

THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA



[Coram: Kakuru, Egonda-Ntende, Madrama, JJA]

**CRIMINAL APPEAL NO. 0038 & 0039 OF 2015**

(Arising from High Court Criminal Session Case No. 245 of 2014 at Nakawa)

**BETWEEN**

Muwonge Issa = Appellant No.1  
Nyeko Alex = Appellant No.2

**AND**

Uganda = Respondent

**JUDGMENT OF THE COURT**

**Introduction**

- [1] The appellants were indicted and convicted of the offence of robbery contrary to sections 285 and 286 of the Penal Code Act. The particulars of the offence were that the appellants and others still at large on the 8<sup>th</sup> day of November 2010 at Kinyawataka, Nakawa division in Kampala district robbed Muhangi Erias of a motorcycle, Bajaj Boxer, Registration No. UDQ 362X red in colour valued at UGX 2.602,000 and at or immediately after the said robbery used a deadly weapon, to wit a panga on Muhangi Erias.
- [2] The appellants were sentenced to a term of imprisonment for 25 years. Being dissatisfied with the decision, the appellants have appealed to this court against both conviction and sentence.

[3] The sole ground of appeal states:

‘1.The learned trial court erred in law and fact when it failed to avail a certified copy of the judgement of the case and thus occasioned a failure of justice.’

### **Submissions of Counsel**

- [4] During the hearing, counsel for the appellants, Mr. Innocent Wanambugo submitted that there are letters on the record showing that the appellants brought the attention of the High Court the issue of the missing judgement. He submitted that the first letter was written by the appellants on 17<sup>th</sup> May 2018 to the Principal Judge regarding the status of their file which had been messed up.
- [5] Counsel for the appellants stated initially, the original file of the appellants went missing and they were tried on duplicate file. However, when the original file reappeared the appellants were summoned to appear again in the lower court in respect of the same matter. He stated that the Principal Judge in reply to their complaint informed the appellants that it was this court that was supposed to request for the record of appeal and not appellants themselves. He submitted that eventually, when this court requested for the record of proceedings and the judgement, the file was forwarded without a judgement. Mr. Wanambugo stated that upon receiving instructions to represent the appellants on state brief, he wrote a letter to the Registrar of High Court requesting for the judgement to be forwarded for the purpose of this appeal. He also stated that the record of proceedings in the trial court does not show that the judgment was read. Counsel for the appellant also stated that the case of the appellants was cause-listed in the criminal session of February 2019 but it could not be heard because there was no judgement on record.
- [6] Counsel for the respondent, Ms Namazzi Racheal prayed that this court orders a retrial.

### **Analysis**

- [7] The background to this appeal is that the appellants filed a notice of appeal on 5<sup>th</sup> February 2015 against both the sentence and the conviction .Through a letter dated

2st May 2018 addressed to the Principal Judge, appellant no.1 requested the High Court to trace the duplicate file upon which he had been tried and reconcile it with the original file so that his file can be forwarded to this court for the purposes of the appeal. The appellant had been tried, convicted and sentenced in 2015 on a duplicate file upon the original disappearing. When the original was eventually found, his case was fixed for a rehearing on 7<sup>th</sup> May 2018 which did not take place. The Assistant Registrar in a letter dated 21<sup>st</sup> December 2018 informed the High Court that the file which had been forwarded to the court on 31<sup>st</sup> January 2017 did not have either a typed or handwritten copy of the judgement. Counsel for the appellants in a letter dated 10<sup>th</sup> of January 2020 wrote to the High court informing it of the missing judgment. There is no response from the High Court to-date.

[8] We have perused the record of appeal. It is clear that the judgment of the trial court is missing from the record. As noted above contacts with the High Court have not elicited any response. This is deplorable.

[9] This court in Tuuni Stephen & Another v Uganda [2018] UGCA 37 stated:

‘6. As the record of appeal is incomplete, in the absence of the judgement of the trial court, it is not possible to hear and determine on the merits an appeal in this case. The appellants are so constrained that they cannot simply prepare and present a substantive appeal to this court which is a constitutional right. In those circumstances we are left with no alternative but to quash their conviction and set aside the sentences imposed upon them.

7. We have considered the possibility of ordering a retrial in this matter as proposed by the learned Senior State Attorney. However, we note that the appellants have been in custody since April 2008 to-date, a period of about 10 years. This covers both the period spent in pre-trial custody and serving sentence after conviction. The longest sentence was 17 years’ imprisonment which was being served concurrently with the one of 15 years’ imprisonment. If one took into account the fact that the appellant may have been entitled to remission in addition to the period on remand they would be about to complete serving the said sentences.

8. Under Rule 32 (1) of the Rules of this court, this court may, ‘so far as its jurisdiction permits, confirm, reverse or vary the decision of the High Court, or remit the proceedings to the High

Court with such directions as may be appropriate, nor order a new trial, and make any necessary, incidental or consequential orders, including orders as to costs.'

9. Pursuant to both rules 2(2) and 32(1) of the Rules of this court we are of the view that the justice of the case compels us not to order a re-trial but rather a stay of prosecution in relation to the facts of this case as against the appellants. To subject the appellants to fresh criminal proceedings would be a travesty of justice.

10. It has come as rather a rude shock to this court that the courts in this country can find themselves in this situation where a court file has such an essential document, a judgement, missing, in this day and age without any explanation whatsoever. We wish to draw the attention of the Chief Justice to this file with a view to taking corrective action to ensure that such a situation is not encountered again. We direct the Registrar of this court to forward to the Chief Justice a copy of this judgment.'

[10] There is evidence that the appellants and this court took steps to ensure that the judgment of the trial court is availed but all was in vain. This has prejudiced the appellant's right to hear their appeal as this court cannot proceed without the said judgment. This court is forced to quash the conviction of the appellants and set aside the sentence. In the interests of justice, we decline to order a retrial. The appellants have already spent over 9 years in pre-trial custody and post-conviction.

### **Decision**

[11] We therefore allow this appeal, quash the convictions and set aside the sentences of both appellant no.1 and appellant no.2. We order their immediate release unless they are held on some other lawful charge.

### **Other Remarks**

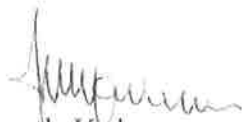
[12] Cases of this nature are troublingly on the increase which points to a significant failure of the courts to maintain the integrity of court records. We wish to draw the attention of the Principal Judge, Judges and Registrars of the High Court and all other Judicial officers engaged in the trial of any matter before the courts of the existence of an 'electronic docket' in the CCAS system to which all documents in

a court file ought to be uploaded as soon as a record is produced. For proceedings in relation to courts using court recording technology it is possible to upload both the audio and the transcript onto this docket. For the courts not using court recording technology the typed record of proceedings should be uploaded onto this feature. And for all courts, as soon as judgments or rulings are delivered, they should be scanned and uploaded onto the electronic docket.

[13] If this advice is implemented the Judiciary will ensure the integrity of trial records as the records in the electronic docket are secure and regularly backed up. This action involves no extra cost as virtually every court has a printer / scanner and the CCAS system is capable of 100% penetration throughout our courts. It may be time for the Chief Justice to issue a practice direction in this matter.

[14] We direct the Registrar of this court to forward a copy of this judgment to the Principal Judge, Judges and Registrars of the High Court of Uganda.

Signed, dated and delivered at Kampala this <sup>10<sup>th</sup></sup> day of *March* 2020.



Kenneth Kakuru  
**Justice of Appeal**



Fredrick Egonda-Ntende  
**Justice of Appeal**



Christopher Madrama  
**Justice of Appeal**