

THE REPUBLIC OF UGANDA.  
IN THE HIGH COURT OF UGANDA.

HOLDEN AT KAMPALA.

HCT-00-CR-CN-0141-2016 (originally crim. appeal no 59/2015)

ARISING OUT OF KAJJANSI CRIM CASE NO 128/2015.

A1. MBAINE ELIPHAZI

A2. MATSIKO RONALD=====APPELLANTS.

VERSUS

UGANDA=====RESPONDENT.

BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JHC.

**RULING.**

***Introduction.***

Mbaine Eliphazi and Matsiko Ronald hereinafter referred to as Appellants were convicted together with a one Mugarura Francis of three counts which were; stealing a vehicle contrary to Sections 154 and 265 of the Penal Code Act, Conspiracy to commit a felony c/s 390 of the PCA and Forgery c/s 342 and 347 of the PCA, Laws of Uganda.

They were all sentenced to 4 years, 3 years, and 1 year respectively to be served concurrently. This was on 17/9/2015.

On the 23rd day of September 2015, the two Appellants filed a Notice of Appeal through M/S Newmark Advocates who indicated their address very clearly as 2nd Floor, Suite 6 Kob house opposite KPC Watoto Church, P. Box 36853, Kampala.

The Notice of Appeal was signed and sealed by the Registrar of Court on 28<sup>th</sup> October 2015.

The Notice of Appeal was accompanied by a letter from the lawyers on the same date of 23/9/2015 in which they requested on behalf of the intending Appellants that the Registrar of Court sends the notice to the trial court at Kajjansi in order for it to send a record of proceedings, judgment and all other relevant material in Criminal Case No. 128 of 2016 for purposes of enabling the Appellants pursue the appeal before this honorable court.

On perusal of the Appeal file, I discovered that all the copies of the Notice of Appeal remained on record and there was no official letter on record sending the notice of appeal to the trial court and calling for the original file, certified proceedings, judgment and any relevant materials/exhibits.

On the 17th day of October 2016, the 2nd Appellant, Matsiko Ronald wrote a letter direct to the Grade 1 Magistrate Kajjansi -Kitende Court through the Welfare Officer Kigo Main prison requesting for the proceedings and ruling/judgment for purposes of filing an appeal in the High Court of Uganda.

This letter was received by court on 18th October 2015. There is no evidence on record to show that the trial Magistrate responded to that letter

The original file and the typed proceedings that were certified on 4/4/2019 were attached to the Appeal file.

The original file and proceedings were therefore forwarded to the Appellate court after 3 years and 7 months, most probably after the sentence has been served. Nothing is on record to indicate to indicate how and when the lower record was forwarded because there is no letter whatsoever written by the registrar calling for the lower record.

On 1/4/2021, the file was allocated to the judge, after close to 6 years.

It was fixed for hearing promptly on 17/5/2021 and the affidavit of service indicated that the Appellants are no longer in custody having served their sentences I suppose and the advocate could not be traced.

The learned state Attorney rightly applied for dismissal of the appeal for want of prosecution and this court had every justification to dismiss it immediately as prayed by the learned state attorney.

However, in the interest of justice and this being a court of Record, I am obliged to guide the lower bench on the legal procedure pertaining to criminal appeals as what happened in this case is not an isolated incident but very rampant.

It is only fair and just that the Appellants are accorded justice when they express dissatisfaction with the proceedings and decisions of the trial Court.

The many appellants who find themselves in similar circumstances do not perceive the judicial system to be fair and just which is contrary to what the Judiciary stands for.



Something must be done and the time is now for the judiciary to rise up to the occasion and dispense justice to all its clients regardless as to whether they are already convicts because the law allows them to appeal against the decisions of the lower court where they are aggrieved with the entire judgment and sentences.

Suffocating and frustrating the appellate system is immoral and should be condemned in the strongest words as it was not provided for in vain

Hearing the appeal after the appellants have served their sentence is a violation of their legal right of appeal and right to be heard which is their constitutional right. *(Refer to Article 28 of the 1995 Constitution of the Republic of Uganda).*

Sending the lower record to the appellate court after the appellants have served their sentences is a mockery of justice.

***What went wrong in this case and what should be done in similar circumstances.***

It is apparent that the Registrar of the Appellant Court/ Division and the trial Magistrate or the Magistrate in the charge of the trial Court did not perform their statutory duty and yet they play a major role in the administration of justice.

**Section 28 of the Criminal Procedure Code Act Cap 116** provides for appeals from Courts in the following words;

***"1. Every Appeal shall be commenced by a notice in writing which shall be signed by the Appellant or an Advocate on his or her behalf, and shall be lodged with the Registrar within fourteen days of the date of judgment or order from which the Appeal is preferred.***

***2. Every Notice of Appeal shall state shortly the effect of the judgment or order appealed against and shall;***

***(a). Contain a full and sufficient address at which any notices or documents connected with the Appeal may be served on the Appellant or his or her Advocate, and***

***(b) Except where subsection (3) applies, state the general grounds upon which the Appeal is preferred.***

***3. If the Appellant or an Advocate on his or her behalf indicates 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."***

From the above provision of the law, both the Appellant and trial Court have the legal duty to ensure the successful prosecution of the Appeal by doing the following;

- 1. The Appellant shall provide full and sufficient address for service of Court process.**
- 2. The Notice of Appeal shall contain briefly the grounds of Appeal (as the rest may be formulated after getting the Record and judgment of the trial Court).**
- 3. The Appellate Court shall send the notice of Appeal to the trial Court and call for the original typed and certified proceedings and judgment, orders and any other material that is relevant to the Appeal.**

4. The trial Court shall send with all practicable dispatch the original file, typed and certified proceedings and judgment with all material/exhibits that are relevant to the Appeal.
5. In case the trial Court does not comply with the call made by the Registrar, the Registrar has a legal duty to send a reminder and warning to the trial Court because the Appellate Court and the Appellant cannot proceed further with the Appeal without procuring the lower record from the trial Court.
6. The Registrar of the Appellate Court shall cause the Appellant to be served with the certified copies of the Record of proceedings, judgment, orders and any relevant material/ exhibits of the trial Court.
7. The process server of the Appellate Court shall file an affidavit of service indicating how and when the Appellant or his or her Advocate were served.
8. The Registrar of the Appellate Court shall then indicate on the file when the fourteen days after service on the Appellant or his or her Advocate shall expire.
9. The Appellant or his or her Advocate shall then file the grounds of Appeal within fourteen days after service of the certified record of proceedings, judgment, orders and any relevant material to the Appellate Court.
10. The Registrar of Court shall then allocate the file to the Appellate Judge for further management.

The above is the ideal procedure which should be followed in the Criminal Appeals process as the wording is a mandatory language.

In the instant case, there is nothing on the record suggesting that both the Registrar of the Appellate Court and the trial Court complied with the above provision of the law.

Neither the Appellants nor their Advocate were served with the certified record of proceedings, judgment, orders and any relevant materials as required under the law.


Consequently, the Appellants served their sentence without being given the opportunity to be heard by the Appellate Court.

I find the conduct of the trial Court of certifying the proceedings and judgment on the 4th day of April 2019 (3 years and 7 months after the Notice of Appeal was filed) to be a total abuse of the Appellate process by the Judicial officer hence occasioning a miscarriage of justice to the Appellants.

I equally find the conduct of the learned Registrar of the Appellate Court to be in breach of his statutory duty. This is because he is mandated under the law to follow up and ensure that the proceedings from the lower court are forwarded to the Appellate Court and served to the Appellant at the address provided on time to enable him/her prepare for his/her appeal.

The Registrar has the statutory duty to prepare the appeal filed for hearing and where the Appellant or their Counsel do not comply with the statutory timelines, the file should be closed. It does not need to take more than 6 months to have an appeal file ready for hearing.

Because of the negligence on the part of the lower bench, many Appellants complete serving their sentences before hearing of their Appeals.



The above flaws on the part of the judicial officers notwithstanding, I also find that the Advocates of the Appellants did not follow up their clients' case because they only stopped at filing the Notice of Appeal.

In my humble view, it is the duty of Counsel to move or remind Court where there is laxity on the side of Court. However, it is trite law that the negligence of Counsel not should be visited on the client.

It is the opinion of this Court that where the Advocate does not follow up the case of his client who is in custody like in the instant case, the Court, that has the mandate to dispense justice should not sit back but take up its cardinal role of ensuring that justice prevails in the Appellant's case.

No wonder, when the Advocate abandoned the Appellants in this case and did not even communicate to court about his new address, when this Court attempted to serve the Appellants with the hearing notices, they could not be traced.

In view of the above, this Court has no option but to dismiss the appeal under Section 44(1)(b) of the Criminal Procedure Code Act with no orders made as to costs.

**Dated at Kampala this 31st day of May 2021.**



**Hon lady Justice Margaret Mutonyi. JHC**