

Citation	Parties	Legal Principles Discussed
<p>CRIMINAL APPEAL NO. 14 OF 2007- COURT OF APPEAL OF TANZANIA AT DODOMA-MUNUO, J.A., KAJI, J.A., And KIMARO, J.A</p>	<p>1. NYAWAJE JOHN, 2. NDALU CHILINGO, 3. JOHN MSELE Vs. REPUBLIC- Appeal from the judgment of the Resident Magistrate's Court of Dodoma-Criminal Appeal No 20 of 2002-A.T.C LYAMUYA-PRM/EXTENDED JURISDICTION</p>	<p>-Decision appealed against made by a Resident Magistrate with Extended Jurisdiction, while seated in the High Court at Dodoma.</p> <p>Court record in Criminal Appeal No. 20 of 2002 has no document showing that the appeal was transferred by the High Court to the Court of Resident Magistrate to be heard by a resident magistrate with extended jurisdiction.</p> <p>Although a Resident Magistrate with extended jurisdiction has powers, under section 45 of the Magistrates' Courts Act, 1984 to hear appeals filed in the High Court, such powers can only be exercised when the appeal is, under section</p>

		<p>45 (2) of the same Act, transferred by the High Court to the Court of Resident Magistrate to be heard by the Resident Magistrate with such powers.</p> <p>Since Lyamuya, PRM/Extended jurisdiction heard Criminal Appeal No 20 of 2002 without the High Court, under section 45 (2)of the Magistrates' Courts Act, 1984, transferring it to the Court of Resident Magistrate to be heard by her, she assumed powers which she did not have. Even if the case had been properly transferred, it would still be wrong for the Resident Magistrate with extended jurisdiction to sit in the High Court while determining the appeal. Under the circumstances the entire</p>
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		proceedings by Lyamuya PRM/ Extended jurisdiction were a nullity and we declare the proceedings and the decision thereon null and void.
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**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: MUNUO, J.A., KAJI, J.A, And KIMARO, J.A)

CRIMINAL APPEAL NO. 14 OF 2007

- 1. NYAWAJE JOHN]
2. NDALU CHILINGO]
3. JOHN MSELE].....APPELLANTS**

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the judgment of the Resident
Magistrate's Court of Dodoma)**

(A.T.C LYAMUYA-PRM/EXTENDED JURISDICTION)

Dated the 11th day of December, 2002

in

Criminal Appeal No 20 of 2002

.....

RULING OF THE COURT

11 & 22 June, 2007

KIMARO, J.A.

When the appeal was called on for hearing, the Court "*suo motu*" required Mr. Anselm Mwampoma, the learned Principal State Attorney who represented the Republic Respondent in this appeal, to state whether the appeal before the Court was competent. The Learned State Attorney said that the appellants are appealing against a decision of Mrs Addy Lyamuya, Principal Resident Magistrate with extended jurisdiction, but the appeal was heard in the High Court. He added that even the perusal of the court record did not give any indication that section 45 (2) of the Magistrates' Courts Act, 1984 was complied with, and the defects made the entire proceedings before Lyamuya PRM/Extended jurisdiction a nullity. He prayed that the proceedings be nullified and the appellants be referred to the High Court for the hearing of their appeal. He cited the cases of **Chihongwe S. Chihongwe Versus Kamwaya Mkonongo and Peter Mkonongo CAT** Criminal Appeal No. 200 of 2004 (Dodoma) (Unreported) and **Ikoj Sugaje Versus the Republic** CAT Criminal Appeal No.201 of 2004(Dodoma) (Unreported) which segment his submission.

The appellants who, understandably, are laymen were not in a position to grasp the technical arguments of the learned Principal State Attorney and they ended up lamenting that the process will take too long. They prayed that the appeal be heard.

The learned State Attorney submitted correctly, that the decision appealed against was made by Lyamuya PRM/Extended jurisdiction, while seated in the High Court at Dodoma. Equally correct is the submission that the court record in Criminal Appeal No. 20 of 2002 has no document showing that the appeal was transferred by the High Court to the Court of Resident Magistrate to be heard by a resident magistrate with extended jurisdiction. Although a resident magistrate with extended jurisdiction has powers, under section 45 of the Magistrates' Courts Act, 1984 to hear appeals filed in the High Court, such powers can only be exercised when the appeal is, under section 45(2) of the same Act, transferred by the High Court to the Court of Resident Magistrate to be heard by the Resident Magistrate with such powers. The Court underscored this position in the cases of **Chilongwe** (supra) and **Ikoje Sigaje** (supra) cited by the learned State Attorney for the Republic.

Since Lyamuya, PRM/Extended jurisdiction heard Criminal Appeal No 20 of 2002 without the High Court, under section

45(2) of the Magistrates' Courts Act, 1984, transferring it to the Court of Resident Magistrate to be heard by her, she assumed powers which she did not have. Even if the case had been properly transferred, it would still be wrong for the Resident Magistrate with extended jurisdiction to sit in the High Court while determining the appeal. Under the circumstances the entire proceedings by Lyamuya PRM/Extended jurisdiction were a nullity and we declare the proceedings and the decision thereon null and void. The appeal will be heard by the High Court, expeditiously we hope, taking into consideration that the appellants are complaining over the delay and the High Court has a share of blame in the mistake which happened in this appeal. It is so ordered.

DATED at DODOMA this 22nd day of June 2007.

E.N.MUNUO
JUSTICE OF APPEAL

S.N.KAJI
JUSTICE OF APPEAL

N.P.KIMARO
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR