

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL APPEAL 050.OF 2021
ARISING FROM BUGANDA ROAD CRIMINAL CASE NO.487
OF 2021

MATOVU BRIAN & ANOR:::::::::::::::::::::::::APPELLANTS

VERSUS

UGANDA::: RESPONDENTS

BEFORE: HON. JUSTICE TADEO ASIIMWE

JUDGEMENT

This appeal arises out of a decision of His Worship MANGENI MARION magistrate grade one delivered on 1/11/2021.

Background

The background of this appeal as can be ascertained from the record of the lower court is the accused persons were charged with offences store breaking with an intent to commit a felony, theft and conspiracy to commit a felony. Before the hearing could commence, counsel for the accused persons raised preliminary objections where court directed both parties to file written submissions which they did. Subsequently, the learned trial magistrate differed the ruling to be delivered in the main judgement and ordered commencement of the hearing hence this appeal.

Being dissatisfied with the decision of the learned trial magistrate to deferred her ruling on preliminary points, the appellants filed this appeal on the following grounds;

1. The learned Trial Magistrate erred in both law and fact when she failed to properly evaluate the evidence on record which occasioned a miscarriage of justice to the appellant.
2. The learned Trial Magistrate misdirected herself when she found that the complainants lack of locus standi can best be addressed through the trial there by occasioning miscarriage of justice yet the same could have disposed of criminal proceeding
3. The learned Trial Magistrate erred both in law and fact in when she misdirected herself and differed a ruling on preliminary objection raised there by occasioning a miscarriage of justice.
4. The learned Trial Magistrate erred in both law and fact when she allowed the matter to proceed in total disregard of the apparent defective charge sheet complained of there by occasioning a miscarriage of justice.
5. The learned Trial Magistrate erred in fact and in law in her ruling when she did not consider and take judicial notice of multiplicity of civil matters pending in land division intended to determine the rights of parties on the same subject matter.
6. The trial magistrate erred law and in fact when she failed and omitted to consider the issues raised by the appellants.
7. The trial Magistrate erred in law and in fact when she overlooked the possibility of conflicting decisions touching the ownership of drugs and shelves allegedly stolen and the premises broken in to thereby occasioning a miscarriage of justice.

8. The trial Magistrate in her decision/ruling ignored possible effects of overlapping judgement in criminal proceedings on pending civil proceedings thus ignoring a legal principle that a decision of the civil court binds the criminal court thus coming to a wrong conclusion.

At the hearing of this appeal, the appellants were represented by Counsel Abas Bukenya while the respondent by Mr wanamama Isiah M. an Attorney from ODPP. Both counsel was directed to file written submissions which they did.

DUTY OF THE FIRST APPELLATE COURT

This being a first appellate court, it is under a duty to reappraise the evidence, subject it to an exhaustive scrutiny and draw its own inferences of fact, to facilitate its coming to its own independent conclusion, as to whether or not, the decision of the trial court can be sustained (see Bogere Moses v. Uganda S. C. Criminal Appeal No.1 of 1997 and Kifamunte Henry v. Uganda, S. C. Criminal Appeal No.10 of 1997, where it was held that: "the first appellate Court has a duty to review the evidence and reconsider the materials before the trial judge. The appellate Court must then make up its own mind, not disregarding the judgment appealed against, but carefully weighing and considering it").

An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination, (see Pandya v. Republic [1957] EA. 336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion (see Shantilal M. Ruwala v. R. [1957] EA. 570). It is not the function of a first appellate court merely to scrutinize

the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, (see *Peters v. Sunday Post* [1958] E.A 424).

Determination

Before resolving the grounds of appeal as framed by the appellants, I wish to first determine whether this appeal is properly before this Court.

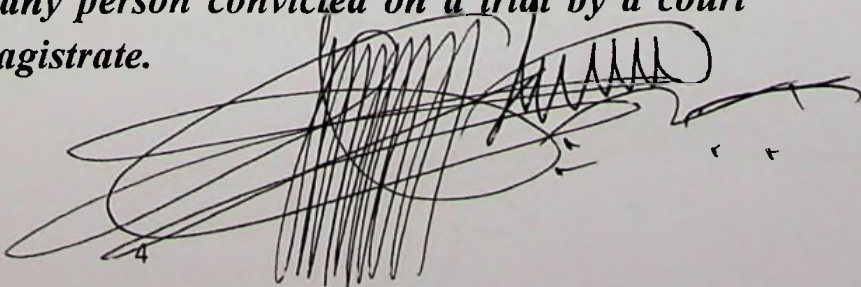
From the pleadings of both parties and their respective written submissions, it is clear this appeal arises from an interlocutory decision of the trial magistrate when she deferred a decision on preliminary points of law to be delivered in the main Judgement.

The position on the interlocutory decisions is now settled in the Supreme Court case of **CHARLES HARRY TWAGIRA (criminal Application no.3 of 2003)**. Where court held as follows:

"Now the right of appeal of an accused person appearing in a magistrates Court is conferred by section 216 of the Magistrates Act, 1970 and section 6 (5) of Judicature Statute. The applicant is being tried by a Chief Magistrate. In so far as relevant the applicable provisions of section 216 state:

"216 (1) subject to the provisions of any other written law and save 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.



(2) Any appeal under subsection (1) of this section may be on a matter of fact as well as on a matter of law."

Clearly the above provisions do not confer a right of appeal to the High Court in respect of interlocutory matter, i.e., discretionary orders or rulings of the Chief Magistrate in criminal matters. This may explain why, after the Chief Magistrates ruling that the applicant had a case to answer, the applicant chose to seek from High Court a revisional order rather than a decision in appeal. To me this course appears to affect his right of appeal to this Court.

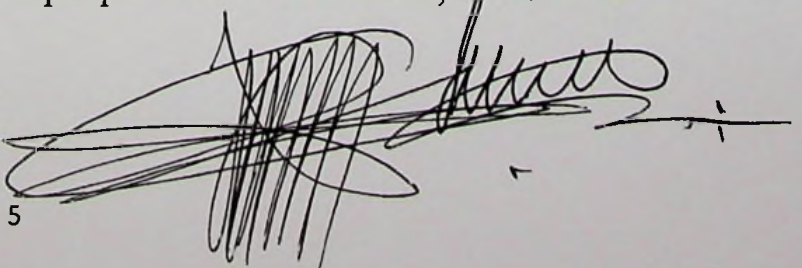
I entirely agree with the above decision and wish to emphasize that an appeal can only arise from a final decision of a court, but not a discretionary order or ruling in an interlocutory decision. This helps trial courts to conclude matters in the shortest time possible to enable the unsuccessful party deal with all the issues on appeal.

In the case before court, the trial magistrate made no final decision or even a ruling but rather a discretionally order to defer her ruling on preliminary points of law. Worse still the trial magistrate made a pronouncement to commence the trial and no single witness had testified. In effect, such discretionary orders are not appealable as already explained above.

In addition, the high court cannot interfere with discretionary orders of the lower court as of course unless they are irregular and or illegal. Even then, such interference by the high court can only be done through revision applications and not through appeals.

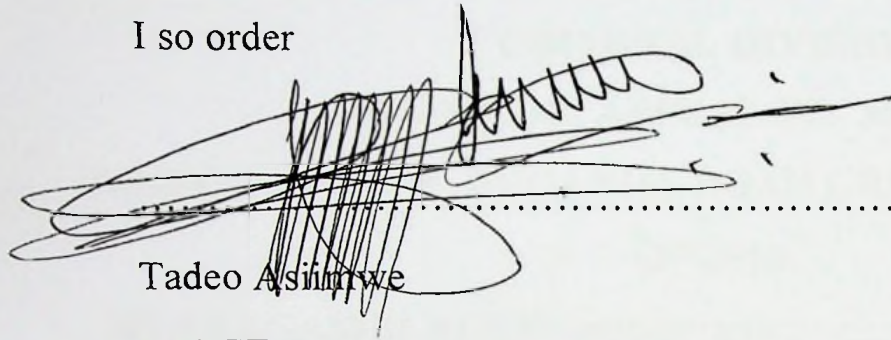
Basing on the above, I find that this appeal is improper before this court.

Since I have found the appeal to be improper before this court, there is no need to go into the merits of it.

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In conclusion, this appeal lacks merit and the same is hereby dismissed.
The trial Magistrate shall continue with the trial of criminal case number
847 of 2021 from which this appeal arises.

I so order

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Tadeo Asimwe

JUDGE

16 /08/2022.