

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

CRIMINAL APPEAL NO. 21-2004

(From BUS-00-CR-0117-2003)

UGANDA.....APPELLANT

VS

BUKENYA RICHARD.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE P.K. MUGAMBA

RULING

At the time this appeal came to be heard Mr. Tumwesigye, counsel for the respondent raised two points of objection. The first was that the memorandum of appeal was without leave of court, filed out of time and was therefore incompetent. The other point was the document which was filed as the memorandum of appeal contained only general ground which did not provide particulars of either law or fact on which the appeal was founded.

Regarding the first point of objection, section 28 (1) and (3) of the Criminal Procedure Code Act are relevant. S.28(1) provides:

“Every appeal shall be commenced by a notice in writing which shall be signed by the appellant or an advocate on his behalf, and shall be lodged with the registrar within fourteen days of the date of judgment or order from which the appeal is preferred.”

In the event judgment was delivered on 29th October 2004. The notice of appeal was filed within time on 8th November 2004. But there was no memorandum of appeal. Section 28 (3) provides:

‘if the appellant or an advocate on his or her behalf indicated at the time of filing a notice of appeal that he or she wishes to peruse the judgment or order appealed against before formulating the grounds of appeal, he or she shall be provided with a copy of the judgment or order, free of charge, and the grounds of appeal shall be lodged with the

registrar within fourteen days of the date of the service on him or her of the copy of the judgment or order.’

The judgment on the court record bears a stamp showing some payment was made and endorsed on it on 17th November 2004; about nine days after the Notice of Appeal was filed. There was ample time for the appellant to file its grounds of appeal as ordained by section 28 (3). This was not the case. The grounds of appeal were filed in the memorandum filed on 14th February 2005. Clearly this was outside the period and as such I agree with the submission of counsel for the respondent that the appeal is incompetent.

As for the other point of objection, section 28 (4) of the Criminal Procedure Code Act states:

‘Where the appellant is represented by an advocate or the appeal is preferred by the Director of Public Prosecutions, the grounds of appeal shall include particulars of the matter of law or of fact in regard to which the court appealed from is alleged to have erred.’

For the record it is instructive to lay out the single ground of appeal as it is presented in the Memorandum.

‘1. The learned trial Magistrate erred both in law and in fact in failing to properly evaluate and address himself to the evidence on record as a whole which led him to wrongfully acquit the accused/respondent.’

Needless to say the ground is so general that it is hard to point out where the trial magistrate erred in fact and/or in law. The requirement for particulars under S. 28 (4) is to make clear what parts of the lower court’s judgment the appellant wishes to appeal against. A general ground such as the above bears no particulars and is no ground of appeal. This point of objection also succeeds.

In the result this appeal stands dismissed.

P.K. Mugamba

Judge

27th July 2005