THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

criminal APPEAL NO. 27 OF 2009

WASSWA DENNIS}::APPELLANT

VERSUS

UGANDA::RESPONDENT

[Appeal from the Ruling of Her Worship Sarah Langa (G.I Magistrate) in Mukono Criminal Case No. 507 of 2006]

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

RULING

This appeal arose from the decision of Ms. Sarah Langa sitting as Grade I Magistrate in Mukono in which she found that the appellant had a case to answer and ordered that he be put on his defence.

The appellant was charged with the offence of theft contrary to s. 254(1) and 261 of the Penal Code Act. The brief facts are that one Ssekaunde Joseph alleged that the appellant stole building materials worth shs 130,000,000/= from premises at Lower Kauga in Mukono. The prosecution called 4 witnesses to prove its case and they were all cross-examined by the appellant's advocate. At the end of the case for the prosecution, the appellant's advocate submitted that there was no case to answer. The court found that the prosecution had made out a prima facie case that was sufficient for the accused/appellant to be put on his defence. The case had been fixed for the appellant to defend himself on the 22/05/2009. Instead on the

21/05/2009, the accused/appellant chose to file this appeal and raised 3 grounds of appeal.

The gist of the appeal was that the trial magistrate did not properly evaluate the evidence in order to come to the conclusion that there was no case to answer and came to a wrong decision. It was also the appellant's complaint that the trial magistrate did not address her mind to the submissions made by his advocate in advancement of the contention that the state had no made out a prima facie case against him. It is pertinent to note that the appellant was all along out of prison on bail pending the conclusion of his trial.

The appeal was first called on for hearing on the 26/11/2009. The appeal was filed by M/s Abaine-Buregyeya and Co. Advocates. Hearing was fixed at the initiative of the Registar who ordered that hearing notices be served on both parties. On that day the appellant was absent and so was his advocate, and this was in spite of the fact that a hearing notice was served on the advocates on the 23/11/2009. On that 26/11/2009, the appellant's advocate also did not attend court. He talked to Mr. Sewankambo (RSA) and proposed to him that they both file written submissions in order to dispose of the appeal. I had my misgiving about the appeal and questioned whether the appellant had the right to appeal against the decision of the lower court at the point that he did. I thus ordered that his advocate appear before me on the next hearing date and address me on whether the appellant had a right to file an appeal in this court before the hearing in the lower court was concluded. I adjourned the appeal to the 21/01/2010.

Since both counsel for the appellant and the appellant himself were not in court on the 26/11/2009, a hearing notice was taken out and served on counsel for the appellant. The affidavit of Florence Namafuta sworn on 20/01/2010 shows that on 19/01/2010, she went to the Chambers of Abeine-Buregyeya & Co. Advocates and

effected service of the hearing notice on a secretary there who passed on the hearing notice to a lawyer in those chambers. The hearing notice was received in protest because the advocate complained that he or his colleague had not been given sufficient time within which to appear before the date indicated for the hearing. The time between service and the hearing date was only one day.

On the 21/01/2010, Mr. Sewankambo (RSA) appeared before me in the absence of the counsel for the appellant and the appellant. He observed that the appellant and his counsel had failed to attend court on both occasions when the appeal was called up for hearing. He submitted that the appellant's counsel was abusing the court process by failing to attend court in spite of the fact that he was served with notice of hearings. He prayed that the appeal be dismissed under the provisions of s.17 (2) of the Judicature Act which provides for the supervisory powers of the High Court over magistrates courts as follows:

> **"17. Supervision of magistrates courts.**
> (1) The High Court shall exercise general powers of supervision over magistrates courts.
>
> (2) With regard to its own procedures and those of the magistrates courts, the High Court shall exercise its inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice."

I addressed my mind to the said provisions and came to the conclusion that the appellant and his advocates may have filed this appeal with the intention of delaying the conclusion of the case in the lower court against the appellant. In the first place, the appellant had no right to appeal to this court after the court's finding that he had a case to answer with respect to the charges preferred against him. This is because the right to appeal is a creature of statute. It is no where

provided in the Magistrates' Courts Act that an appeal may lie to this court after a ruling on a submission that there is no case to answer. On the contrary, s. 204 of the MCA specifically provides for criminal appeals as follows:

> "(1) Subject to any other written law and except as provided in this section, an appeal shall lie—
>
> (a) to the High Court, by any person convicted on a trial by a court presided over by a chief magistrate or a magistrate grade I;"

I therefore find that the appellant and his advocate are deliberately trying to pervert the course of justice. Counsel filed the appeal when he most probably knew that there was no law authorizing him to do so. He therefore deliberately kept away from court when it was proposed that he appear and explain where the right to file the appeal originated from. On his part, the appellant is out of prison on bail and he is comfortable for the proceedings not to continue for then he can delay knowledge of his fate and possible conviction for the alleged offence.

Since the proceedings in the Magistrates' Court have no doubt been delayed since May 2009 to the present day, a period of about 6 months, I agree with Mr. Sewankambo that this court has the duty to prevent such delay under the provisions of s.17 of the Judicature. For that reason and for the reason that the appellant had no right to appeal in the first place, the appeal is hereby dismissed. The file shall be remitted to the Magistrate's Court to continue with hearing and disposal of the case against the accused/appellant.

Irene Mulyagonja Kakooza
JUDGE
21/01/2010