

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.123 OF 2014 (Arising from Criminal Case No. 870 of 2911)**

**TATU NAKAMYA :::APPELLANT**

**VERSUS**

**UGANDA :::RESPONDENT**

**RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction**

1.1 The appellant, Tatu Nakamya, through her lawyers M/S Sekaana Associated Advocates & Consultants filed this appeal in Court on 27<sup>th</sup> March, 2015. The respondent is represented by Mr. Muzige Amuza, Senior State Attorney working with the Directorate of Public Prosecutions.

1.2 The appeal is against the decision of Her Worship Buchana Lillian the Chief Magistrate given at Buganda Road, Chief Magistrate’s Court on 25<sup>th</sup> day of November, 2014, whereby she found that the appellant (A1) had a case to answer. The appellant was dissatisfied with the said decision hence, this appeal.

**2. Grounds of appeal.**

The appellant’s appeal is based on the following grounds of appeal, that:-

- a) The Trial Chief Magistrate erred in law and fact when she held that the appellant has a case to answer, whereas Asuman Wamala, A2, admitted the offence and was sentence to three years.

- b) The Trial Chief Magistrate never allowed us (sic) to write submissions on a no case to answer despite the fact that it is indicated in the typed copy of proceedings that she gave two weeks to write their submissions.
  - c) It is proposed to ask Court that the charges against Tatu Nakamya be dismissed.
3. Today, the 15<sup>th</sup> day of October, 2015, when this appeal came up for hearing, Counsel for the appellant, Mr. Kyozi Sam from Isabirye & Co. Advocates addressed Court that they took over conduct of the appellant's Criminal Case in the lower Court from Sekaana Associated Advocates & Consultants. That the appellant has already given her defence in the lower Court. That they were not aware that there is a pending appeal that was filed in the Court by the appellant.

From the set of events as were narrated by Counsel for the appellant, it appears to me that since the appellant has already testified in her defence in the same case in the lower Court, this appeal is overtaken by events.

Further, the appeal is from the order of the Trial Chief Magistrate on a case to answer. In these circumstances, it is trite law that where the Trial Magistrate has not concluded the trial, the accused if he/she is dissatisfied with the ruling of the Court, he/she has no right of appeal. This instant appeal, therefore, has no legal foundation.

The Supreme Court of Uganda, in the case of Charles Harry Twagira –vs- Uganda Criminal appeal No.27 of 2003 held and directed on the practice to be followed in case an accused is dissatisfied with the Trial Court ruling that there is no case to answer. That the appeal should lie at the conclusion of the full trial and include

the ground of appeal any complaints about wrong findings that there is no case to answer.

By the strength of this authority I do not find it necessary to hear the parties on this appeal. This appeal is a nullity and it is accordingly dismissed. The original Court file is returned to the Chief Magistrate of Buganda Road Court with the directive to proceed with the trial of the appellant (accused) in accordance with the law, and especially Section 128 of the Magistrate's Courts Act, Cap. 16, Laws of Uganda.

Dated at Kampala this 16<sup>th</sup> day of October, 2015.

**Joseph Murangira**

**Judge.**

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**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.123 OF 2014**

**(Arising from Criminal Case No. 870 of 2011)**

**TATU NAKAMYA :::APPELLANT**

**VERSUS**

**UGANDA :::RESPONDENT**

**REPRESENTATION**

Mr. Kyozi Sam from Isabirye & Co. Advocates for the appellant.

The appellant is in Court.

Mr. Amuza Muzige for the prosecution.

The matter is for a ruling.

**Court:** Ruling is delivered in open Court.

Right of appeal explained.

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**Joseph Murangira**

**Judge**

**16/10/2015**