

Citation	Parties	Legal Principles Discussed
CRIMINAL APPLICATION NO. 2 OF 2007- COURT OF APPEAL OF TANZANIA AT DODOMA- <u>KIMARO, J.A.</u>	MANOMA MALOLELA, 2. MOSI MALOLELA, 3. MATILANGA MALEMBO Vs. THE REPUBLIC- (Application for leave to appeal against the decision of the High Court at Dodoma- Criminal Appeal No 65 of 2006-LILA, J.)	Under the Appellate Jurisdiction Act, 1979, section 6 (7), criminal appeals decided by the High Court under Part XX of the Criminal Procedure Act, [CAP 20 R.E.2002] do not require leave either of the High Court or the Court before coming to the Court of Appeal.

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

CRIMINAL APPLICATION NO. 2 OF 2007

**1. MANOMA MALOLELA
2. MOSI MALOLELA
3. MATILANGA MALEMBO-----APPLICANTS**

VERSUS

THE REPUBLIC-----RESPONDENT

**(Application for leave to appeal against
the decision of the High
Court at Dodoma)**

(LILA, J.)

**Dated 14th March, 2007
in
Criminal Appeal No 65 of 2006**

RULING

14 & 21 JUNE, 2007

KIMARO, J.A.

The applicants' appeal No. 65 of 2006 was, on, 14th March 2006 struck out by the High Court on the ground that it was filed out of time. The learned High Court Judge said that the extension of time to file the appeal granted to the applicants by the High Court, (Mjasiri,J.) required them to file the appeal within seven days, counted from 4th July, 2006. Instead of the applicants complying with the order, they filed the appeal on 19th July 2006, nine days beyond the period of extension granted.

The applicants were aggrieved by the order which struck out the appeal and they have filed a notice of motion under Rule 45(1) and (2) of The Court of Appeal Rules, 1979 praying for two orders:

1. The applicants be granted leave to appeal against the decision of the High Court which struck out the appeal.
2. The Court to issue a certificate that there is a point of law because the delay was not caused by the applicants fault.

The application is supported by a joint affidavit affirmed by the applicants.

At the hearing of the application, the applicants who are prisoners, serving an imprisonment term of thirty years, appeared in person. Mr. Anselm Mwampoma, Principal State Attorney represented the respondent Republic.

The main reason for the application, and the applicants reiterated it during the hearing, is that the applicants prepared their memorandum of appeal in time and submitted the same to Prisons Officer in charge of the prison where they were held. They argued that in as far as they were in prison, with no means of pushing the prisons authority to consider the essence of time in filing the memorandum of appeal in time, then their inability to move from the prison to the court to file the appeal in time, should have been considered by the first appellate judge. They contended that their obligation to comply with the order for extension of time ended after submitting their memorandum of appeal to the Prison Officer in charge of the prison.

The learned Principal State Attorney submitted that if the applicants want to appeal against the decision of the High Court, they are entitled to do so without asking for leave. Alternatively, the applicants should go to the High Court again, with another application for extension of time and support the application with the same reason they have used in this application.

I entirely agree with the learned Principal State Attorney. Their application is in a wrong court. Under the Appellate Jurisdiction Act, 1979, section 6(7), criminal appeals decided by the High Court under Part XX of the Criminal Procedure Act, [CAP 20 R.E.2002] do not require leave either of the High Court or the Court before coming to the Court of Appeal. The applicants' appeal in the High Court was dealt with under section 361(2) of the Criminal Procedure Act; Cap 20 which falls under Part XX of the same act. No leave is required before filing their appeal in the Court of Appeal. This is one.

Second, the effect of striking out the appeal meant that the applicants were at liberty to file the appeal again, so long as they rectified the mistake which led the High Court to strike out their appeal. In this respect they could use the same reason they have used in this application to support their application in the High Court. In my view this is the first option open to the applicants. The reason which the applicants seeks to rely upon appear to be a sound one as it touches on the practicability of compliance with orders of the court where a party is a prisoner. It can assist them with an application for extension of time in the High Court.

For the foregoing reasons, the application is incompetent. It is accordingly struck out.

DATED at DODOMA this 21st day of June, 2007.

N.P.KIMARO
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR