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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 204 OF 2019

MUSABATO ARIAKIM ::: APPELLANT

VERSUS

10 **UGANDA ::: RESPONDENT**

[Appeal from the decision of the High Court holden at Kampala (The Honourable Lady Justice Jane Frances Abodo) dated the 6th day of September 2019 in High Court Criminal Appeal No, 135 of 2018]

15 **CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ**
HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHEBORION BARISHAKI, JA

JUDGMENT OF THE COURT

20 This appeal is from the decision of the High Court of Uganda at Kampala in High Court Criminal Appeal Session Case No. 135 of 2018, in which Justice Jane Francis Abodo dismissed the appeal against the decision of the Magistrates Court of Luwero in Criminal Case No. 265 of 2018.

From the onset, this matter arose from a Complaint on private prosecution by
25 the appellant. The Appellant brought a charge of malicious damage to property

5 contrary to section 335 of the Penal Code Act Cap120 against a one Kalyango
Musa who was acquitted and set free by the trial Magistrates Court of Luwero in
Criminal Case No. 265 of 2018. He appealed against the said decision and the
High Court dismissed his appeal.

The Appellant being dissatisfied with the decision of the High Court now appeals
10 against Judgment and findings of the Court.

On 16th September 2021, the Registrar of the Court of Appeal of Uganda ordered
the Office of the Director of Public Prosecutions to take over the Appeal and
prosecute it to its logical conclusion.

Representation

15 At the hearing of this appeal Ms. Carolyne Hope Nabaasa learned Senior
Assistant Director of Public Prosecutions and Ms. Sarah Awelo Assistant Director
of Public Prosecutions represented the Respondent. The Appellant was present.

The Submissions

The Appellant submitted that he had all his evidence on the file and requested
20 that his appeal proceeds.

The Respondent having been ordered to take over the prosecution of the Appeal
submitted that that this matter arose from a private prosecution and the
Directorate had closed the file long before the trial which prompted the Appellant
to proceed by way of private prosecution.

5 As a result, the DPP maintained that there was no merit in the appeal and prayed that the said appeal abates.

Resolution

This is a first appeal and as such this Court is required under *Rule 30(1)* of the Rules of this Court to re-appraise the evidence and make its inferences on issues
10 of law and fact. **See: Pandya vs R [1957] E.A 336, Bogere Moses and another vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997 and Kifamunte vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997.**

Criminal prosecutions in Uganda are conducted by the Director of Public Prosecutions (DPP) in compliance with his/her Constitutional mandate
15 elaborately set out in **Article 120 of the 1995 Constitution of Republic of Uganda.**

For private prosecutions to take place, they must be conducted with leave of Court. Under the Criminal Procedure Code Act Cap 116, a magistrate may permit a prosecution to be conducted by any person.

20 We note that Uganda (the Respondent) was wrongly named as a Respondent in this Appeal. From the onset Musabato Eriakim was the Appellant as a Private Prosecutor. The Respondent was Kalyango Musa who was acquitted by the Magistrates Court and High Court. It is settled that the DPP is the Prosecutor in Uganda and in this instance where the Appellant was acting as private
25 prosecutor, he was still doing it in the name of the Public Prosecutor

5 It is also settled law that in a case of an acquittal, a private prosecutor may appeal against such acquittal only upon the consent of the public prosecutor pursuant to Article 120 of the 1995 Constitution of Uganda.

Article 120(3) (c) of the Constitution specifically gives powers to the DPP to take over and continue any proceeding initiated by any other persons or authority.

10 This means that it is lawful and proper for any person or authority to commence and continue criminal prosecutions against any individual or group of individuals to the point of disposing off the whole case.

Article 120 (3) (d) of the Constitution also provides the DPP has power to discontinue criminal proceedings instituted by someone else except that this
15 shall not be done without the consent of Court.

In the case of **Rufus Riddles Barger v. Brian John Robson [1959] 1 EA 841**, the trial Magistrate acquitted the accused in a private prosecution case. The Complainant appealed by stating case, which was also dismissed. The complainant then appealed without the consent of the Attorney General. Court
20 examining the competence of the second appeal noted that in the case of an acquittal by a subordinate court, the consent of the Public prosecutor or Attorney General should be sought as a necessary safeguard to prevent an accused being put in jeopardy a second time, except upon the soundest grounds. **See also**
Jumbe Mohamed Bin Tambaza v Hashil Hemed and Another [1960] 1 EA
25 **527**

5 From the review of the Record of Appeal, the said consent was not sought before
the hearing and determination of High Court Criminal Appeal Session Case No.
135 of 2018. Accordingly, the Appeal to this Court stands as a second appeal.
Section 45 of the Criminal Procedure Code Act Cap 116 states:

10 ***“Either party to an appeal from a magistrate’s court may
appeal against the decision of the High Court in its appellate
jurisdiction to the Court of Appeal on a matter of law, not
including severity of sentence, but not on a matter of fact or
of mixed fact and law.”***

As submitted by Ms. Carolyne Hope Nabaasa learned Senior Assistant Director
15 of Public Prosecutions, the Appellant’s file had originally been closed and that is
what prompted the private prosecution. She prayed that the Appeal abates.

We have reviewed the record and find that there are no matters of law to be
determined by this court. There was also no Memorandum of Appeal to ascertain
existence of the said matters of law or not.

20 In the premises, we do hereby dismiss the Appeal.

We so order.

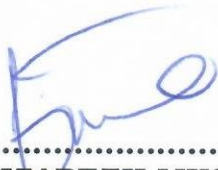
Dated at **Kampala** this 28th day of February 2022.

Richard Buteera

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RICHARD BUTEERA
DEPUTY CHIEF JUSTICE

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**ELIZABETH MUSOKE
JUSTICE OF APPEAL**

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**CHEBORION BARISHAKI
JUSTICE OF APPEAL**

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