

## LEGAL PRINCIPAL DISCUSSED

<b>Citation</b>	<b>Parties</b>	<b>Legal Principles Discussed</b>
IN THE COURT OF APPEAL OF TANZANIA AT DODOMA.  CRIMINAL APPEAL NO 204 OF 2007.  KILEO J.A, MASSATI J.A AND ORIYO J.A.	<b>SELEMANI GABRIEL VS THE REPUBLIC</b>  (Appeal from the Decision of the High Court of Tanzania at Dodoma, Masanche J.)	1. PRM with extended jurisdiction has no power to hear and determine an application for extension of time to lodge an appeal filed in the High Court.



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

**(CORAM: KILEO, J.A., MASSATI, J.A. And ORIYO, J.A.)**

**CRIMINAL APPEAL NO. 204 OF 2007**

**SELEMANI GABRIEL.....APPELLANT  
VERSUS  
THE REPUBLIC.....RESPONDENT**

**(Appeal for the Decision of the High Court of Tanzania  
at Dodoma)**

**(Masanche, J.)**

**Dated 16<sup>th</sup> day of May, 2006  
in  
Criminal Appeal No. 52 of 2004**

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**RULING OF THE COURT**

**8<sup>th</sup> March, 2010**

**KILEO, JA**

When the appeal by Selemani Gabriel was called on for hearing, Ms Neema Mwanda, learned Senior State Attorney appearing on behalf of the Respondent Republic, asked the Court to strike out the appeal for being incompetent. She pointed out that the appellant delayed in filing his appeal in the High Court and the application for extension of time which was granted was heard by a Magistrate who had no jurisdiction.

Apparently, Mr. Awasi, PRM Extended Jurisdiction heard the application for extension of time. Ms Neema Mwanda pointed out that apart from the fact that there was no order transferring the application to the PRM with Extended Jurisdiction, that PRM had no powers to hear the application in terms of Section 45 of the Magistrates Courts Act, Cap 11. The learned Senior State Attorney submitted that under the above provision the Minister is only empowered to invest in a particular magistrate appellate jurisdiction that is ordinarily exercisable by the High Court. The court was referred to the case of **Benego Mathayo and Others v. R** - Cr. Appeal No. 251 of 2006 (unreported) in which this Court held that a PRM with Extended Jurisdiction has no power to hear and determine an application for enlargement of time to lodge, an appeal, filed in the High Court under S.361 of the CPA. Ms Neema Mwanda asked us to strike out the appeal in the circumstances.

The appellant did not have much to say apart from praying that his appeal be heard.

It is true as submitted by Ms. Mwanda that the application for extension of time to file an appeal in the High Court was heard by a PRM with Extended Jurisdiction. It appears that the PRM purported to act under Section 45 (1) of the Magistrates Courts Act. However, as it was held by this Court in the **Benego** case (supra) powers to hear applications for enlargement of time to file an appeal in the High Court are only vested in the High Court itself. It goes without saying therefore, that so far no extension of time to appeal in the High Court has been granted, and the appeal which was heard in the High Court was incompetent. Likewise, the appeal before us is incompetent as it arises out of an appeal which was incompetent. In the circumstances, the appeal before us being incompetent is struck out. We have so struck out the appeal in the exercise of powers vested in this Court in terms of Section 4 (2) of the Appellate Jurisdiction Act. We further order that the matter be remitted to the High Court with directions that it hears the application for extension of time to file an appeal in accordance with the law.

It is accordingly ordered.

DATED AT DODOMA this 8<sup>th</sup> day of March, 2010.



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

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

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

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

  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**