

**THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO 259 OF 2016
ARISING FROM COURT MARTIAL APPEAL NO 023 OF 2013
(ARISING FROM CRIMINAL CASE NO UPDF/GCM/041 OF 2009)
HALOGA HUMPHREY}APPELLANT (S)**

VERSUS

UGANDA}RESPONDENT

CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE FREDERICK EGONDA NTENDE, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF COURT

The facts of this appeal are that the appellant with two others was indicted, tried and convicted by the General Court Martial for the offence of aggravated robbery contrary to sections 285 and 286 (2) of the Penal Code Act Cap. 120. The appellant pleaded guilty and was convicted accordingly. They were each sentenced to 20 years imprisonment whereupon the appellant appealed to the Court Martial Appeal Court. The Court Martial Appeal court confirmed the sentence. The appellant being aggrieved further appealed to this court against sentence on the following ground only:

1. The learned members of the Court Martial Appeal Court erred in law when they confirmed a sentence of 20 years imprisonment upon the appellant, which sentence was illegal as it was arrived at without



taking into account the appellant's specific individual mitigating factors (separately) and thus occasioned a failure of justice.

At the hearing of the appeal, the appellant was represented by learned counsel Mr Innocent Wanambogo while the respondent was represented by learned Senior State Attorney Ms Fatinah Nakafeero.

We requested the advocates to address the court on whether the Court of Appeal has jurisdiction to hear an appeal from the decision of the Court Martial Appeal Court which appeal is against a sentence of 20 years imprisonment. Learned counsel for the appellant left the issue to court on whether the court can use its inherent jurisdiction while respondent's counsel Ms Nakafeero submitted that she is not aware of any statute that conferred a right of appeal in the circumstances.

Ruling on preliminary point of law

We have considered the appeal on the preliminary point of law as to whether the Court of Appeal is seized with the jurisdiction to hear appeals from the Court-Martial Appeal Court. The appellants appeal was brought under regulation 20 of Uganda People's Defence Forces (Court-Martial Appeal Court) Regulations, S. I. 307 – 7.

From that perspective, we have examined the Regulation 20 of the Uganda People's Defence Forces (Court-Martial Appeal Court) Regulations; Statutory Instrument 307 – 7 which provides that:

20. Appeals to be final.

(1) Except as provided in some regulation (2) of this regulation, any determination by the court of any appeal or other matter which the court has power to determine under the provisions of the act or of these Regulations shall be final, and no appeal shall lie from the court to any other court.



(2) In the case of an appeal against the conviction involving the sentence of death or life imprisonment that has been upheld by the court, the appellant shall have the right to further appeal to the Court of Appeal.

The appellant's appeal relied on regulation 20 (supra). Regulation 20 does not confer any right of appeal from a sentence of imprisonment for a term of years such as the appellant's 20 years imprisonment. It only purports to confer jurisdiction on the Court of Appeal to hear appeals against a sentence of life imprisonment or death.

In the premises there was no right of appeal from the decision of the Court-Martial Appeal Court under the only law which confers or purports to confer jurisdiction on the Court of Appeal to hear appeals from decisions of the Court-Martial Appeal Court. Furthermore, this court has no appellate jurisdiction as stipulated in regulation 20 of the Uganda People's Defence Forces (Court-Martial Appeal Court) Regulations, S. I. 307 – 7. We have further held in **Pte Muhumuza Zeph v Uganda; Criminal Appeal No. 031 of 2016** that regulation 20 of Uganda People's Defence Forces (Court-Martial Appeal Court) Regulations, S. I. 307 – 7 was ultra vires the enabling Act and is a nullity. Furthermore, we applied the law in **Attorney General v Shah (No. 4) [1971] EA, 50**, where it was held that appellate jurisdiction is a creature of statute and there is no such thing as inherent appellate jurisdiction.

Secondly, the appellate jurisdiction of the Court of Appeal has to be conferred by Parliament but neither the provisions of the Uganda People's Defence Forces Act Cap 307 (repealed) nor that of the Uganda People's Defence Forces Act 2005 envisages or confers appellate jurisdiction on the Court of Appeal to hear appeals from the Court Martial Appeal Court.



In the premises, this court lacks jurisdiction in the matter and this renders the appellant's appeal incompetent. It is accordingly struck out. The question of whether the trial of the appellant was lawful or without jurisdiction can be the subject of proceedings before a competent court and does not have to be raised in or be handled by this court.

Dated at Kampala the 17th February day of ~~January~~ 2020



Kenneth Kakuru

Justice of Appeal



Frederick Egonda Ntende

Justice of Appeal



Christopher Madrama Izama

Justice of Appeal

