

**IN THE COURT OF APPEAL OF TANZANIA**

**AT ARUSHA**

**(CORAM: MUNUO, J.A., KILEO, J.A., And MANDIA, J.A.)**

**CRIMINAL APPEAL NO 215 OF 2009**

**LOMAYAN KITOI TEVEL.....APPELLANT**

**AND**

**OLTOBWAI NGOWOL SAKITA.....RESPONDENT**

**(Appeal from the judgment of the High Court  
of Tanzania at Arusha)  
(Chocha, J.)**

**dated the 13<sup>th</sup> day of February 2009**

**in**

**(PC) Criminal Appeal No 3 of 2007)**

**RULING OF THE COURT**

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20<sup>th</sup> & 24<sup>th</sup> February, 2012

**KILEO, J. A.:**

This is a ruling pursuant to a preliminary objection raised under Rule 107 (1) of the Court of Appeal Rules, 2009 by Mr. Nelson Merinyo, learned counsel on behalf of the respondent against the appeal filed by Lomayan Kitoi Tevel. The appeal is in a matter that originated from the Primary Court of Emaoi in Arusha District. This is therefore a third appeal.

Objection by the learned counsel is on two main grounds: **One**; that the appeal is barred by period of limitation and **second**; that it violates the provisions of section 6 (7) (b) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 as no certificate was issued to certify that there was a point of law involved in the matter to warrant intervention by the Court of Appeal..

In his oral submission before us Mr. Merinyo pointed out with respect to the first ground that since the judgment which is sought to be appealed against was delivered on 13.02.2009 then the Notice of Appeal which was lodged in Court on 9.04.2009 was out time as in terms of Rule 68 (1) of the Court of Appeal Rules, 2009 the notice of appeal was supposed to be lodged within 30 days of the decision sought to be appealed against.

On the second point of preliminary objection Mr. Merinyo submitted that the appellant was required to obtain a certificate from the High Court in terms of section 6 (7) (b) certifying that there was a point of law involved in the matter which required the intervention of this Court.

Basically, the appellant did not have much to say save that he did not understand the procedure involved in processing his appeal.

The decision by which the appellant was aggrieved was given on 13.02. 2009. The appellant filed his Notice of Appeal in this Court on 9<sup>th</sup> April 2009. The Notice was lodged 54 days after the delivery of the decision sought to be impugned. The decision was given and the Notice of Appeal lodged when the 1979 Court of Appeal Rules were still in force. Rule 61 of the 1979 Rules is the relevant Rule which provides:

**61. - (1) Any person who desires to appeal to the Court shall give Notice in writing, which shall be lodged in triplicate with the registrar of the High Court at the place where the decision against which it is desired to appeal was given, within fourteen days of the date of that decision, and the notice of appeal shall institute the appeal.**

We need not detain ourselves. The appeal which was instituted by the Notice of Appeal, it being a criminal appeal, was obviously outside the period of limitation. This is not all. This being a third appeal the appellant was required to obtain a certificate in terms of section 6 (7) (b) of the Appellate Jurisdiction Act indicating the points of law for determination by the Court of Appeal. The said section provides:

**(1) Any person convicted on a trial held by the High Court or by a subordinate court exercising extended powers may appeal to the Court of Appeal–**

**(a) .....**

**(b) .....**

**(i) .....**

**(ii) .....**

**(2) .....**

**(3) .....**

**(4) .....**

**(5) .....**

**(6) .....**

**(7) Either party–**

**(a) to proceedings under Part X of the Criminal Procedure Act may appeal to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact;**

**(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.**

As up until the time this appeal was called on for hearing no certificate had been issued under the provisions of the law, the appeal is rendered incompetent.

In the circumstances we uphold both the two points of preliminary objection raised and argued upon by Mr. Merinyo on behalf of the respondent. The appeal is found to be incompetent and it is accordingly struck out.

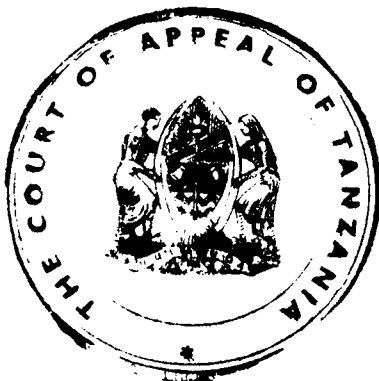
DATED at ARUSHA this 21<sup>st</sup> Day of February 2012.


E. N. MUNUO  
**JUSTICE OF APPEAL**

E. A. KILEO  
**JUSTICE OF APPEAL**

W.S. MANDIA  
**JUSTICE OF APPEAL**

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



  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**