE COURT**

28<sup>th</sup> July & 6<sup>th</sup> August, 2014

**ORIYO, J.A:**

This is a third appeal. It has its origin in the Primary Court Criminal Case No. 8 of 2009 at the Kongwa Primary Court, Dodoma. The appellant was charged and convicted of robbery contrary to sections 285 and 286 of *Cr*

the Penal Code, Cap 16. At the conclusion of the trial, the appellant was convicted as charged and sentenced to fifteen years imprisonment.

Being aggrieved by the conviction and sentence, the appellant appealed to the District Court of Kongwa where the appeal was dismissed. Still dissatisfied he appealed to the High Court at Dodoma. However, in terms of Section 45(2) of the Magistrate's Courts Act, Cap 11 (R.E. 2002), the High Court transferred the hearing of the appeal to be heard by the learned Rutatinisibwa, Principal Resident Magistrate, with Extended Jurisdiction, (PRM, Ext. J). The hearing of the appeal proceeded in the Resident Magistrate's Court at Dodoma as PRM Criminal Appeal No. 30 of 2012, (PC Appeal No. 11 of 2011). The first appellate court found the appeal lacking in merit and dismissed it.

The appellant has now come to this Court to further protest his innocence. A notice of intention to appeal was lodged on 21<sup>st</sup> day of May, 2013 followed by a Memorandum of Appeal.

At the hearing of the appeal, the appellant, as was the case in the lower courts, appeared in person. For unknown reasons, the respondent defaulted appearance.

The Court, **suo moto** raised a point of law that, since the appeal originates from 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. The appellant, instead of getting the certificate from the High Court first, came directly to the Court to file the notice of appeal, thus offending the provisions of Section 6(7) (b) of the Appellate Jurisdiction Act, Cap 141 (R.E. 2002), which provides as follows:-

*"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 above, in criminal matters, there is no automatic right of appeal to the Court of Appeal,

in a third appeal. For an appellant whose criminal case originated from a Primary Court, there is no direct route to lodge an appeal in the Court of Appeal. In order to lodge a competent appeal to the Court, the intended appellant has to go through the High Court first with an application for a certificate that there is a point of law involved in the intended appeal. It is only when the appellant is armed with the certificate from the High Court, that a competent 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, this means he failed to comply with the procedure laid down under section 6(7)(b) of the Appellate Jurisdiction Act. In the circumstances the appeal is incompetently before this Court.

In view of the unveiled status of the appeal, it is accordingly struck out. Subject to the law of limitation, the appellant may, if still interested, file the appeal afresh upon obtaining the requisite Certificate on a point of law from the High Court.

It is so ordered.

DATED at DODOMA this 5<sup>th</sup> day of August 2014.

B. M. LUANDA  
**JUSTICE OF APPEAL**

K. K. ORIYO  
**JUSTICE OF APPEAL**

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

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

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