

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: KIMARO, J.A., MASSATI, J.A., And MANDIA, J.A.)**

**CRIMINAL APPEAL NO. 172 OF 2010**

**PAUL JOHN MHOZYA.....APPELLANT**

**VERSUS**

**1. ABDALLAH MOHAMED MPANJINJI**

**2. HASSAN MOHAMED LIGILE.....RESPONDENTS**

**(Appeal from the judgment of the High Court of Tanzania  
at Dar es Salaam)**

**(Juma, J.)**

**dated the 14<sup>th</sup> day of December, 2009**

**in**

**Criminal Appeal No. 108 of 2009**

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**JUDGMENT OF THE COURT**

**28 June & 29 July, 2013**

**KIMARO, J.A.:**

This appeal arises out of an unsuccessful private prosecution of Abdallah Mohamed Mpanjinji, the first respondent, and Hassan Mohamed Ligile, the second respondent. They were privately prosecuted by the appellant for three offences. One, certifying and subsequently circulating

documents with information designed to be prejudicial and harmful to the complainant contrary to section 96 of the Penal Code. Two, inciting commission of an offence contrary to section 390 of the Penal Code and three, being parties to section 22(b) and (c) of the Penal Code for malicious destruction of property contrary to section 326 of the Penal Code. The trial court dismissed all the charges for lack of evidence to prove the offences and for failure by the appellant to obtain consent from the Director of Public Prosecutions for the prosecution of the respondents. The appellant lodged an appeal to the High Court but he was not successful for the same reasons as were given by the trial court.

He is now before the Court with thirteen grounds of appeal faulting the decision of the two courts below.

During the hearing of the appeal all parties appeared in person. None of them was represented. The Court "*suo motu*" required the appellant to say whether the appeal he filed in the Court was competent. He opted to leave the matter to the determination of the Court. The

respondents on the other hand, also decided to take the same move by leaving the matter to the determination of the Court.

The position of the law is that appeals to this Court in criminal cases are governed by section 6 of the Appellate Jurisdiction Act, [CAP 141 R.E.2002]. Section 6(2) of the Act confers "*locus standi*" to appeal against any acquittal, sentence or order passed either by the High Court or a subordinate court exercising extended powers to the Director of Public Prosecution only. The section reads as follows:

*"Where the Director of Public Prosecution is dissatisfied with any acquittal, sentence or order made or passed by the High Court or by a subordinate court exercising extended powers he may appeal to the Court of Appeal against the acquittal, sentence or order, as the case may be, on any ground of appeal."*

In an appeal which was filed in this Court in the case of **Seif Sharif Hamad V S.M.Z.** [1992] T.L.R. 43, the appellant was challenging an order passed by a regional magistrate with extended jurisdiction. In

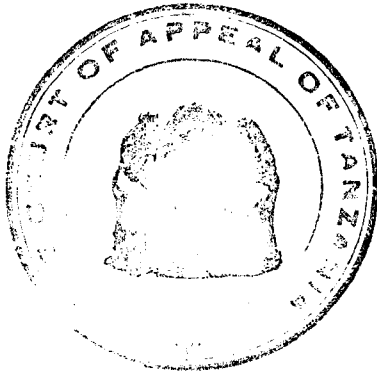
determining the question whether the Court had jurisdiction to entertain the matter, the Court held that:

*"(iii) our appellate jurisdiction derived from the Appellate Jurisdiction Act, 1979. Section 6 deals with criminal appeals like this one. Section 6(2) expressly permits only the D.P.P. to appeal against any order of the High Court or subordinate court in the exercise of extended Jurisdiction;*  
*(iv) The appellant has no right of appeal."*

The appellant in this appeal is not the Director of Public Prosecution. As indicated before, he is appealing against the acquittal of the respondents for offences privately prosecuted by him. In view of the provisions cited above and the case of **Seif Shariff Hamad** (supra) he has no *"locus standi"* to file the appeal. The appeal before us is incompetent. We hereby strike it out. It is ordered accordingly.

**DATED at DAR ES SALAAM** this 12<sup>th</sup> day of July, 2013.


N.P.KIMARO  
**JUSTICE OF APPEAL**



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

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

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

  
(P. M. KENTE)  
**REGISTRAR**  
**COURT OF APPEAL**